ABSTRACTS

The Ethiopian Constitution as a modern model for Africa

By *Heinrich Scholler*, München

Ethiopia belongs to the least developed countries, the so called LDC countries, as far as economy is concerned. However the constitutional development always played an important role not only for Ethiopia, but also for other countries, especially because Ethiopia was never colonized by Western countries not withstanding the short period of the Italian occupation from 1936 to 1941. The revised Ethiopian constitution 1955 based on the earlier one of 1931 was already a model trying to combine traditional and modern constitutional elements. This is even more true for the new constitution of 1994, which incorporated an extended section granting human rights, federal structure of the country, a parliamentary system and constitutional review. This Ethiopian constitution tries to combine again the traditional elements like the different ethnical groups in the second chamber, with modern constitutional structures. The question to what extent democracy had been re-established or further developed is still discussed because the economic situation and the problem of multi-ethnicity have up to now made it very difficult to strengthen an open and democratic civil society. The legal and constitutional history of Ethiopia shows that throughout centuries feudalism and the monarchical power had been the underlying powers to build the constitutional system more or less as imperial decisions. The modernisation of this long lasting tradition started in the middle of the 19th century by the four so called Reform Emperors.

In so far as the Ethiopian constitution could be used as a model for other African states, which need a high degree of decentralisation, collaboration between quite different ethnicities depends also from the answer to the question whether there is something like an African legal family. Naturally the Anglophone or Francophone models, like the Westminster Model or the French Neo-presidentialism, can not be seen as typical examples of African legal families. If we accept the existence of something like a common customary African law, which in reality did not exist, characterized by collectivism, slowliness and religious identity we would have to oppose this picture with the Ethiopian constitutional model. This Ethiopian structure of legal and constitutional frame work of society is in contrast to the traditional African characterized by individualism, greater independence of women and separation of religious institution (the church) and governmental power. On this basis it is evident that we can recognize the demand and legal transformation of three modern ideas also in Ethiopia: decentralisation, self-determination and human rights, which are also introduced into the Ethiopian constitution of 1994.

A look into some of the relevant rules of the Ethiopian constitutions should prove the above statement. Art. 34 and 78 provide the establishment of courts based on religious (Islamic) law, or on cultural (traditional) law. Naturally in addition to the existing modern courts acting according to modern Ethiopian law. Art. 35 and 39 are guaranteeing equality and self-determination for the individuals and the ethnicities. The inequality of women should be overcome by granting an "affirmative action" vis-à-vis the government.
Important is the transformation of Ethiopia into the model of a decentralized political system, which in reality must be explained as a federal system based or collected with a one-party political model. The constitution provides a federal president reduced on more or less mere representative powers and functions. He has even no residual power like the federal president of Germany. Within the constitutional commission there was a extended discussion whether the French model of presidency, or something similar to the German model should be introduced. Also with regard to the court system the Constitutional commission discussed widely the American and the German model. The American model based on a parallel system of federal and state courts was finally refused and replaced by something like the German model. The Ethiopian regional courts therefore have to apply not only the regional law, but also the delegated federal laws.

The concept of "neutral power": considerations concerning presidentialism and parliamentarism

By *Andreas Timmermann*, Berlin

The common conclusion of constitutional debates concerning Latin America is that "Presidential Democracy has failed" and that parliamentarism would have brought better results. From a historical point of view the question is more complicated: After the independence the statemen in Latin America tended to mixed forms of government. An example is the reception of *Benjamin Constants* (1767-1830) ideas. During the 19 th century his concept of "neutral power" (pouvoir neutre) influenced both liberals and conservatives in Europe and in Latin America. This is the case of *Brazil*, where the European influence was particularly strong. The "neutral power" (poder moderador) in Brazil - the emperor - was the key to the entire constitutional system of 1824; and it was exspected to become an element of balance and harmony among the other branches of government. In a very different way the idea of "neutral power" also influenced the concept of *Simón Bolívar* (1783-1830), when he established new institutions as a fourth power in *Bolivia* and *Peru* (1826), called "poder electoral" and "poder moral". In *Mexico* the "Constitución de las Siete Leyes" (1836) introduced the "poder conservador", supposed to maintain a balance between the different branches and to avoid despotism. The concept of Benjamin Constant

had a strong appeal also in Latin America during the 20 th century. Several states established mixed forms of government, even closer to parliamentarism than in the 19th century. This is the case of *Uruguay* and the system of "colegiado integral" and "ejecutivo bicéfalo" (1917) as a hinderance against abuses. Another example is *Kuba* and his constitution of 1940, with a president as "poder moderador".

The Darfur Crisis in Sudan and the International Law: A Challenge to the United Nations (UN) and the International Criminal Court (ICC)

By *Hatem Elliesie*, Berlin

The state of Sudan has known little peace since gaining independence in 1956. As opposed to the wording of the 2005 signed "Comprehensive Peace Agreement", the country hasn't been repacified in a 'comprehensive' manner, thus far. The State of Sudan is still remains at a crossroads. The atrocities in the western parts of Sudan represents a supreme humanitarian emergency and is therefore not only a test case of international commitment to an emerging norm of humanitarian intervention; but also that of deep concern jeopardizing the achievements in the search of a new constitutional formula suitable to Sudan's distinctive needs. Following his article in this journal (VRÜ 2005/3), the author provides an overview of Darfur's crisis and argues aspects of relevant international law regulations bounded to the protagonists. The international community's feeble response, mainly acting through the United Nations bodies, is also addressed, along with the issues of the ICC-referral and its principle of complementary as well as past, current, and upcoming crucial constitutional and national concerns in this context.

Brazil's challenge through the terror of organized crime.
After the wave of attacks in Rio: Fight against (narco-)terrorism?

By *Sven Peterke*, Brasilia

In late December 2006, Rio de Janeiro was shaken by a wave of brutal attacks that was organized by the city´s powerful drug factions. Many people died or were injured. In response to these extremly violent events, Brazil´s President Lula spoke of terrorism, because the deeds had exceeded the understanding of „ordinary criminality". The article at hand examines, from different angles of view, whether and how far Rio´s drug factions

committed true terrorist acts and whether it is possible to observe a process of transformation into terrorist organizations. After a brief description of the wave of attacks and a more detailed analysis of the purposes and motivs behind it, these problems are first tackled from a legal point of view. It is demonstrated, that there is no clear-cut answer in this respect. Therefore, a more sociological perspective to highlight the differences and similarities of Brazil´s organized crime to terrorists groups and their tactics is required. Finally, the question is raised whether the term narcosterrorism is appropriate for addressing the outlined phenomenon. Last but not least, the article focusses on the measures envisaged by the State of Brazil to fight Rio´s drug criminality and points out the risk of a further escalation of the violent conflict alreading taking place. Unfortunately, the political options that are currently discussed mainly appear to be of a merely repressive nature.