Editors’ Note

The Arctic States can do Better on Human Rights

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The themes of the Third Akureyri Symposium on Polar Law were human rights and good governance in the Arctic States that is Canada, Denmark in relation to Greenland, Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America. Accordingly, in this volume of the Yearbook of Polar Law that usually draws on contributions to these Symposia, several authors bring up issues concerning various aspects of the human rights and good governance performance of the States concerned, as these relate to both indigenous peoples and other Arctic communities. Many of the authors make critical comments.

One would expect that the democratic and rich States of the north would be able to present top-level performance when it comes to the realization of international human rights and governance standards; after all these are minimum standards that most of the same States are eager to export to the rest of the world.

A different picture emerges upon close examination of the human rights situation in the Arctic States, and in this editorial attention is drawn to three aspects relating in particular to indigenous rights. First, the steps taken by the Arctic States in subscribing to international standards concerning the rights of indigenous peoples are inadequate and uneven. Second, there are significant shortcomings in national implementation and inconsistencies vis-a-vis foreign policy of the same States. And third, the testing of domestic performance in national courts, appeals to international monitoring instances, and scrutiny by non-governmental organizations should be pursued more vigorously.
1. Acceptance of International Standards

As to the acceptance of the instruments most relevant to the rights of indigenous peoples and of the corresponding monitoring procedures, the list is less than encouraging:

− The Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169, adopted in 1989, in force from 1991) is the only international human rights treaty specifically addressing the rights of indigenous peoples, notably rights to land and natural resources. Canada, Finland, Iceland, the Russian Federation, Sweden and the United States of America have not ratified the Convention.

− The International Covenant on Civil and Political Rights (UN 1966, in force from 1976) has many relevant articles, in particular article 27 which the Human Rights Committee through its case law has elevated to the provision most frequently employed in case law to the benefit of indigenous peoples worldwide. All the Arctic States have ratified the Covenant and all of them except the United States of America have ratified its first Optional Protocol (UN 1966, in force from 1976). This Protocol allows the Human Rights Committee to receive and consider complaints from individuals after the exhaustion of local remedies. All of the States concerned have also accepted the competence of the Human Rights Committee under article 41 to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.

− The United States of America has not ratified the International Covenant on Economic, Social and Cultural Rights (UN 1966, in force since 1976) with a series of relevant articles on issues like education, health and social security. None of the Arctic States have ratified the Optional Protocol to this Covenant (UN 2008, not yet in force) that would allow complaints to the Committee on Economic, Social and Cultural Rights relating to the substantive provisions of the Covenant.

− The International Convention on the Elimination of All Forms of Racial Discrimination (UN 1966, in force since 1969) has strong language on the obligation of States to take special and concrete measures for combating racial discrimination. While all the Arctic States have ratified the Convention, Canada and the United States of America have not made the declaration under article 14, paragraph 1, that recognizes the competence of the Committee on the Elimination of Racial Discrimination (CERD) to receive and consider complaints from individuals or groups of individuals claiming to be victims of a violation by a State Party.

− The United States of America has neither ratified the Convention on the Elimination of All Forms of Discrimination against Women (UN 1979,