

ABSTRACTS

Present situation and direction of development of the Chinese legal system

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The growth of Chinese law during the last quarter of the past century is sometimes looked at to represent a movement from a legal system which mainly functions as an instrument of governmental power towards a system which aims at restricting this power. Whereas it may not be completely misleading to assume such a development, this paper makes the point that at present the Chinese legal system is characterized by coexistence and undecidedness of traditional and modern elements. This paper first surveys basic aspects of the present legal system as they have resulted from the policies of “socialist market economy”, “socialist state governed by law” as well as “reform and opening”. After it examines the underlying ambivalent value structure and points at possible future developments towards strengthening “rule of law”-elements, as indicated mainly by conceptional thinking of Chinese (constitutional) law scholars.

Practice as the basis of sentences passed by the administrative judge in Cameroon

By *François-Narcisse Djame*, Douala

Cameroon administrative law certainly gives an important place to written law. Yet, as this study sets out to examine, the administrative judge remains sensitive to the aspirations of social groups when these are expressed in practice. Thus, he will not hesitate to apply customary practice to cases before him whenever such practice has become legal tender. Sometimes too, practice assumes greater proportions than mere sociological phenomena and become real principles of law.

Mozambique at crossroads – the constitution of 2004

By *Dietrich Nelle*, Bonn

Mozambique, the former Portuguese colony in South-Eastern Africa, is home to a population of almost 20 Mio. inhabitants and richly endowed with mineral resources. For

the first 15 years following independence in 1975 it was firmly rooted in the socialist block and developed a specially intensive relationship with the German Democratic Republic. At the same time, the country terribly suffered from a protracted civil war. More or less at the same time as the fall of the Berlin wall, the country started a fundamental reorientation and undertook a remarkable social and economic transition. Clearly distinguishing it from many other countries in the region, this included a power sharing between the former civil war factions, basing its political system on the predominance of two competing political parties wielding similar support within the population. While the constitution of 1990 was a product exclusively of the reform efforts of the ruling party, the new constitution of 2004 had to be elaborated jointly by the two major components of the political system. Consequently, it was almost unanimously endorsed by the parliament and the electorate. The new fundamental law gives more attention to civil rights and the rule of law. In contrast, changes in the main elements of the political and economic system concern more the form than the substance. The present paper traces the major lines of debate in the process of the elaboration of the new constitution, analyses the major orientations of the reforms finally adopted and links them to the backdrop of the current state of developments in the relevant fields of Mozambican reality.

Democracy as Guiding Principle of the African State System? Theory and Practice of Democratic Guarantee-Clauses in the African Union

By *Christof Hartmann*, Bochum

One of the many remarkable changes within the African state system is the growing role of regional and continental organizations for the internal governance of member states. While the Organization of African Unity was characterized since its inception in the early 1990s by the dogma of non-intervention in domestic sovereignty, norms about legitimate statehood have slowly moved to the foreground and feature prominently in summit declarations and policy documents of the African Union and sub-regional bodies. The article presents an overview of these norm dynamics but also highlights policy and implementation strategies of these organizations. It particularly argues that democratic 'guarantee clauses' have modified state practice in so far as unconstitutional change of government is now considered a legal justification for sanctions and interventions. The article systematically analyses the reactions of the OAU/AU to non-democratic developments in African states, especially collective behaviour in case of military coups. It concludes that the AU is less powerful in promoting democracy on the continent than in strengthening the principle of constitutional rule.