ABSTRACTS

Joel Hernández García, *United States Immigration Legislation and Constitutional Defense of Undocumented Workers*

The Act governing reform of illegal immigration and liability of the immigrant, promulgated in September 1996, establishes more obstacles for correcting the immigration situation of undocumented individuals to stay legally in the United States. This essay examines the provisions of the new law that affect undocumented workers in particular; it tries to identify the legal aspects that could be questioned constitutionally in the American federal courts. The essay is divided into five sections. The first describes the sources of American immigration law and underlines the importance of the constitutional dispute in order to have this right adapt to the precepts of the United States Constitution. The second and third explain how, when the "expeditious removal" process was introduced, the 1996 law limited the scope of rights and recourses protected by "due process". The fourth one explains how the 1996 law is applied in the work place and how it attacks the Fourth Amendment to the American Constitution. The fifth highlights the practical effect of the 1996 law of repealing different administrative rules whereby city officials are prohibited from requesting information on the immigration status of individuals who provide public services or from sending this type of information to the American Immigration and Naturalization Service.

Hernán de J. Ruiz Bravo, *Extraterritoriality of Internal Laws: some Procedural Questions*

Although not all extraterritorial norms are contrary to international law, the extraterritorial application of internal rules (with a few well-defined exceptions) attacks the principles and the practice of healthy coexistence between the States. The Helms-Burton Act, whose main objective is the imposition of restrictions on trade with Cuba to achieve a change of government in that country, has been harshly criticized by the international community because it tries to apply internal rules outside of the territory. In this essay, the author

analyzes the legal exceptions to the principle of territoriality and states that none of them sustains the extraterritoriality of the Helms-Burton Act. According to him, although this is not the first American extraterritorial legislation, this law is novel in that it affects procedural aspects that have usually been reserved for the territorial sphere of each State. The author analyzes the effects that would be created if Title III comes into effect, based on which American judges could improperly hear suits against individuals or companies of other countries for acts not committed in American territory, and over which they have no jurisdiction. It also describes some "antidote laws" adopted by Canada, Mexico and the European Union with the intention of inhibiting the effects of extra-territorial laws that, like Helms-Burton, contravene international law.

Pedro Castro, *The Helms-Burton Act and Extraterritoriality of Internal Laws: Explanatory Elements*

Approval of the Helms-Burton Act, American extraterritorial legislation, created a great deal of international reaction because of its potential repercussions on the property of people or companies not subject to American jurisdiction, because of actions not counter to international law. This article analyzes the essential aspects of Helms-Burton, the interests that explain it, the actions taken by Canada, Mexico and the European Union (EU) to counteract its effects, and the response from the American president, addressed toward maintaining the United States' international system of alliances. The essay is divided into three sections. The first explains the origin of Helms-Burton as a product of the Cuban-American National Foundation activities —one of the most important lobbying groups in Washington— directed toward achieving the fall of Fidel Castro's regime. It also analyzes the content of Titles III and IV of the law. The second one studies the reactions of Canada, Mexico and the EU, individually or through multilateral forums such as the World Trade Organization (WTO) or the mechanisms established in the NAFTA. The third section examines the reaction of the Clinton administration to international repudiation of Helms-Burton, in particular the presidential decision to suspend application of Titles III and IV. In the conclusions, the author highlights the problems created by Helms-Burton inside the United States by juxtaposing the interests of influential groups in Congress with the presidential direction of foreign policy. According to him, because of its extraterritorial nature, this law is already part of the history of misguided decisions in American world policy.

Socorro Flores Liera, *The Struggle Against Terrorism and the Establishment of an International Criminal Court: Two Legal Issues in the United Nations General Assembly's Agenda*

The negotiation and adoption of numerous international instruments within the United Nations (UN) shows the intense legal activity of that organization in recent years. In this essay, the author examines two issues of the agenda of the Legal Affairs Commission (sixth commission) of the UN General Assembly that are of special importance for the member States: the fight against terrorism and the establishment of an International Criminal Court (ICC). The essay is divided into two large sections. The first analyzes how the issue of terrorism has been treated in the UN and distinguishes two stages in which different approaches have prevailed. With an increasingly pragmatic treatment of the issue, the author examines the obstacles that States have to overcome in order to fight terrorism within the limits established by international law. The second section analyzes the process for the establishment of a general, permanent ICC that would be in charge of judging those responsible for international crimes. The author specifies the points that will have to be defined for effective operation of the ICC: jurisdiction and definition of crimes over which it would have competency; the authority of the Security Council *vis à vis* those of the ICC; the type of relationship between the court and the national jurisdictions, among other things. She also stresses the substantial differences that persist among the States concerning the final statute of the future ICC, that could obstruct its adoption in the international conference of 1998. The conclusions underline the importance of new international law norms adapting to generally recognized principles.

Ulises Canchola Gutiérrez, *Environmental Protection and Sustainable Development; the Difficulties of Environmental International Law*

From the time of the United Nations Environment and Development Conference (UNEDC), it seems practically impossible to disconnect the issues of development and environmental protection. Does this imply a risk for the viability of international environmental law as an autonomous branch of international law? This essay studies and evaluates the notion of "sustainable development" and its influence on the evolution of international environmental law. It also reflects on whether there have been legal changes that advance in the task of the objectives of sustainable development. The conclusions underline the risks implicit in the politization of environmental issues *vis à vis* the production of international legal instruments in this area.

Diana L. Ponce Nava, *Progressive Development of International Law and the Rights of Indigenous Peoples*

This essay analyzes how the progressive development of international law has translated into the area of law applicable to native peoples. It is divided into four sections. The first describes the process of recognizing the rights of native communities, in particular within the framework of the United Nations; the second highlights the work done by international organizations and institutions, as well as by nongovernmental organizations to reinforce the rights of indigenous peoples. The third one analyzes the development of recognition and protection of the rights of Mexican indigenous communities since the 1910 Revolution up to our times, and how international law has influenced this process. Lastly, the fourth section describes some legal instruments that strengthen and recognize the rights of indigenous peoples in countries like Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala and Venezuela. The conclusions demonstrate the need to increase the autonomy of indigenous communities as a measure to counterweight Nation-States in the face of globalizing trends.

Federico Chabaud Magnus, *Mercenaries and International Law*

This essay seeks to analyze the relationship between mercenarism and international law. It is divided into three large sections. The first briefly describes the progress of international law in typifying mercenarism as a crime and underlines the elements that, in the author's opinion, a multilateral legal instrument that is destined to definitely proscribe mercenarism in international relations must have. The second one examines some of the internal legislation existing in relation to mercenarism and stresses the need for legislation on this issue when these laws do not exist, or to update and enforce those that already exist. The third section examines in detail, the evolution of positive international law applicable to mercenaries. The conclusions underline the need for States to adhere to the 1989 international convention so that it can be put into effect.

Arturo González y S., *Development and the Environment: Toward Sustainable Development?*

This essay reflects on the relationship between development and the environment. In particular, it stresses the idea of "development with sustainable environment", that is, the need to achieve integral development of the ensemble of

nations, based on international cooperation for development and for preservation of the environment. It is divided into three large sections. The first examines the concepts of development, economic development and protection of the environment, as well as their interrelationship. The second analyzes evolution in the international perception of the relationship existing between the environment and development, from the publication of the report (1968) of the Rome Club up to the establishment of the Sustainable Development Commission (SDC) in 1992. The third one analyzes the work of the SDC in the meetings held between June 1993 and May 1997. The conclusions stress the fact that environment with sustainable development requires a new type of international cooperation, particularly in the multilateral sphere.