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Book Review. The Effectiveness of International Decisions and Foreign Development Lending – Legal Aspects

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BOOK REVIEWS AND NOTES

LEO GROSS

Book Review Editor

- The Effectiveness of International Decisions.* Papers of a Conference of the American Society of International Law and the Proceedings of the Conference. Edited by Stephen M. Schwebel. Leiden: A. W. Sijthoff; Dobbs Ferry, N.Y.: Oceana Publications, 1971. pp. 538. Index. \$19.50.
- Foreign Development Lending—Legal Aspects.* The Papers and Proceedings of a Conference of Legal Advisors of National and International Development Lending and Assistance Agencies Sponsored by the American Society of International Law. Edited by Seymour J. Rubin. Leiden: A. W. Sijthoff; Dobbs Ferry, N.Y.: Oceana Publications, 1971. pp. 352. Index. \$18.20.

The volumes under review collect the papers and proceedings of two gatherings of legal advisors to international organizations and to development lending agencies, held in 1967 and 1968. Like other collections of this kind, their contents are uneven in importance and quality, the papers ranging from elaborate studies to outlines and notes of half a dozen pages, and the discussions moving from the trivial to the insightful, if not profound. Such publications are not intended to provide an exhaustive treatment of a topic, but rather to offer to the reader some benefits from the experience of the conference participants, in this case the persons in charge of legal decision-making in the agencies involved. It follows that the transcript of the discussions, about 160 pages long in each volume, is of particular importance and interest, crammed full of details and anecdotes, general impressions, and indications of the agencies' informal methods and devices.

Editing and production is all-important in books of this sort. The transcripts have been successfully edited to retain their conversational tone without sacrifice of clarity. On a more technical level some criticism is due. Most readers will use these books largely as reference tools and they should not be made to read, or reread, the entire book to discover whether or where a particular issue is raised. The tables of contents must be comprehensive and they must include not only the papers' titles but, at the very least, the chapter headings in the proceedings. This was done in the volume edited by Mr. Rubin but not in that by Professor Schwebel. Within the proceedings, subheadings indicating particular topics under discussion have been provided by both editors but neither has seen fit to reproduce them in the Table of Contents. An exhaustive index, with references to concepts, rules, countries, names, and incidents as well as institutions, is clearly indispensable. The *Effectiveness* volume does, in the main, have a good index—from which, however, the names of the conference par-

ticipants are unaccountably omitted. These in turn are found in the *Lending* volume's index along with the agencies involved—but with little more. Inadequacy of the index significantly diminishes the latter book's convenience.

The principal advantage of the *Development Lending* volume is that it possesses unity of subject matter as well as some uniformity in the structure and content of the papers. "Instant comparisons" on particular issues are easier and more rewarding. On the law applicable to development lending transactions, for instance, one finds a remarkable diversity in practice, convincingly documented by the descriptions of solutions adopted by each agency. Some international organizations, with the World Bank in the lead, insist on the applicability of public international law to their agreements. Most national aid agencies, on the other hand, and, to a degree, some international ones are willing to accept determination of the applicable law through normal conflict of laws rules. An exception from both trends is found in a remarkable essay by the then legal adviser of the Kuwait Fund for Arab Economic Development, Professor Shihata, who notes that the Fund's loans are under a law consisting of the general principles of law common to the legal systems of the borrower and Kuwait. More generally, the practical significance of the whole problem and of the choice of a solution is open to question. Perhaps diversity of solutions reflects the problem's small actual importance.

Discussion in this volume is dominated by the problem of the proper limits of the lender's involvement in the borrower's domestic decision-making processes. Time and again, in differing contexts, the participants come back to this fundamental question. Variations among the lending agencies, not so much in policies as in style and perception of problems, become apparent. They range from the realistic French position, stressing the importance of actual control over its borrowers exercised by the Caisse Centrale (as shareholder, main or sole lender, or provider of technical assistance), to the "progressive" efforts of the Swedish aid agency to structure the aid relationship so as to increase the options open to the borrower, while trying at the same time not to let its loans and assistance be wasted, to the relatively legalistic approach of other agencies. Conversation is relatively frank—surprisingly so, considering the positions of the participants—although nothing secret, confidential, or even startling or unknown comes out; the participants are frank, not irresponsible.

A general impression comes through of remarkable similarity in the problems confronting development lending agencies, national as well as international, and in the methods they adopt to deal with them. This fact becomes particularly striking in the case of two agencies, the World Bank and the Inter-American Development Bank, which are discussed in both volumes under review. The duplication, far from being undesirable, proves quite illuminating. The two institutions are studied in and against two discrete contexts, that of their sister international organizations and that of other development lending agencies. One thus discovers, perhaps not surprisingly, that the World Bank has, in its approach and methods, much

more in common with the other aid agencies, including national and regional ones, than with other United Nations specialized agencies. Departures from common patterns, among lending agencies, are relatively minor, although sometimes the intentions behind them may be significant (compare the already mentioned Swedish attempts to reach a more egalitarian type of relationship with the aid recipients).

The *Effectiveness* volume is broader, less homogeneous, more theoretical. It starts with a few general essays and short papers, among which should be noted Oscar Schachter's path-breaking "theory of international obligation" and Rosalyn Higgins' succinct and perceptive discussion of the "variables" relevant to compliance with UN decisions. Studies of the methods, techniques and choices for the structuring and implementation of international organization decisions are undertaken by Joseph Gold (IMF), Lester Nurick (World Bank), Gerald FitzGerald (ICAO), Jean Pierre Dobbert (FAO), Nicolas Valticos (ILO), and Michel Gaudet (European Communities). Shorter notes deal summarily with WHO, IAEA, UPU, GATT, and other organizations. In view of the diversity of the institutions considered, discussions here proceed along two parallel paths: one topical (kinds of decisions, methods, techniques, problems, etc.) and one institutional (political, financial, technical institutions). Comparisons are less easy and generalizations more qualified. Moreover, the theoretical orientation of the participants and their conception of the scope of legal concern differ markedly and this affects the quality of the discussion—not always adversely.

In their particular fashion, these volumes contribute significantly to our perception and understanding of the manner in which international institutions function. The American Society of International Law and the books' editors deserve our gratitude.

A. A. FATOUROS

Long-Term International Monetary Reform. A Proposal for an Improved International Adjustment Process. By the Panel on International Monetary Policy of the American Society of International Law. Washington D.C. February 1972. pp. vi, 41. \$1.00.

The particular proposals for monetary reform put forward by the authors of this brochure are not, in my view, entirely workable. But they will promote and provoke well-informed discussion of issues that are at once of high importance and high urgency. And, as the authors themselves emphasize, that is their purpose.

The study provides what I believe to be the best available brief description of the system of inter-governmental monetary consultation and cooperation that emerged during the 1960's. (I happened to be one of the Canadian officials chiefly involved.) The central strength, as well as some inherent weaknesses, of the International Monetary Fund are well set forth; and so are the activities, which are far less widely known, of the "Group of