

schen temporären Liquiditätskrisen von Schwellenländern und chronischen Solvenzkrisen von höchstverschuldeten armen Ländern (Heavily Indebted Poor Countries - HICP) zentrale Grundfragen ("Was brauchen die Entwicklungsländer?"). Franz Kamphaus, Bischof von Limburg, plädiert als Kirchenmann für ein von globalem Verantwortungsethos getragenes *fares internationales Insolvenzverfahren* ("Entwicklung braucht Entschuldung"). Bundesbankpräsident a.D. Hans Tietmeyer leitet aus der Notwendigkeit, auf Kreditgeberseite leichtfertigen Geschäftsgebahren (*moral hazard*) vorzubeugen, Vermeidungsstrategien ab in Form verstärkter Kooperation und Kommunikation unter den beteiligten internationalen und nationalen Institutionen ("Krisenprävention und Krisenmanagement – wie kann das internationale Finanzsystem effizienter gestaltet werden?"). Weltbanker Axel van Trotsenburg referiert über "Die HICP-Initiative für die armen Länder", als Manager der HICP-Implementation-Unit in Zusammenarbeit mit dem IWF selber an vorderster Praxis-Front mit dem Thema befasst. Emmanuel Tumusiime-Mutebile, Treasury-Secretary im ugandischen Finanzministerium, bildet aufschlussreiche Zusammenhänge ("Das Beispiel Uganda: Schuldenerleichterung ist Armutsbekämpfung"). Diarmuid Martin, als irischer Theologe Ständiger Beauftragter des Heiligen Stuhls bei internationalen Konferenzen zu Entwicklungsfragen, mahnt als Ausblick sowohl das nachhaltige Armutsbekämpfungsmotiv bei den Geberländern als auch zumutbare Eigenanstrengungen (Rüstungsabbau, Infrastruktur, lokale Partizipation) bei den Empfängern an ("Schuldenerlass: Hoffnungen und Perspektiven für die Zukunft"), ehe abschliessend Rolf-E. Breuer noch einmal zu Wort kommt ("Erinnern und Gestalten").

Ein Buch, das keine Fussnoten kennt und dennoch eines themenangemessenen Tiefgangs nicht entbehrt.

Und eine verdiente Würdigung für einen gentleman, dessen Fähigkeiten dem Gemeinwesen Bundesrepublik Deutschland namentlich nach dem 3. Oktober 1990 noch lange hätten von Nutzen sein können.

Karl-Andreas Hernekamp

Frank Hoffmeister

Menschenrechts- und Demokratiekláuseln in den vertraglichen Außenbeziehungen der Europäischen Gemeinschaft

Human Rights and Democracy Clauses in EC Agreements with Third States
Springer Verlag, Berlin / Heidelberg / New York, 1998, 654 pp., DM 186,--

Since the late 1980s, the European Community/Union has been building a practice of linking international cooperation to considerations of human rights and democracy. Both legally and politically, this is an interesting phenomenon. Frank Hoffmeister's thick book

on *Human Rights and Democracy Clauses in EC Agreements with Third States* maps out an important part of that practice, as it developed up to the end of 1995. The main text of this international law volume is in German. It is summarized very briefly in English at the end.

The book addresses five main issues. It starts off by describing with which third states and on which conditions the European Community (EC) has concluded human rights and democracy clauses in external cooperation agreements. Accordingly, in Part I, Hoffmeister presents an exhaustive, largely factual description of how human rights and democracy clauses gradually entered the majority of the Community's external cooperation treaties. It shows authoritatively, if at times perhaps a bit dryly, how the situation shifted from the virtual absence of such clauses to the increasingly consistent appearance of ever clearer and legally more binding ones. The precise types of clauses opted for differed per country or per relevant grouping of countries. While most emphasis is put on relations between the Community and developing countries in Africa, the Caribbean and Pacific, Hoffmeister also discusses events concerning (developing countries in) the Mediterranean, the Middle East, South America, Asia and Central and Eastern Europe.

Part II presents a solid and insightful international legal analysis of the content, coverage and general implications of the various types of human rights and democracy clauses. Hoffmeister examines how the main responses of the European Community to (alleged) human rights violations in third states – criticizing the situation, not developing relations further, suspending development aid and/or treaty obligations – compare with the non-intervention principle, with the *pacta sunt servanda* rule and other possible justifications found in treaty law, and with countermeasures. A very clear and detailed picture is then established of the range of protection offered by the various types of human rights and democracy clauses which came into being through the years, including the so-called 'Baltic', 'Bulgarian' and 'essential element' clauses, and the procedures to apply them in practice.

After considering relevant substantive and procedural EC law in Part III of the book, Part IV studies the actual Community practice of applying human rights and democracy clauses. Its ultimate objective is to assess the lawfulness of that practice. At the beginning of Part IV, as earlier on, Hoffmeister explains his deliberate decision to focus on negative/punitive measures taken, and not to go into the positive/supportive practice. According to the author, this is justified by the fact that positive measures such as financial support for elections or non-governmental organizations in third states "hardly raise legal problems" (p. 452). In so doing, however, he poses himself a number of problems. Firstly, the author himself points out on various occasions in the book that positive pressure was (and still is) a main policy line of the Community. Accordingly, the sections on Chile (pp. 528-529), Central America (pp. 531-534) and Eastern Europe (pp. 537-557) still highlight positive measures, contradicting the author's earlier choice. As a consequence, he sets out a number of practical aspects of human rights support measures without having explored the theoretical legal side. Secondly, in practice legal problems do occur in the realm of human rights

and democracy support measures. In 1998, for example, the Commission had to temporarily suspend a large number of human rights support measures and programmes, as a consequence of a judgement of the European Court of Justice which pointed out serious flaws in their legal basis (ECJ Judgement C 106/96, *UK v. Commission*, 12 May 1998). Complications might also arise in situations in which the third state involved is not willing or not able to accept Community support measures, while the latter still wants to be positively involved in the situation by directly supporting human rights NGOs, or through humanitarian aid.

In general, Hoffmeister is reticent in criticizing the European Community. For example, he falls short of the firm conclusion that, in its practice of responding to human rights violations or undemocratic developments, the Community in several cases violated international law, even though his findings on some of the cases considered point clearly to that conclusion. The Community quite regularly resorted to negative measures without respecting existing procedural requirements. Hoffmeister establishes this, for example, in relation to sanctions applied to Sudan (pp. 465-466), Liberia (pp. 468-469), Kenya (pp. 493-494), and Equatorial Guinea (p. 502). Substantively, too, the Community has on a number of occasions gone beyond the legally permissible in some respects, for example in relation to Haiti (pp. 482-483), Togo (p. 506) and Nigeria (p. 525). Despite this clear evidence of violations of international law, Hoffmeister rather mildly qualifies the Community actions concerned as legally "doubtful", "unsatisfactory" or "not perfect". In some instances he invokes a lack of documented facts on Community behaviour (e.g. on p. 496 on Cameroon), or on the details of the human rights situation at stake (e.g. on p. 499 concerning Malawi), as preventing harsher conclusions. The clearest exception to this reticence is the case of Nigeria, in which Hoffmeister surprisingly comes to the conclusion that the 1995 Community sanctions, taken largely in response to the trial and subsequent execution of Ken Saro-Wiwa and other Ogoni leaders, did not have an unequivocal legal justification (pp. 520-525).

Hoffmeister has opted for what he calls a 'purely juridical approach'. He does not address economic and political aspects of the subject matter, not even peripherally. Leaving aside the general question as to whether in reality law operates in isolation of the economy or politics, this approach causes problems, especially when practical recommendations are still made. In Chapter 14, for example, Hoffmeister tables a proposal to reduce the number of inconsistent and potentially dubious Community 'judgements' of the human rights situation in a particular country. He suggests that, prior to any response measure by the Community, an independent international judicial organ should be mandated to render advisory opinions on whether, at a certain point in time, a human rights and democracy clause was violated by a particular state. While from a theoretical legal point of view this is a logical recommendation, it is highly unlikely that the European Community will ever agree to such a procedure. There are many indications that the Community and its member states find it politically convenient to have the leeway to differentiate in their treatment of different or similar kinds of third states. It can hardly be a coincidence that African countries have so clearly

been hit hardest by negative measures in practice, while the Cooperation Agreements with some developed country partners of the Community do not even contain (strong) human rights and democracy provisions. Hoffmeister pays little attention to the motives and interests that direct the European Community's behaviour in this realm. Thus, he leaves out a very important dimension that has a direct influence on the formation of state practice, one of the pivotal sources of international law considered in this study.

Finally, in part V, the book addresses questions of how the resulting (system of) human rights and democracy clauses relate(s) to existing regional and global human rights protection mechanisms, and whether the treaty practice involved has significance for the development of general public international law. On the latter point, the main contribution identified by Hoffmeister lies in the sphere of state practice building towards the development of an internationally protected right to development. While this is certainly correct, the findings of the study justify a much more elaborate account of the distinct nature of this contribution, which is not self-evident. It is quite remarkable that a regional actor like the European Community has, over time, established a network of human rights and democracy clauses with such a large number of third states across the globe. The way in which these clauses evolved is also highly of considerable interest and amounts to a record which not many others can claim to have. Yet, Hoffmeister chooses not to put the experiences gained into context. At the end of such a thick book, this reader at least was looking forward to a comparative assessment by the author of the overall validity and usefulness of the processes involved and the outcomes achieved.

Hoffmeister has analysed a rather unique course of events and a highly interesting set of legal questions. That in itself makes his book compulsory reading for those who have a specialized interest in the legal aspects of human rights and democracy clauses in international cooperation treaties. Others might stumble over the level of technical detail, and perhaps over the strictly legal and at times non-contextualized approach of the book.

Karin Arts

Gregor Paul / Caroline Y. Robertson-Wensauer (Hrsg.)

Traditionelle chinesische Kultur und Menschenrechtsfrage

Schriften des Instituts für Angewandte Kulturwissenschaft der Universität Karlsruhe (TH),
Band 3

Nomos Verlagsgesellschaft, Baden-Baden, 2. Auflage, 1998, 221 S., DM 79,--

Das Buch ist aus einem gleichnamigen internationalen Symposium hervorgegangen, das 1995 in Karlsruhe stattgefunden hat, nach dem Vorwort eine "wirklich interdisziplinäre Veranstaltung". Die Disziplinen der Vortragenden sind ausweislich der Beschreibung ihrer