

Joshua Castellino / Niamh Walsh (eds.)

International Law and Indigenous Peoples

The Raoul Wallenberg Institute Human Rights Library, Volume 20

Martinus Nijhoff Publishers, 2005, 399 p., 215,00 EUR, ISBN 978 90 04 14336 4

This collection of sixteen essays, edited by Joshua Castellino and Niamh Walsh, aims to provide greater insight into issues concerning indigenous peoples today, the situations in which the violation of their rights occurs and the legal advances in the international arena to improve legal standards and to provide effective protection to indigenous peoples.

The first section of the book presents the basis that exists within the discourse of international human rights law on indigenous peoples. The relevant regulations of the International Covenant on Civil and Political Rights -emphasizing on the right to self-determination- is presented through the analysis of key cases according with the practice of the Human Rights Committee. It is also analysed how the International Convention on the Elimination of Racial Discrimination (ICERD) deals with the caste/descent-based discrimination. An overview of the International Labour Organization (ILO) Convention 169 on Indigenous Peoples, the central human rights treaty concerning indigenous peoples, is also offered.

This review of the law and practice in international organizations shows that there is still much to be achieved. Despite of the important progress in adopting conventions and appointing bodies and rapporteurs, not all these attempts have been successful. A clear sign of the limitations of the current international legal regime is that many indigenous people continue to suffer from the pressure of development. Nevertheless, there are “unifying forces” in the international arena, whose achievements are a clear sign of their commitment for the acknowledgment of indigenous rights.

The second section focuses on the negotiation between states and indigenous peoples. The right to land in international law is analysed by Joshua Castellino, focusing on the extent to which international law on title to territory is reflected in documents developed for the protection of indigenous peoples. Cultural genocide and how the Convention for the Prevention and Punishment of the Crime of Genocide deals with it is also presented. Although indigenous peoples may have view the convention as an instrument on little practical value, during the last years the convention has been interpreted in a more meaningful way, offering new possibilities that should be explored. The appropriation of aboriginal cultural property in Australia, where cultural heritage legislation has operated to deny Aboriginal control of cultural property while privileging development and research interests is review in the last article of this section.

The third section offers nine case studies from jurisdictions where the issue indigenous peoples has been before the Courts for a considerable period, such as Australia and Canada, and also cases from diverse corners of the globe which have not receive so much international attention such as Bangladesh, India, Kenya, Mexico, Nicaragua, Nigeria and South Africa.

The decision of the Inter-American Court on Human Rights on the Awas Tingni Community case; the Adivasis experience with land rights, self-rule and autonomy facing legislation enforcement problems; the possibilities of multicultural legislation and its relation with indigenous autonomy in Oaxaca; the decision of the African Commission on Human and Peoples' Rights in the Ogoni case, are some examples of the variety of the diverse indigenous peoples' issues presented in this chapter: management of natural resources, indigenous peoples' land ownership; autonomy, discrimination, lack of proper responses from the domestic legislation, and national compliance with the international standards.

This book complies efficiently with its task to offering a panoramic view of the situation of indigenous peoples, not only from the theoretical international law perspective, but also through important study cases to demonstrate how legal issues are viewed in the practice, and the extent implementation and compliance of national and international regulations succeed or fail.

The book – due to its date of publication – does not include the latest international developments, such as the establishment of the Human Rights Council in replacement of the Commission on Human Rights, the adoption by the Human Rights Council of the United Nations Declaration on the Rights of Indigenous Peoples, and the General Assembly's resolution that postponed its adoption, considered a serious set-back for the universal protection of indigenous peoples. Nevertheless, the articles – thorough and interesting – are written in a clear style and provide an excellent overview on the most important relevant issues. It is a highly recommendable book.

Rocío Meza, z. Zt. Gießen

Judith Dick

Offizieller Rechtspluralismus im Konkurrenzverhältnis unterschiedlich geregelter Geschlechterverhältnisse

Das Recht der Khasi im System der personalen Rechte (personal laws) Indiens
Nomos Verlagsgesellschaft, Baden-Baden, 2007, 392 S., 278,00 EUR,
ISBN 978-3-832926274

Heutzutage lieben nicht nur Postmodernisten Rechtspluralismus. Das Konzept oder vielmehr der Begriff hat insbesondere im angelsächsischen Raum einen Siegeszug angetreten, der seinesgleichen sucht. Die deutsche Rechtswissenschaft ist hiervon bis auf wenige Ausnahmen³ verschont geblieben. Dies verwundert zwar einerseits nicht, muss man sich doch von der lieb gewonnenen exklusiven Verknüpfung von Recht und Staat lösen, wenn man

³ Insbesondere *Gunther Teubner* sowie *Franz von Benda-Beckmann*, der sich jedoch eher als Rechtsanthropologe denn als Jurist versteht.