ABSTRACTS

The Right to Development and the foreign policy of the United States

By *Markus Kaltenborn*, Bochum

In recent years there can be observed a considerable intensification of the debate on the right to development both in the Human Rights bodies at UN level and in academic literature. The Intergovernmental Working Group on the Right to Development and the High-level Task Force on the Implementation of the Right to Development have formulated a catalogue of criteria which can be used as a guide for the implementation of the right to development at the international level with the aim of improving the effectiveness of global development partnerships. Moreover legal scholars have intensively discussed the various questions with regard to the contents, the duty-bearers and the holders of this human right. But despite all these efforts, the concept of the right is still highly controversial: The Non-Aligned Movement, for example, has already proposed the elaboration of a convention on the right to development, whereas most developed countries are still quite reluctant to accept a legally binding text. In particular, the administration of the United States of America is (mostly) not willing to vote in favour of resolutions supporting this right in the UN Human Rights bodies or even in the General Assembly because they suspect that otherwise new customary rules regarding obligatory foreign assistance could come into existence. The article gives an overview of the recent history of the right to development and discusses the US position in this part of the international human rights debate.

Constitution and normative international Cooperation in Brasil

By *Marcos Augusto Maliska*, Curitiba

The Brazilian Constitution of 1988 (CF/88) regulates in Article 5, § 2º, that the fundamental rights enumerated in the Constitution does not exclude other defined by the Treaties on Human Rights, to which the Federative Republic of Brazil is part. This dispositive brought controversy regarding its interpretation. The Supreme Court (Supremo Tribunal Federal – STF) since from entry into force of the Constitution confirmed his Jurisprudence, that the international treaties have status of ordinary law in the domestic law. This aspect is analyzed here with regard to the understanding of STF-Judge Gilmar Mendes in his vote on Extraordinary Appeal Nr. 466343. The text does not intend to be an exhaustive analysis of the matter, but, instead, it basically critically highlights the position that the human rights treaties ratified by Brazil before the amendment 45/2004 would have status above ordinary law but below the Constitution and examines the “immobilizing effect” of these treaties in

relation to infraconstitutional legislation and the harmony of these comprehensions with the concept of a cooperative constitutional state.

The Principles of administration procedures in Brazil and the challenges of equality and juridical security

By *Ricardo Perlingeiro*, Rio de Janeiro

The article analyses the fundamental principles and general rules of administrative procedure, its implementation in Brazilian law (1988 Constitution and Law no. 9,784, of January 29, 1999) and sporadically in a few Ibero-American national systems, leading to reflections about the erga omnes extension of the favorable aspects of administrative decisions as a guarantee of the fulfillment of the principle of equality, and bona fides as a prevailing factor of legal security.

The main solutions for the externalities in environmental law in Brazil

By *Bradson Camelo* and *Juliana Dutra de Barros*, Brasilia

This paper aims to introduce some methodological tools used in economics to analyze the facts with environmental impact to society, because the law has to weight the benefit from the economic development and the cost of damage the environment.To achieve this goal, it starts presenting the concept of externality in Environmental Law as the effect of pollution to third part who do not produce this pollution, in this approach, it is to know that the market is not capable to be efficient (it is a market failure). In a second moment the paper shows how economy uses those methodological tools to induce agents to produce fewer externalities (pollution to third parts) with a focus on market mechanisms to internalize the externality and due real cost-benefit analysis by the society. At last, we analyse the solutions used in Brazilian Law to try to internalize the effects of the pollution and their problems.

Indigenous Land Rights in Brasil

By *Ana Maria D'Ávila Lopes* and *Martonio Mont'Alverne Barreto Lima*, Fortaleza

One of the most notable features of the contemporary Brazilian constitutional law has been to establish a new paradigm to protect indigenous human rights. The Federal Constitution of 1988 has recognized indigenous cultural and land rights. This paper aims to delimitate and discuss the most polemic aspects of land rights. Therefore, the Raposa Serra do Sol case, decided by the Federal Supreme Court on December 2009, will be analyzed. That

decision is taken as the Brazilian leading case about demarcation of Indian reservations and is expected to serve as a precedent for the other 227 cases in process.

A brief discussion of the politicization of the judiciary and the view of its application in Brazilian law

By *Humberto Theodoro Junior, Dierle Nunes* and *Alexandre Bahia*, Belo Horizonte

This article shows the trend for a convergence between the systems of common law and civil law and its consequences in Brazil, due to a growing appreciation for the precedents (as in Anglo American law) as the basis of judicial decisions in order to overcome the crisis of the judiciary - the exponential increase in lawsuits and the consequent excessive delay in their resolution. It has been observed that there are a large number of recurrent themes in lawsuits, which require new forms of treatment. In this case, the standardization of trials and/or the consequentialism of decision making, so that the courts do not judge cases, but theses. This paper questions the suitability of these mechanisms given that there is no specific theory of precedent in Brazil as well as arguing that, concerning comparative law, this mistaken transposition may lead to deficit of the efficiency and legitimacy of decisions taken.

Provincial Governance in Africa: The Ghanaian Experience

By *Joseph R.A. Ayee*, Durban

Provincial governments have become an important part of decentralization in most African countries because they not only form the link between the central and local government units but also have resources at their disposal to build patronage at the sub-national level. Given that provincial governments can make or unmake decentralization, this paper examines provincial or regional governance in Ghana using the following indicators: (I) The political economy of the creation of regions; (II) Constitutional authority; (III) Electoral process; (IV) Range of expenditure and management responsibilities devolved; (V) Authority and competence of staff; and (VI) Regional governance and party politics. The paper concludes that in spite of the secondary role of regional governments in Ghana, they are still very powerful compared to local government units because they serve as a source of patronage and complementary support for the party in power.