
XXXII

POLISH YEARBOOK
OF INTERNATIONAL LAW

2012

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Wydawnictwo Naukowe SCHOLAR
Warsaw 2013

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PL ISSN 0554-498X
DOI 10.7420/pyil2012

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www.scholar.com.pl

Printed in Poland

First edition, 250 copies

CONTENTS

ARTICLES

Wojciech Sadurski

Democratic Legitimacy of the European Union: A Diagnosis and Some Modest Proposals9

Roman Kwiecień

Does the State Still Matter? Sovereignty, Legitimacy and International Law45

Anna Wyrozumska

Execution on an Embassy Bank Account75

Malgorzata Fitzmaurice

Some Reflections on Legal and Philosophical Foundations of International Environmental Law89

Susana Camargo Vieira

Governance, Good Governance, Earth System Governance... and International Law111

Alice de Jonge

What Are the Principles of International Law Applicable to the Resolution of Sovereign Debt Crises?129

Mia Swart

The Lubanga Reparations Decision: A Missed Opportunity?169

Adam Bodnar, Irmina Pacho

Targeted Killings (Drone Strikes) and the European Convention on Human Rights.....189

Aleksandra Dłubak

Problems Surrounding Arrest Warrants Issued by the International Criminal Court: A Decade of Judicial Practice209

Maurizio Arcari Limits to Security Council Powers under the UN Charter and Issues of Charter Interpretation.....	239
Natividad Fernández Sola The European Union as a Regional Organization within the Meaning of the UN Charter.....	259
Dagmar Richter Judicial Review of Security Council Decisions – A Modern Vision of the Administration of Justice?.....	271
Pavel Šturma Does the Rule of Law also Apply to the Security Council? Limiting Its Powers by Way of Responsibility and Accountability	299
Andreas Zimmermann The Security Council and the Obligation to Prevent Genocide and War Crimes	307
POLISH PRACTICE IN INTERNATIONAL LAW	315
Oktawian Kuc <i>Krstić Case</i> Continued	315
Amicus curiae briefs in <i>Janowiec and Others v. Russia</i>	325
BOOK REVIEWS	401
POLISH BIBLIOGRAPHY OF INTERNATIONAL AND EUROPEAN LAW 2012	427

Bartłomiej Nowak, *Gas market liberalization and energy security. Legal and institutional aspects.* Wolters Kluwer Polska – Lex, 2012, pp. 272

ISBN 978-83-264-4133-2

Liberalization of the European (as well as Polish) gas market and the problem of energy security are hot topics in the current political debate. The progressive (albeit very slow) de-monopolization of domestic gas markets in the EU countries, the shale gas revolution, Russia's fight to maintain its dominant position in the supply sector (particularly in the CEE region) as well as the shift from solid fuels to gas and various renewable energy sources are characteristic features of the process that is currently shaping the gas sector. Despite those developments, the existing scientific literature analyzing the legal aspects of current processes is limited, at least in terms of the Polish scholarship. This seems to be surprising, especially considering the number of theoretical and practical issues that call for scientific enquiry. The importance of such enquiry also lies in the fact that energy, in the current stage of economic development, has become a necessity for the well-being and proper functioning of entire economic systems. Any interruptions in energy supplies, even if only temporary, carry with them serious financial and social costs to all sectors of the economy. The monograph by Bartłomiej Nowak is one of those few positions that attempts to analyze the various legal problems that have emerged over recent years and to propose feasible regulatory solutions that could address existing market shortcomings.

Nowak observes, as a starting point of his analysis, that the current growth of gas consumption in Poland, together with a continuing dependency on foreign upstream suppliers, creates an urgent need to enquire how these supplies should be secured. Very different views on the virtues of energy security and liberalization of the energy market, including its feasibility and desirability, are expressed in both the political and academic debate. Nowak takes the approach that liberalization fosters innovative solutions. He assumes that the market should be opened for competition by increasing number of sellers (and suppliers), albeit under the supervision of independent national regulators and unbundled from mother companies system operators. System operators should, in Nowak's opinion, grant access to the energy infrastructure on non-discriminatory conditions, based on the assumption that free access to infrastructure is one of the principal elements in improving the level of competition and thereby also the security of supply in the energy market. However, as Nowak argues, it is also crucial to satisfy several premises in the entire process, without which the effects of liberalization may be insufficient to improve energy security. In particular, he identifies three necessary conditions: (i) the creation of adequate legal regulations for the functioning of the gas market, including those directly concerning energy security; (ii) the creation of effective bodies to monitor how these legal regulations and rules of competition in the gas market are adhered to, including, above all, an agency for energy regulation and independent

system operators; and (iii) the extension of network and storage infrastructure within the European Union Member States.

The author also argues that the structure of the gas market in Poland has been already changed due to the ongoing liberalization process (both on the domestic and regional level). He points that what we are facing now is the division of responsibilities among different actors. Nowak identifies four entities onto which the legal instruments driving gas market liberalization distribute the burden of responsibility or collective responsibility for energy security, and which need to cooperate closely with each other. These four entities are:

a) state administration, which sets the goals and rules of the functioning of the energy market within state energy policy, including apolitical regulatory authorities dealing with energy markets;

b) enterprises operating as energy providers/suppliers (which are obliged to maintain adequate reserves of energy carriers), and enterprises operating as system operators (that are obliged to make network and storage infrastructure available to third parties and to conform to rules of equal access to infrastructure for all sellers);

c) consumers, above all large industrial users, that are obliged to introduce mechanisms for saving and energy efficiency; and

d) in light of deepening European integration, relevant EU institutions cooperating strictly with member states. In this context it is the European Commission that should play the crucial role inasmuch as, in its capacity of “guardian of the Treaties”, it has been obliged to manage and regulate the integration processes in the EU.

On the basis of the analysis presented in the respective chapters of the book, the author comes to the conclusion that a soundly functioning, liberalized, and harmonized common gas market in the European Union, arising as an effect of liberalization of national gas markets based on well-developed market-based mechanisms governed by transparent legal regulations, under the supervision of independent system operators and regulatory authorities, and free from particular, political influence, will have a beneficial impact upon the energy security of individual EU Member States. This is also true with respect to Poland. It is difficult to disagree with Nowak when he observes that an increased legal and economic integration within the European Union, including the creation of common a gas market, in particular taking into account Poland’s present geopolitical situation (the country’s territory is passed over by the newly-launched Nord Stream gas pipeline and is threatened with gradual withdrawal from the Yamal gas pipeline as a transit route to Western countries – EU Member States) will improve Poland’s energy security in the gas sector.

Nowak’s recent book is most definitely a valuable position for anyone interested in the current legal developments in the European and Polish gas sectors.

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DOI 10.7420/pyil2012t

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