Introduction: A Nordic Approach to International Law?

The Nordic countries have a long-standing tradition of collaboration on a wide range of legal issues. The Nordic Council of Ministers endeavours “to promote basic common principles in Nordic legislation”, and extensive inter-Nordic harmonisation is now in place in areas as diverse as education, energy, taxation, culture, and gender equality. But do these “shared Nordic values” extend to embrace a common perspective on international law and policy beyond the Nordic region? And do international legal scholars in the Nordic countries share a professional outlook enabling us to speak of a distinct “Nordic approach to international law”? With generous support from The Danish-Norwegian Collaboration Foundation, The Carlsberg Foundation and The Dreyer Foundation, international legal scholars and expert practitioners from Denmark, Finland, Iceland, Norway and Sweden gathered at Lysebu outside Oslo for a two-day conference in August 2015 to discuss contemporary issues of international law from a Nordic perspective. In addition to the question of a distinct Nordic tradition within international legal scholarship, the conference call welcomed papers addressing various topics in international law from a Nordic viewpoint. From a wide variety of paper proposals, panels were organised around the following themes: “The Nordic Approach to International Legal Regulation of Natural Resources”, “Nordic Judges of International Courts”, and “the Nordic Approach to International Human Rights Law”. Moreover, a renowned international legal scholar from each of the Nordic countries was invited to give a key note lecture, and the five directors of legal affairs in each of the Nordic Ministries of Foreign Affairs presented their views on the conference theme in a round-table discussion.

This special issue of the Nordic Journal of International Law contains eight of the papers presented at the conference. They all address aspects of the question of a Nordic approach to international law, varying significantly in terms of subject area, methodology and style.

In the opening essay, Gregor Noll claims that “this special issue, and the conference preceding it, is organised around a phantom pain”. Based on three examples concerning central questions in current international law, he first argues that little evidence exists of substantive Nordic convergence in today’s
practice. Noll goes on to show that in the “geopolitical heyday of Nordic international law”, the Nordics took a leading role in shaping and articulating an international law of neutrality. As this question is of limited relevance today since the law of neutrality has been replaced by the law of collective security post World War II, the Nordics are left with nostalgia: “a mentality that is acutely mindful of past grandeur and therefore sees and laments present decay”. Reading this melancholic longing for a Nordic international law through Andrej Tarkovsky’s 1983 film, Nostalghia, Noll finally asks how it might be transgressed.

The subsequent two articles both address the relationship between international law and domestic law within the field of human rights. However, their respective approaches – as well as their findings – differ substantially. Marlene Wind conducts a quantitative study of the frequency with which Scandinavian supreme courts cite treaties and judgments of international courts. By analysing an original, extensive dataset comprising the total number of references made by the supreme courts of Denmark, Norway and Sweden to decisions of international courts between 1961 and 2014, Wind argues that the Scandinavian supreme courts are far less engaging towards international law than what would be expected in light of the common depiction of the Nordic countries as frontrunners, particularly in so far as international human rights law is concerned. Notably, however, her study shows that the Norwegian Supreme Court takes a much more favourable approach to the “domestication of international law” than its Danish and Swedish counterparts. Wind argues that the reluctance of Scandinavian courts to accommodate international law in domestic judicial practice may be explained by the influence of Scandinavian legal positivism and the strong tradition of majoritarian democracy in the Nordic region.

David Thór Björgvinsson’s article comprises a qualitative analysis of the effect of judgments of the European Court of Human Rights (ECtHR) before domestic courts. First and foremost, Björgvinsson examines the status of the principle of res interpretata in Iceland with regard to the case law of the ECtHR. For comparison, the article includes parallel studies of the situation in Denmark and Norway. Björgvinsson concludes that the national courts of all three countries regularly consult the case law of the ECtHR within the framework of res interpretata and the rule of presumption.

Martti Koskenniemi’s essay describes the engagement by Finnish jurists with international law in the 20th century. He claims that international law had an exceptionally strong position in Finland in comparison to the other Nordic countries, and explaining this he refers to historical events, including the disputes concerning the Åland Islands and Eastern Carelia. Koskenniemi goes on to present the towering figures among 20th century Finnish international