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Conference Report: 40th Annual Meeting of the Arbeitskreis für Überseeische Verfassungsvergleichung

By *Konrad Vossen** and *Tanja Herklotz***

This year's annual meeting of the *Arbeitskreis für Überseeische Verfassungsvergleichung* took place on July 3 and 4, 2015 at the University of Potsdam.¹ Titled "The Rule of Law in a Global Context", the conference addressed a wide array of issues: the rule of law in national legal systems, the bilateral rule of law promotion, the role of human rights law in development cooperation and the rule of law in international institutions like the UN and the World Bank. Equally diverse was the list of speakers, comprising a wide range of scholars from PhD candidates and postdocs to university professors from various academic fields. As a highlight of the conference Professor *Sérgio Costa* from Freie Universität Berlin gave this year's Herbert Krüger Memorial Lecture. In line with the conference's approach to see law in a broader context, he shared his thoughts on the sociological role of law as "relay" in Latin America. The conference was accompanied by an online symposium on *Völkerrechtsblog* where some speakers presented their arguments and allowed readers to join the virtual debate through comments.

The first session of the conference dealt with the rule of law in different national contexts, namely in India, Latin America and the European Union. *Tanja Herklotz* gave a talk on "Religious Personal Laws, the Women's Movement and the Higher Judiciary in India". She looked at religion based family law in India (generally referred to as personal law) through a gender lens and focused on the interpretation of these laws through the Indian higher judiciary. She explained that many of these (codified or uncodified) regulations for Hindus, Muslims, Christians and Parsis contain aspects that contradict the constitutional principle of equality between men and women and that the women's movement has long campaigned for a reform of the personal law system. Big legislative changes in this area, such as the introduction of a Uniform Civil Code, do however seem unfeasible. In this situation of legislative reluctance, the Indian judiciary has sometimes functioned as a quasi-legislator. Though never declaring the personal law system as such to be unconstitutional, various personal law provisions have been interpreted in a way that accommodated gender-jus-

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1 The conference was generously sponsored by the Prof. Herbert Krüger Stiftung.

tice. *Herklotz* called this a step-by-step activism and argued that in the delicate context of personal laws, this strategy might actually be more efficient in order to achieve change without provoking a communal backlash.

Shifting the focus to Latin America, *Julio Cesar Pereira* analysed the legal status of culture in the Brazilian constitution and its potential role as a means to promote socio-economic development in the region. Arguing that social change in Brazil has often been brought about by amendments to the Brazilian Constitution, *Pereira* focused on a recent constitutional amendment, which anchored a national cultural system (nationales Kultursystem) in Art. 215 and 216 of the Brazilian constitution. Stressing that this amendment was partly brought about by the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, *Pereira* emphasised that international organisations can play a major role in promoting a socio economic approach towards culture, rather than viewing culture as a mere luxury good. Despite these important normative changes, he argued that the term 'culture' remains rather vague, making it hard to handle as a legal concept grasp from a legal point of view. He subsequently outlined the main features of the federal system for the promotion of culture established in the wake of this constitutional amendment. A core instrument here could be a tax refund system that incites private actors to support cultural projects. But *Pereira* pointed out the risks of such an approach as well: funding that focuses merely on economic hubs and on mass culture. This is why he retained a rather pessimistic stance as to what extent the new instruments might really promote cultural diversity as a factor of socio-economic development in Brazil.

Turning to Europe, *Lutz Römer* analysed a specific legal problem of the Dublin III regulation. According to one of the regulation's core rules, asylum seekers can be sent back to the country legally responsible for the examination of the asylum claim. However, courts have made exceptions from this possibility with reference to human rights guarantees in the European Convention on Human Rights (ECHR) as well as European Union Law. *Römer* argued that these exemptions are not consistent when looked at in detail: On the one hand, the European Court of Human Rights (ECtHR) applies an individual analysis of potential violations of human rights in each individual case. On the other hand, the European Court of Justice (ECJ) applies a coarser legal test, looking only at systemic deficiencies in the destination country. This discrepancy creates specific problems for the national judge, who is bound by both interpretations. To *Römer*, the solution to this problem is to be found in Art. 52 (3) of the Charter of Fundamental Rights of the European Union. This article stipulates the guarantees of the European Convention on Human Rights in its interpretation through the ECHR as an absolute minimum. *Römer* subsequently formulated a fundamental critique of the ECJ's jurisprudence on the matter. Accordingly, he reasons that national judges should apply the legal test developed by the ECtHR when deciding individual cases.

The session on the rule of law in national contexts ended with *Sérgio Costa's* Herbert Krüger Memorial Lecture – a highlight of the conference. His lecture was titled "Law as a Relay – Experiences from Latin America" (Das Recht als Relais – Erfahrungen aus Südamerika) and argued for a paradigm shift away from the transistology approach in polit-