October 1973

Review of La Banque Mondiale et Ses Filiales: Aspects Juridiques et Fonctionnement

Cynthia C. Lichtenstein
Boston College Law School, cynthia.lichtenstein@bc.edu

"How Congress Makes a Law"; and that, coupled with its succinctness and directness, is perhaps its special merit.

Dr. Petersmann, by contrast, is preoccupied principally with the domain of legal theory. His book is a wedding, more or less, of two different studies, the first being a more general study of doctrinal writings and opinion and also institutional practice, within the original Community, on the relation between Community law and the individual national laws of the member-states of that Community. The second part of Dr. Petersmann's study is devoted to an historical survey of the development, through English constitutional law, of that principle celebrated by Dicey at the end of the 19th century as the Sovereignty of Parliament. Dr. Petersmann ranges very widely from Chief Justice Coke and the 17th century English constitutional struggles, on to Blackstone, with additional glances at Hobbes, Bentham, Austin; *Trethowan's* case in Australia in 1931; and the two *Harris* cases in 1952 in South Africa. None of this material is very new, of course, and the very sweep of Dr. Petersmann's survey means that much of the critical secondary literature is necessarily passed over. The treatment of the Commonwealth law cases cited by Dr. Petersmann suffers in particular from this, for the treatment remains rather abstract and un-fact-oriented and tends to miss the confrontations of strong-willed political personalities behind the actual collisions of the institutions in which they happen to find themselves. Nevertheless Dr. Petersmann is clearly right in his main conclusion that British constitutional lawyers have been prepared, in the past, to modify abstract constitutional doctrine where it has seemed to stand in the way of commonsense or state reason. The very absolutism of the doctrine of the Sovereignty of Parliament, as Dicey formulated it, seems, in retrospect, itself to have been a highly pragmatic response to particular political conditions in the heyday of Empire in late 19th century Britain. There is absolutely no reason to assume that British courts, if and when they should have to face the problem of an alleged conflict between British law and Community law, will not react with equal pragmatism and temper the classical doctrine of the Sovereignty of the British Parliament by making sure, in Lord Denning's formulation in *Blackburn* v. *Attorney-General* in 1971, that legal theory will really "march alongside political reality."

EDWARD MCWHINNEY

La Banque Mondiale et Ses Filiales: Aspects Juridiques et Fonctionnement. By Roberto Lavalle. Paris: Librairie Générale de Droit et de Jurisprudence, 1972. pp. 323. Bibliog. Appendix. Index. F. 45.

Workmanlike, orderly, exhaustive, Mr. Lavalle has written what amounts to a comprehensive legal handbook on the World Bank and its affiliates, the International Finance Corporation and the International Development Association. Although the author's precise and elegant style and his punctilious citations are those of a continental author, this book, which must have been a doctoral dissertation, bears to an American reader a curious resemblance to a looseleaf service: Each article of the Articles of Agree-

ment of the three Bank Group institutions is examined and explained and the practice of the institution under that rubric detailed. Thus the book covers the legal aspects of admission of states to membership in the institutions (Ch. II), funding (Ch. III), legal structure (Ch. IV), the curious provisions for self-interpretation of the articles and the provisions for arbitration established by the articles (Ch. V), privileges and immunities (Ch. VI), relations with other international organizations (Ch. VII), the provisions of the articles governing the extension of loans and credits (Ch. VIII), and the practice of the institutions in their financings, including extensive discussion of the Bank's General Conditions usually incorporated into its loan agreements (Ch. IX). The final two chapters cover briefly nonfinancial functions of the institutions (technical assistance, studies, and coordinating work) and the provisions for amendment of the articles. The degree of exhaustiveness of treatment can be seen, for example, in Chapter II on the admission of states, which describes in detail all the legal instruments required and their form; Chapter III on funding describes the signature circulars utilized by the Bank in handling its accounts with its depository banks.

The late Professor Friedmann indicates in his Preface to the treatise that, "if certain parts of the work are essentially descriptive, others are critiques and contribute to the doctrine of contemporary international law," and Professor Friedmann in the Preface debates Mr. Lavalle's thesis concerning the law applicable to the Bank's agreements with member states and other entities. Apart, however, from developing this thesis and a brief but well-reasoned "appreciation" of the provisions in the articles for self-interpretation by the institutions, Mr. Lavalle confines himself quite strictly to description and analysis, refusing to intrude judgments. He also resists firmly any temptation to stray from "aspects juridiques" into what might be considered political questions. His description of the conflict between the Bank and the UN General Assembly over aid to Portugal and South Africa is a case in point. He gives the full history of the General Assembly resolutions and the Bank's replies; he discusses whether or not an advisory opinion on the dispute could be requested of the International Court of Justice; but no germ of his own opinion on the problem is revealed.

The book, therefore, is an eminently useful one for a legal adviser with a question concerning the legal functioning of one of the institutions (although the International Finance Corporation and its investments are not covered in the same detail); it fills a need for a comprehensive and assiduous legal portrait of these unique international organizations. It is to be regretted, however, that Mr. Lavalle perceived his task quite so narrowly. While it is understandable that he chose not to depart from an area defined by the content of the constitutive articles and actual practice of the institutions (reading the book, one would not know that UNCTAD exists) into the minefield of ideological debate over development methodology, some discussion, for instance, of possible changes in the legal structure of the Bank to accommodate the linking of the creation of world

liquidity to the needs of developing nations would have been welcome. Proposals to make the "link" [1] through allocation of SDR's to the World Bank have been made, but Mr. Lavalle has not, unfortunately, included possibilities for the future in his penetrating analysis.

A final note: American legal draftsmen will enjoy Mr. Lavalle's description of the draftsmanship of the Bank's loan agreements as ". . . characterized by that crafty prolixity, weighty but precise in its casuistry, that is one of the distinctive characteristics of Anglo-Saxon legal documents." (my translation).

CYNTHIA C. LICHTENSTEIN

Staats-und völkerrechtliche Aspekte der Berlin-Regelung. By Karl Doehring and Georg Ress. Frankfurt/Main: Athenäum Verlag, 1972. pp. viii, 122. Appendix.

Following unconditional surrender the question of the international legal status of Germany was extensively examined in many quarters, not least of all in Germany itself, but it was never really satisfactorily resolved. The issue also arose periodically before courts as such early decisions as *Rex* v. *Bottrill, Ex parte Kuechenmeister,*[1] and the ruling of the Swiss Court of Appeal of Zürich,[2] illustrate. Such a question does not appear to be unique, particularly in terms of Germany. For example, similar debates occurred after World War I in connection with the legal status of the Saar territory (which twice had a special status, from 1920 to 1935 and from 1947 to 1956) and after World War II in relation to Berlin. Indeed, the conclusion on September 3, 1971 of the French-Soviet-United Kingdom-United States Quadripartite Agreement, the supplementary Transit Agreement of December 17, 1971 between the Federal Republic of Germany and the German Democratic Republic concerning transit traffic of civilian persons and goods between the FRG and West Berlin, the arrangement between the GDR and the Senate of West Berlin of December 20, 1971 on facilitating and improving the traffic of travellers and visitors, and the Final Quadripartite Protocol of June 3, 1972 have once again revived the debates.

In this slim volume the authors examine these instruments from a juridical point of view and conclude that the Berlin arrangements are hardly satisfactory. Not only is substantial doubt expressed about the accords, but the assertion is made that their provisions and process of conclusion violated the Basic Law, that is, the Bonn Constitution. The most important claim made is that the stipulation in the Quadripartite Agreement that the situation which has developed with regard to Berlin "shall not be changed unilaterally" has given the Soviet Union a veto power over the fate of West Berlin which could prevent future unification of the

[1] For a description of, and an interesting nontechnical debate on the "link" proposals, *see, SDR's & Development $10 Billion for Whom?*, 8 FOR. POL. 100 (1972) and the three articles by James W. Howe, Harry G. Johnson, and Imanuel Wexler contained therein.

[1] 1946 1 All E.R. 635 (K.B.).

[2] 1946 ANN. DIG. 187 (No. 86).