ABSTRACTS

The Inter-American commitment to democracy

By *Christian Schliemann*, Berlin

The article analyses the right to democracy in the regional Organization of American States. It starts by summarizing the main historical steps that forged the democratic norm in the Americas leading up to the adoption of the Inter-American Democratic Charter in 2001. Arguments will be advanced that strongly support the assumption that the Democratic Charter must be considered as legally binding, in spite of the political character generally attached to resolutions of the General Assembly of the OAS. To elucidate the concept of democracy pursued in the OAS the main part examines measures adopted by organs of the regional organization. Central to this examination are firstly political crises in member states and the reaction of the political organs of the OAS thereto and secondly democracy related cases treated by the Inter-American human rights bodies. The article concludes that democracy in the OAS can only be understood in terms of a distinction between essential and supportive elements of democracy that differ according to the means of their implementation. A short outlook evaluates the usefulness of this norm to democracy for the determination of the democratic legitimacy of other actors in public international law.

Buddhist ethics and positive law – an investigation into possible relations between Buddhist ethics and a legal system following the example of Sri Lanka

By *Florian Preußger*, Berlin

The aim of the article is to formulate a systematic account of the connection between Buddhist ethics and a legal system, taking into consideration the constitution of Sri Lanka, a country undisputedly shaped by (*Theravâda-*)Buddhism. First, a brief introduction into the ethics of the Buddhist teachings (*Suttas*) is provided. The following examination discusses the question of which concept of law the Buddha might have advocated – especially focusing on the problem of a necessary versus a mere possible, "desired" relation between a legal system and its ethical justification. Finally, the third step is dedicated to the real, i.e. factual empirical relation between the idea of Buddhist ethics developed in part one and the Sri Lankan constitution. However, such an "incorporation" of Buddhist ethics cannot be asserted: neither does the constitution refer to, nor does it include any elements which can be traced back to, and *only* to, Buddhist ethics. This aporia is demonstrated exemplarily with its Human Rights record. What can clearly be established however, is an extraordinary standing of Buddhism as (practiced) religion or teaching (*Buddha-sâsana*) within the constitution, which is indeed relevant for the topical "conflict" between the *Buddhist-Sinhalese*

majority and the *Hindu-Tamil* minority. In this respect the article concludes with an alternative understanding of "the relation between law and Buddhism:" the interference of (parts of) the Buddhist clergy (*Sangha*) into the political-juridical reality of Sri Lanka – showing no obvious common features to Buddhist ethics (of the *Suttas*).

Citizen Participation in Environmental Law Enforcement in Nicaragua: A Comparative Study of Nicaraguan, United States and German Environmental Law

By *Martin Kellner*, Freiburg (Breisgau)

Citizen participation in environmental law is provided for in many national legal systems. The idea of citizen participation in this area is strongly inspired and enhanced by international law. This article examines citizen participation in the environmental law of Nicaragua in comparison with the laws of the United States (U.S.) and of Germany. In the jurisdiction of these three states, similar means of private law enforcement can be found. Whereas the environmental laws of Nicaragua and the U.S. provide forms of citizen suits, in Germany the association action (*Verbandsklage*) is intended to ensure that private parties have the possibility to enforce the law on behalf of the public at large. However, the practical meaning of citizen participation in the legal processes differs. In Nicaragua only few cases were initiated by citizen suits up to now. In the U.S., the Supreme Court practically suspended citizen suits for reasons of constitutional concerns. However, the German legislature expanded citizen participation in environmental law in recent years. The reason for this expansion is to be found in the implementation of the Aarhus Convention in national law. This article discusses from a comparative perspective what lessons can be drawn from the U.S. and the German experiences with citizen participation for the environmental law of Nicaragua.

Indigenous territorial rights in the Inter-American human rights system since Awas Tingni (IACHR judgement, 2001).

By *Margret Carstens*, Berlin

In 2008, Nicaragua handed down traditional land to the Awas Tingni community. Earlier, in 2001, the Inter-American Court of Human Rights declared that this Indian community has collective rights to their traditional lands, natural resources, and environment. It set an important precedent for the rights of indigenous peoples in international law. In 2005/06, the same Court released seminal indigenous land rights cases: In the case braught by the Yakye Axa people against Paraguay in 2005 the Court expanded on its earlier decision in 'Awas Tingni' regarding enforced indigenous communal land rights. The IACourt held that when the State is to determine whether communal ancestral land rights or current individual land rights will prevail in the same property, it could be necessary to restrict the right to

individuals´ private ownership of property in order to preserve 'the cultural identity or a democratic and pluralistic society' In the „Sawjoyamaxa decision" (2006), the Court added a temporal condition to the right of indigenous peoples to claim and to regain their ancestral lands in Paraguay: The State must evaluate claims on a case-by-case basis, using the analysis set forth in 'Yakye Axa'. Already in 2004, a report concerned a petition presented to the Inter-American Commission on Human Rights against the State of Belize by Maya Communities, citing 'Awas Tingni': The Commission concluded that the state violated the right to property enshrined in the 'American Declaration' to the detriment of the Maya people by failing to take effective measures to delimit, demarcate and officially recognize the communal property rights to the lands they have traditionally occupied and used and by granting logging and oil concessions. Until then, the report was the clearest statement of the law protecting indigenous land rights in the hemisphere. In 2006-08, IACommission received complaints lodged by indigenous peoples from Costa Rica, Guatemala, Nicaragua and Panama. Like in a report on traditional territorial rights of the Kelyenmagategma community (Paraguay, 2007) the still prevailing question arose, whether indigenous peoples land and resource rights exist on the basis of traditional use and occupancy and in how far these rights are safe (in view of a state refuse to consider traditional property rights according to international law standards).

In 2007, all these cases influenced the Supreme Court of Belize ruling that the government must recognize indigenous Mayans' customary tenure to land and refrain from any act that might prejudice their use or enjoyment of the land. This is the first national judgment rendered with reference to "United Nations Declaration on the Rights of Indigenous Peoples"; as such, it could have legal repercussions worldwide.