ABSTRACTS

Mongolian Law under Genghis Khan and his Successors
The Role of Law in Non State Societies

By *Rüdiger Wolfrum*, Heidelberg

The Mongolian legal order was tailored to the needs of a nomadic population. Genghis Khan believed nomadism to be the "preferred form of government", although China's state system formed a prominent backdrop.
The purposes of the codification of Mongolian law included internal peacekeeping and the integration of the various peoples. Inasmuch, Mongolian law is not distinct – in terms of its objectives – from current attempts at legal harmonization or the creation of a single body of law for a unified Europe. This raises the interesting question of to what extent and under what conditions lawmaking can have integrationist effects of can, in particular, lead to the emergence of a new national identity. Genghis Khan faced this question just as we face it today. During his leadership, he was apparently successful in creating such an identity. He did this, however, under circumstances and by means that are no longer tenable in modern times. After all, the newly established legal order ultimately served to secure his personal dominion and that of his family – as did the parallel propagation of the myth of the great Genghis Khan. The Mongolian law of the 13th century is thus not merely historically significant, but also reveals what function law can have in a transient society. And therein lies its relevance to modern legal issues.

Submission of statutes to the Constitutional Court of Taiwan

By *Tzu-hui Yang*, Taipei

The procedure of specific judicial review, in which a judge submits a statute to the Constitutional Court for judicial review, is one of the most important constitutional procedures before the Constitutional Court. A major requirement of admissibility in this procedure is the question, whether the statute is relevant to the issue. The Court uses this requirement in order to limit access to the Constitutional Court. In a series of recent decisions the Judicial Yuan of the Republic of China (Taiwan) uses this requirement also as a requirement of admissibility. However the Judicial Yuan does not use it in order to limit the access but in

order to extend the object of review and therefore its powers to interpret the Constitution. This recent practice can not be constitutionally justified, because it commingles questions of admissibility and problems of the merits of the case.

The "Piracy of the Barbary States" and International Law

By *Almut Hinz*, Leipzig

Since the 17th century, the Barbary States of North Africa, although nominally governed by the Ottoman Empire, had been largely independent and were run by military strongmen and financed by plunder, tribute, and ransom. This article deals with the Barbary States and examines the charge of privateering levelled at these States. The investigation, chiefly based on the Western as well as Islamic conceptions of International Law, takes into account the literature in which various, pertinent sources have been analysed, such as the correspondence of the North African consulates as well as the registers of European public health authorities.

The study is focused on three major areas. In the first place, the term "piracy of the Barbary States" and its concomitant implications are examined from various angles (section II). The applicability of the term "piracy" is assessed in the context of the political situation in the Barbary States as well as in the West, especially the relationship between the U.S.A. and the Regency of Tripoli. Secondly, the author examines the concept of international law according to Islam (section III). Here especially the position of non-Muslims within the so-called Islamic international law is relevant, and so is the distinction that Muslims draw between *jihad* "efforts on behalf of Islam" and "piracy". Thirdly, the author discusses the correlation between the Christian-occidental community of international law and the Muslims (section IV) and arrives at the following conclusion: neither the Western nor the Islamic conception of International Law can discern a *prima facie* case for holding the Barbary States as an example for piracy (section V). In both the Western and the Islamic conceptions of International Law the so-called piracy is not deemed to be such. According to the former it is not piracy, but legal privateering. According to the latter, it is a legitimate form of *jihad*, and as such the activity is consonant with the law. In the last section (VI) the misrepresentation of historical facts is singled out as a central theme. It takes special note of what U.S.-American sources call the Barbary War (1801-05), in which the U.S.A. fought against the privateering Regency of Tripoli, thus launching called by some historians the First War against Terrorism.