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2016

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Dear Readers,

We are pleased to present you with the latest volume of the Polish Yearbook of International Law (36/2016). Following our tradition, it is divided into three sections: articles, Polish practice in international law, and book reviews. In addition, at the beginning of the volume we have included a memorial to the academic life and work of Jan Kolasa, the distinguished Polish professor of international law from Wrocław University, who sadly passed away last year (by Bartłomiej Krzan).

The first section starts with two texts (by Roman Kwiecień and Michał Kowalski) that analyse the legal consequences of the famous judgement of the International Court of Justice in the Nicaragua case (*Military and Paramilitary Activities in and against Nicaragua, Nicaragua v. United States of America*). These two publications are very timely, as 2016 marked the 30-year anniversary of the judgement. Both authors agree on its significance for modern international law, particularly with respect to customary rules relating to the use of force and principle of non-intervention. While the texts discuss different aspects of the judgement, both of them are rather critical of the ruling, and it is difficult not to agree with them, especially if one considers the developments that have taken place in Eastern Ukraine over last couple of years (and their legal assessment).

The third text in this section (by François Finck) explores the role of recognition in State creation. Based on an analysis of the relationship between the principles of effectiveness and legality in the process of State creation, the author claims that recognition is constitutive of statehood as a subject of international law. In the next article, Wojciech Burek argues that while the existing provisions on family reunification in international and European law are formulated in neutral language, the enforcement of these substantively neutral rules results, in certain situations, in discrimination with respect to women, both as the sponsors of migration or the bearers of the consequences of male migration. Next Athanasios Yupsanis takes a critical look at the legal mechanisms for guaranteeing cultural autonomy for minorities in selected states of the former USSR (including the Russian Federation), tracing their origins back to the late 19th century Austro-Marxist school of thought. Anna Karapetyan in turn addresses the problems arising from the inclusion of the “lawful sanction clause” in the relevant definition contained in the Convention against torture, while Aleksandra Rychlewska analyses the jurisprudence of the European Court of Human Rights relating to the principle of *nullum crimen sine lege* (as enshrined in Article 7 of the European Convention on Human Rights) and comes to the conclusion that it is understood as requiring foreseeability in the application of criminal law and coherence in terms of the “essence of an offence”. Petra Bárd, in her important (and timely) text deals with the rules and procedures applicable to violations of the rule of law requirement in the European

Union. In this context she assesses the need for – and the possibility of establishing – an EU Scoreboard on EU values, which could contain viable strategies and procedures to regularly monitor all Member States’ compliance with the rule of law; and discusses as well the effectiveness and nature of the dissuasive sanction mechanisms foreseen for rule of law violators. Joanna Ryszka investigates two phenomena which have emerged within the framework of the European Union integration process, i.e. “social dumping” and “letterbox companies”. She contends that both of them may have some negative effects in terms of attaining the EU objective of a “highly competitive social market economy”, and presents possible solutions to the problems they give rise to. In the last text, Dominik Horodyski and Maria Kierska provide the Polish perspective on the effectiveness of emergency arbitrator proceedings by analysing the applicable regulations on interim measures and their enforcement.

The second section (Polish practice in international law) includes three texts. In the first, Dorota Pyć discusses the quality of the recent implementation of the Maritime Labour Convention into the Polish legal system (i.e. the new Polish Act on Maritime Labour). Grzegorz Wierczyński then presents the Polish practice of promulgation of international agreements since the end of World War II. In this context he shows that the practice is at variance with Polish law and makes it difficult to determine the current legal situation vis-à-vis international agreements in Poland. The section closes with a text by Agata Kleczkowska, who analyses the judgement of the Polish Supreme Court of 17 February 2016 in a case concerning Polish soldiers accused of having committed crimes in the village of Nangar Khel in Afghanistan in 2007.

The last section includes five reviews of recently published books that should not be missed by our readers.

As you will immediately notice, the volume does not contain the usual “Polish bibliography in international and European law”. The main reasons for the discontinuance of this section is the fact that our readers apparently do not find this list so useful anymore as the download statistics for the document are gradually declining. Of course we will reconsider our decision if there are any changes in the future.

It is always a great pleasure to present you with each new volume of the Yearbook. We encourage you to contact us if you wish to submit a paper for a future volume, or just to express your opinion regarding the usefulness or content of PYIL, at pyil@inp.pan.pl).

Karolina Wierczyńska, Łukasz Gruszczyński