

## ■ PREFACE

*Jürgen Busch & Harald Eberhard*

### **New issue – new challenges**

We are now publishing the second issue of the ICL Journal. This time we once again present very interesting and, in special, recent topics we want to deal with. A few days ago we had finished the section 'Austrian constitutional developments' which focuses on recent decisions of the Austrian Constitutional Court regarding the regulatory framework of entry and residence of aliens in Austria. This framework represents the focus of the development in the fields of right to asylum, right to residence and the procedure of expulsion and administrative detention of illegal immigrants within the last two years. In the last days, this topic has obtained a completely new aspect because of the recent published decisions of the Constitutional Court from October. The fact that we have the modern technical possibilities allowed us to react to this newest development and include the new jurisdiction in this field. Dealing with this very sophisticated and complex topic we want to present a general view over the different problems which appear from the set of laws which entered into force in 2006. The respective legal acts were a significant object not only of the legal, but also of the political discussion in Austria. One of the most relevant points in this way are the rights and guarantees resulting from the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) which has constitutional status in Austria. It is remarkable that the Constitutional Court now has specified the relevant issues which are binding for all authorities in this field especially regarding decisions about expulsion orders and therefore – from his point of view – filled a gap of the legal framework. *Barbara Ramberger, Christian Schwabl* and *Valerie Leskovar* present and evaluate these very important decisions of the Constitutional Court.

In the section 'Articles' *Rafael Leal-Arcas* deals with the recent topic in how far the EU Member States will retain legal powers with regard to the WTO if the discussed Reform Treaty will be set into force. He gives us a concise overview about the limits of the Union's powers in matters of trade policy though we face thereby an exclusive power. One of his results is that the Member States will play their role in the same way as up to now. A relevant factor is the democratic deficit of the EU which – regarding this point – has its specific features. The article builds up on a lecture *Rafael Leal-Arcas* held at the NICLAS Summer School 2007 on WTO and EU relations. This summer programme on ICL, coming under the EU's Erasmus Intensive Programme funding scheme and also serving as one main source for the topics discussed in this e-journal, has been prolonged for funding and will consequently be continued in the fall semester and summer of 2008. NICLAS focuses on one of the most dynamic policy fields at the moment, the Area of Freedom, Security and Justice. Whereas NICLAS 2007

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focused on freedom policy, the preparatory and summer course programme in 2008 will be dedicated to security policy. The recent challenges of the EU's and its member states' security policy for the ICL focus areas democracy, human rights and governance range without doubt among the crucial questions of our nowadays' societies and its constitutional frameworks. The preparatory work and the preliminary programme of the ICL project "NICLAS for Security 2008" involving 10 European partner universities and research institutions can be found at <http://www.internationalconstitutionallaw.net> (section "SummerSchool"). Given the link between our ICL activities at the University of Vienna Law School and our partner institutions with this journal, one focus area of the subsequent issues in 2008 will be security law in a global constitutional network. The second article of the recent issue still dates back to NICLAS 2007 as well: *Konrad Lachmayer* presents the theoretical background of the main issue our journal wants to deal with: the International Constitutional Law Approach. He makes clear that we have to face a new perspective on constitutional challenges in a globalizing world which has important consequences for scientific work on constitutional law regarding all relevant levels. All these levels – the national as well as the supranational and international one – are interconnected and influence each other. In this way, we have to replace a state-related understanding of constitutional law by an open one.

Our book review of this issue, composed by *Ulrike Brandl*, deals with a book of *Dan Sarooshi* about the exercise of sovereign powers of International Organizations. Many questions regarding this topic still can be qualified as open points, in special the limits of a conferral of powers touching aspects of traditional state sovereignty in the field of 'legislation'. This conferral of sovereign powers raises theoretical as well as practical questions of accountability and responsibility for acts of such organizations.

Happy reading to all of you!

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