LITERATUR

Buchbesprechungen

Dupré, Catherine: Importing the Law in Post-Communist Transitions. The Hungarian Constitutional Court and the Right to Human Dignity. Oxford – Portland Oregon: Hart Publishing (2003). XVI, 217 p. £ 35,00

The Hungarian Constitutional Court is among the better known courts of the former communist block. Many publications discuss its decisions or general developments of the Hungarian constitutional judicial practice. But Mrs Dupré's book is not just one of these works. Its value is not the presentation of facts or arguments used by the Hungarian Constitutional Court, but the analysis of the phenomenon of the birth of a new democratic legal order. Thus the book not only asks "what" developed, but rather "why" and "how" the developments occurred. The problems are analyzed on the basis of the right to human dignity in the adjudication of the Hungarian Constitutional Court as a case study.

The first chapter is about the general political and legal context of the study, i.e. the transformation from communism to the rule of law. The author emphasizes the ideological and economic depth of the transformation and the time pressure under which it had to proceed. A new social system was built to replace the failed communist system. Due to the failure of the old system it seemed to be obvious and logical, that the opposite model, i.e. the western democratic one, should be implemented. The democratic system features the rule of law, the separation of powers (instead of the unity of powers) with its most important dimension, the independence of the judiciary, and individualism instead of collectivism. The most important new institution was the Constitutional Court. Formally the Constitution of 1949 remained in force, it was only amended. Thus it is in some aspects out-dated (e.g. strong emphasis on the social rights) and it has no coherent and logical system. The most important (especially in light of the later constitutional practice) new fundamental right is the right to human dignity.

The second chapter evolves a new conceptual framework in order to be able to analyze the legal aspects of transition. Watson offers a possible conceptual framework. Watson's theory about the "legal transplants", however, does not fit the Eastern European transformation process because: (1) legal transplants are always linked with a larger movement of population, and here it was not the case; (2) they are able to describe long-term changes, but here the whole process happened in a few years; and (3) in Watson's theory only private law can be "transplanted", but in this process even public law was drafted according to the western model. Thus the author proposes a new explanatory concept of "law importation" which has four essential characteristics: (1) the imported law is not for-

mally binding; (2) it is more than the mere use of comparative law as inspiration because elements of foreign law are used; (3) it is a deliberate choice; (4) it is a strategy to develop law. It is especially difficult to reveal this law importation in judicial reasoning because the influences of foreign law on judicial reasoning are not visible (explicit), especially not in the case of constitutional judicial reasoning, because the constitution is the supreme law of a country, and thus there is little place for arguments of foreign law in constitutional cases. The main channels for law importation to Hungary after the collapse of communism were the EC, the CSCE, the Council of Europe (and within this organization: the Venice Commission), the World Bank, the IMF, the EBRD, countless non-governmental organizations, and different individual experts. The importers from the Hungarian side were the professional elite. The main causes of the importation were on the one hand the failure of communist law and on the other hand an institutional optimism. Institutional optimism means the belief that the mere implementation of institutions (e.g. democratic elections, right to human dignity) is enough for the construction of a new social order. Concentrating only on the institutional problems was of course the easiest way, but it neglected some important components of democracy, e.g. activity of the civil society and belief in democratic values.

Whether the law importation by post-communist countries was successful cannot be debated at a general level. It must be analyzed on the basis of a concrete problem. Duprés analysis in chapter 3 focused on the problem of the import of human dignity from German law. Her assessment of concrete cases of the Hungarian Constitutional Court analyzed the extent to which the legal argumentation of the German *Bundesverfassungsgericht* influenced the Hungarian one (in a clear chart pp. 76-78). The main phenomenon she observed was the association of human dignity with the general personality right. The Hungarian Constitutional Court's view that human dignity and the general personality right as mother-rights involve deriving sub-rights also stems from Germany. The reasoning of the Court however, did not cite German case law explicitly, but the Court referred to "modern constitutions and their case law". In fact, this kind of legal construction (i.e. human dignity as mother-right) is a unique German solution. (Why the Court did so is analyzed in chapter 7.)

Chapter 4 questions why the German model was chosen. Dupré names three causes: (1) prestige; (2) knowledge; (3) suitability. The first reason suggests that German law was always appreciated because of its detailed conceptual framework. The second cause concerns on the one hand Hungarian law professors' (many of whom have spent months or years in Germany) knowledge of the German law, and knowledge of the German language on the other hand. This made it possible to establish personal contacts with German lawyers, which also helped the importation of law. The third cause of the choice of the German model was that it was suitable for the legal problems of the Hungarian transition process. On the one hand because Germany possesses a similar legal culture (not like for example the British or the American one), on the other hand because it has a written and clear catalogue of fundamental rights (not like the French constitutional system).

In chapter 5 Dupré analyzes how the Court modified and instrumentalized the German model in its jurisprudence. Dupré argues that divergences between the two bodies of case law on human dignity cannot be explained by errors and misunderstandings. Also, the textual basis of the two case laws is different. In contrast to Art. 2 (1) GG, there is no provision on the general personality right in the Hungarian constitution. The main difference between the two sets of case law is that in the German constitutional jurisprudence human dignity is the highest legal value (*höchster Rechtswert*), whereas in the Hungarian system it does not possess a special status: human dignity is a (subjective) fundamental right. This can be explained by the individualistic approach of the Court.

The Court's approach is the result of the deliberate rejection of the communist legacy of a collectivist approach to fundamental rights. In chapter 6 Dupré analyzes the communist concept of fundamental rights and the Court's attempt to overcome it. The communist approach can be characterized by the inseparable linking of basic duties to basic rights and state law as the only legal source of basic rights. The Court tried to give new meaning to the old fundamental rights and in some cases – instead of using a special fundamental right – to use the right to human dignity with its liberal and individualistic aspects. As a result, the Hungarian constitutional adjudication became more individualistic than the German one.

In chapter 7 Dupré writes about the role of the phrase "modern constitutions" used by the Court in its legal reasoning. The Court often chose one special interpretation of a fundamental right, because it "corresponds to the modern constitutions and their practice". Dupré regards this kind of argument to be a modern substitute for natural law. The "modern constitutions" were exterior and anterior to the judgements and gave an alternative ideal of justice – just like natural law. Although the essence of the transition was ideological, the Court could not rely on arguments of liberalism (i.e. an ideology) to support its reasoning, as ideology had been the ultimate justification for law under the previous regime and the use of ideological arguments was thus discredited. The solution to this problem was to point to "modern constitutions". By doing so, the constitutional judges could not be suspected of creating new rights: they merely saw the new law in the preexisting "modern constitutions". Thus this argument helped to legitimize the work of the Court. Dupré thinks the role of law importation is going to decrease, because the Court now has got its own case law. The law importation was a learning process, the initial step in the creation of a new legal system. Also the time constraints have disappeared. The author prognosticates a decreasing role of the German case law, and an increasing one of the adjudication of the ECHR.

Chapter 8 outlines some problems faced by the Hungarian legal system such as the rivalry between the Hungarian Supreme Court and the Constitutional Court, the deafness of the ordinary courts to Constitutional Court judgements, the skepticism regarding the efficacy of legal norms, the possible anti-innovative effects of law importation, and the lack of a re-examination of the past (because importation also meant *tabula rasa*).

Some minor shortcomings on the book should be mentioned. Unfortunately, the Hungarian academic debates are not analyzed, only the adjudication of the Constitutional Court. It would have been interesting to see how these debates were influenced by Western European discussions. But it is, of course, arguable that the subject matter of the work had to be limited. FN 39 at p. 34 names the book by Imre Zajtay "Introduction à l'étude du droit hongrois" as an introduction to the Hungarian socialist legal order. That book, however, – although published in 1953 – only discusses Hungarian law before communism. FN 42 at p. 56 mentions that the renovated communist party of Hungary – the Hungarian Socialist Worker's Party – won 3,7 % of the parliamentary seats on the elections of 1990. In fact, the renovated communist party (the legal successor) was the Hungarian Socialist Party, which won 10,9 % of the votes and 8,5 % of the seats in 1990. The Hungarian Socialist Worker's Party – a nostalgic small communist party, founded by some orthodox old communists with the name of the old communist party – actually won 3,7 % of the votes in 1990, but it did not win any seats, because there was a minimum 4 % of votes to gain seats (except for winning in individual districts). The author also writes (p. 97) that German was the official language in Hungary from 1784 until 1867. The situation in this respect is quite complicated because different institutions had different official languages and some institutions had more than one official language. Generally the situation could be described as follows: In fact, the language decree of Joseph II (1780-1790), which prescribed German as the official language, was only in force for a couple of years, then Latin became the official language up until 1844, when Hungarian – after gradual expansion in state life – became the official language. After the failure of the revolution of 1848-49, German became the official language again until 1867. Furthermore, Dupré writes (p. 98) that three of the constitutional judges (Kilényi, Tersztyánszky, Vörös) came from legal practice, while the others were senior academics. In fact, two of those three judges (Kilényi, Vörös) were also doctors of the Hungarian Academy of Sciences (which corresponds approximately to the German habilitation), and also worked – besides their work in legal practice, which is common to most of the judges – in varying academic institutes. The name of the Act XI 1987 is not "Act on the hierarchy of sources of law" but "Act on law making" (p. 150 FN 29). And finally, it is also questionable whether the ECHR began to have an impact on domestic legislation and case law in Western Europe after only five decades of existence (p. 166).

Summarizing the book, it is – apart from the small mistakes mentioned above – an excellent work which allows both lawyers from the west, and lawyers from the former eastern block to better understand the mechanisms and problems of Hungary's legal transformation. András Jakab

Pauwelyn, Joost: Conflict of Norms in Public International Law. How WTO Law Relates to other Rules of International Law. Cambridge: Cambridge University Press (2003). 522 S. £ 65,00

In view of the increased proliferation of multilateral conventions and international tribunals in recent years, the problem of how international law norms interact has become a focal point of interest. This is also a core issue in the debate on globalization and non-economic concerns, as has been amply underlined *inter alia* by the agendas of the 2002 Johannesburg Summit on Sustainable Development and the WTO Doha Development Round.

Joost Pauwelyn, formerly a lawyer in the WTO Appellate Body Secretariat, now associate professor at Duke University, aims to provide a conceptual framework for addressing these intricate issues; an attempt all the more welcome given that there are very few recent in-depth studies on the issue (cf. in particular Wolfrum/Matz, Conflicts in International Environmental Law (2003); Shany, The Competing Jurisdictions of International Courts and Tribunals (2003)). Although Pauwelyn's treatise is written from an international law perspective, it is illustrated to a great extent by WTO case studies. Pauwelyn devotes the first three chapters of his work to a textbook-style introduction to the problem: Chapter I explains the reasons for the increased risk of conflict of norms in international law (including the sheer rise in the number of treaties, the fact that modern international law encompasses ever more regulatory fields, and insufficient coordination among treaty negotiators); Chapter II provides an overview of the legal system established by the various WTO agreements, and makes the point that WTO law is not to be regarded as a self-contained regime, which is a leitmotif recurring throughout the rest of the study in various contexts. In Chapter III, which addresses the problem of the (lack of) hierarchy of sources in international law, Pauwelyn reaches his first major conclusion, namely that "to build a theory of conflict of norms with reference solely to the source of these norms is unworkable" (p. 147).

Chapter IV sets out the definition of the conflict of norms in international law, which constitutes one of the main conclusions of this book: "two norms are ... in a relationship of conflict if one constitutes, has led to, or may lead to, a breach of the other" (pp. 175-176). Pauwelyn further distinguishes inherent, necessary and potential conflicts. Some comments are in order regarding this definition. First, Pauwelyn rightly rejects the narrow definition of conflict arguably prevailing in international law, which apparently has its origin in the writings of Jenks, according to whom, "a conflict in the strict sense of direct incompatibility arises only where a party to ... two treaties cannot simultaneously comply with its obligations under both treaties" (Jenks, 30 BYIL 1953, 426 and 451). This definition has been adopted in WTO dispute settlement practice and recent publications (Marceau, Conflict of Norms and Conflicts of Jurisdictions, 35 JWT 2001, 1081 at 1083 ff.; panel report, *Indonesia – Certain Measures Affecting the Automobile Industry*, WT/DS54/R, WT/DS59/R, WTO/DS64/R, adopted on 23 July 1998, paragraphs 14.28 ff., paragraph 14.99, fn 649 and accompanying text). This definition of conflict denies that there is conflict in the event that an explicit right is incompatible with a prescriptive norm in (the same or) another treaty, which has the consequence that states have to forego express rights and that a treaty may lose

"much or most of its practical importance". This was even recognized by Jenks (*ibidem*), although he did not change his definition in view of this problematic result. In other words, incompatibilities between rights and prescriptive norms, which may be as serious as conflicts between two prescriptive norms, are not recognized as conflicts and are always indirectly "resolved" in favour of the more stringent obligation without any possibility for established conflict rules such as the *lex posterior* principle to come into play. It is one of the merits of Pauwelyn's book that it takes the opposite stance, which is also in line with legal theory (see e.g. Lenk, in: Lenk, (ed.), Normenlogik (1974), 198; Wiederin, 21 Rechtstheorie (1990), 311 ff.).

Second, it may be commented that the definition proposed by Pauwelyn resembles that of Kelsen in his late writings. Kelsen similarly subdivided the problem of conflicts of norms into necessary and potential conflicts, and also opted for the criterion of breach in order to determine whether one norm potentially or necessarily violates the other ("a conflict between two norms occurs if in obeying or applying one norm, the other one is necessarily or possibly violated"; cf. Kelsen, Allgemeine Theorie der Normen (1979), 99-100; also published in English as Kelsen, General Theory of Norms (1991), and French as Kelsen, Théorie générale des normes (1996)). Pauwelyn employs the criterion of breach, arguing that to do so makes the question of when there is a conflict more concrete and objective ("an 'objective' question, to be determined by normal rules on, for example, treaty interpretation"). While there is some appeal to these arguments, there is, however, another main reason why one should rely on Kelsen's test of breach. As was pointed out by Wiederin though not by Kelsen himself, the criteria normally proposed in legal theory are in part incapable of, and in part less reliable in, indicating when there is a norm conflict than the criterion of breach first adopted by Kelsen (on this see the seminal treatise of Wiederin, 21 Rechtstheorie (1990), 311 ff.).

In the remainder of Chapter IV, Pauwelyn discusses two phenomena closely related to conflicts of norms, namely the concept of what he terms "fall-back" to general international law in the event that a treaty is silent on certain issues, and the concept of contracting out of general international law. The latter is exemplified by a particularly well-argued study of the law of WTO remedies.

Chapter V deals with "conflict-avoidance techniques". Pauwelyn first rightly warns against overemphasizing the presumption against conflict in international law, emphasizing that it cannot be regarded as an argument militating in favour of a narrow definition of conflict (as was in fact done recently and emphatically by Marceau, 35 JWT 2001, 1081). He then analyses the limits of interpretation as a conflict-avoidance tool and concludes, in particular, that a WTO treaty provision is to be interpreted in the light of the rules of another treaty not only if these are binding on all WTO Members, but also when they can be said to be "at least implicitly accepted or tolerated by all WTO Members" (p. 261). This view appears justified *inter alia* since the WTO treaty could never be interpreted in the light of other treaties if there had to be identity of – 146 – contracting parties to both trea-

ties. Pauwelyn's argumentation, though perhaps not surprising to international lawyers, is worth reading, as it takes issue with the views of other writers on WTO law and takes into account decisions of both international tribunals and the WTO adjudicating bodies.

Chapters VI and VII address the problem of how to resolve conflicts of norms. Pauwelyn first deals with international law norms conflicting with *jus cogens*, termination of a treaty by means of concluding another incompatible treaty (Article 59 VCLT) and acts of international organisations that are inconsistent with their constituent instruments. He then moves on to discuss the problems of "AB/AC" conflicts (conflicts stemming from treaties concluded by a given state A with two different states B and C) and *inter se* modifications and suspensions in the light of Articles 41 and 58 VCLT. All of these constellations, addressed in Chapter VI, share the common characteristic that they lead to the invalidity or illegality of one norm.

In contrast, Chapter VII deals with conflicts which have to be resolved by making one norm prevail over another according to explicit conflict rules set out in a treaty and conflict principles such as *lex posterior* and *lex specialis*. Pauwelyn's discussion of the conflict rules contained in the WTO agreements is of particular interest, as it takes into account WTO precedents which may have gone unnoticed due to their technical nature, but which are of considerable systemic importance, such as the Appellate Body decision in the *Argentina – Footwear* case (WT/DS56/AB/R).

On the other hand, Pauwelyn's treatment of the *lex posterior* and *lex specialis* principles appears not to be entirely convincing. Concurring with Vierdag (cf. Vierdag, 60 BYIL 1989, 75), Pauwelyn rightly emphasizes that it may be impossible to decide on the basis of Article 30 VCLT which of two treaties is earlier in time, particularly if one is faced with multilateral treaties: this is due to the fact that the criterion of "conclusion of a treaty", employed by Article 30, is not unequivocal in the sense that it always refers to a single point of time for all contracting parties. Hence, in certain constellations of conflicts it may be impossible to determine which of two conflicting treaties is earlier in time: a simple example would be a bilateral treaty concluded in 1997 between an original WTO Member and a state that acceded to the WTO in 2000. From the point of view of the first state, the bilateral treaty would be the *lex posterior*, whereas the WTO treaty would be the later treaty for the other state. To overcome such apparent impasses, Pauwelyn proposes to introduce the notion of "continuing treaties": according to him, treaty norms should be regarded as "continuing" when they form "part of a framework ... which is continuously confirmed, adapted and expanded, for example, by means of judicial decisions, interpretations, new norms or the accession of new state parties" (p. 378). This reasoning would apply, for example, to the WTO treaty. In conflicts involving such "continuing treaties", Pauwelyn suggests that one should "dis-apply" the *lex posterior* principle laid down in Article 30 VCLT in order to make room for the *lex specialis* principle. This somewhat artificial reduction of the scope of Article 30 is arguably not necessary. It rather appears to be the unavoidable consequence of Pauwelyn's view that the *lex specialis* principle is al-

most always subordinated to the *lex posterior* principle. Since, according to this view, the *lex prior specialis* would regularly be superseded by the *lex posterior generalis*, there is an evident need for rebalancing in case this somewhat rigid approach leads to problematic results. And this is arguably where Pauwelyn's concept of "continuing" treaties comes into play: Pauwelyn obviously needs and makes room for the *lex specialis* principle in such cases by dis-applying Article 30, which he does by labelling either, or both, conflicting treaties as "continuing". It may be submitted, however, that these intricacies are avoidable: if one does not create a hierarchy between the *lex posterior* and *lex specialis* principles, but regards them as interpretative (or at least as functionally equivalent) criteria that function on the same level, then there is no need to reduce the scope of the *lex posterior* principle in cases where the hierarchy created by Pauwelyn proves inadequate.

In his concluding chapter, Pauwelyn examines the crucial question of whether non-WTO law can be applied as a defence in WTO proceedings. In line with other authors, he rightly emphasizes that one has to distinguish between the jurisdiction of WTO panels – which is restricted in terms of the claims that can be brought (i.e. complaints under WTO covered agreements only) – and the law that panels are bound to apply. While their jurisdiction cannot normally be widened (with the exception of Articles 7.3 and 25 of the DSU), non-WTO international law can be invoked, as Pauwelyn correctly argues, as a defence: thus, for example, an international treaty binding on both disputing parties can be invoked by the defendant as long as the rights of third WTO Members are not infringed, and if the non-WTO treaty norms prevail pursuant to the established conflict rules of *lex posterior* and *lex specialis*. This clear-cut solution does not perhaps come as a surprise from an international lawyer's perspective. However, it rightly rejects the WTO-centric perspective of what appears to be the majority of WTO law publicists on the subject, who deny the possibility of non-WTO law prevailing over WTO obligations in WTO proceedings, and who would essentially let conflicting international law come in only under exception clauses such as Article XX of the GATT (cf. e.g. Trachtman, 40 Harvard Journal of International Law (1999) 333). The latter view would indeed have the highly questionable consequence that states would only be allowed to employ the least trade restrictive means and would thus amount to a subordination of non-WTO international law under WTO disciplines.

In sum, it is to be emphasized that the strong points of this remarkable study outweigh by far: Pauwelyn's thesis convincingly rejects the narrow definition of conflict arguably prevailing in international law and WTO panel decisions; it sheds new light on disputed issues of systemic importance, such as the interrelations of the WTO agreements; and it emphasizes that WTO law has to be regarded as a part of international law which can be influenced by international law in various ways. In the words of Pauwelyn, it is "one of the main purposes of this book to reject the 'self-contained' view of WTO law" expressed by some authors who reject the very possibility of bi- or plurilateral modifications of WTO rights and obligations (p. 316). For this reviewer, Pauwelyn has achieved this aim in an impressive manner.

Erich Vranes, Wien

Steinle, Stephanie: Völkerrecht und Machtpolitik. Georg Schwarzenberg (1908–1991), Band 3 der Studien zur Geschichte des Völkerrechts. Baden-Baden: Nomos Verlagsgesellschaft (2002), X, 271 S. € 49,–

Waren in den letzten Jahrzehnten für das Völkerrecht hohe Verrechtlichungsgewinne zu verbuchen, so erlangt in jüngerer Zeit die Kategorie der Macht im internationalen Rechtssystem wieder größere Bedeutung. Das bestätigt die gegenwärtige geopolitische Lage und zeigt das Erscheinen von weitreichenden Überlegungen zur Machtpolitik und ihrem Verhältnis zum internationalen Recht (siehe etwa Robert Kagan, Macht und Ohnmacht, 2003 und Michael J. Glennon, Limits of Law, Prerogatives of Power, 2001). Solche machtpolitischen Ansätze im Völkerrecht sind jedoch nicht neu, sondern können auf Autoritäten zurückgreifen. Eine der wichtigsten Vertreter, in dessen Denken Macht eine zentrale Rolle eingenommen hat, ist Georg Schwarzenberger. Sein Buch Power Politics, in 3. Auflage 1964 erschienen, steht bis heute auf den Lektürelisten vor allem der Studenten der internationalen Beziehungen. Er wird neben Raymond Aron, Hans J. Morgenthau und Kenneth Waltz als einer der wichtigsten Vertreter der realistischen Denkrichtung angesehen, wonach nicht sittliche Grundsätze und Ideen, sondern vor allem Interessen das Handeln der Staaten in der internationalen Politik bestimmen.

Dem Lebensweg und dem wissenschaftlichen Werk Schwarzenbergers ist die von Stephanie Steinle vorgelegte Studie gewidmet. Die flüssig geschriebene und sehr lesenswerte Forschungsarbeit, bei der es sich um die Dissertation der Autorin handelt, ist im Rahmen des Projekts "Ideengeschichte des Völkerrechts zwischen Kaiserreich und Nationalsozialismus" am Max-Planck-Institut für Europäische Rechtsgeschichte entstanden. Den Schwerpunkt ihrer in drei Kapitel gegliederten Monographie legt die Autorin auf die Emigration Schwarzenbergers und das Spannungsfeld, das aus seiner deutschen Herkunft bis zur Assistentenzeit und seiner weiteren wissenschaftliche Sozialisation in Großbritannien entstanden ist.

Zunächst zeichnet Steinle im ersten Kapitel die Jahre Schwarzenbergers in Deutschland nach (S. 5-35). Die Jugend- und Schulzeit in Heilbronn, das Studium der Rechtswissenschaft in Heidelberg und Tübingen, die Aktivitäten in der organisierten Sozialdemokratie, das Referendariat in Württemberg, der Alltag in der erstarkenden Diktatur und schließlich die Denunziation Schwarzenbergers, die zu seiner Entlassung aus dem juristischen Vorbereitungsdienst und zum Widerruf der Zulassung zur Staatsprüfung führte, werden geschildert und in den Zusammenhang gestellt. Das zweite Kapitel (S. 37-179) erforscht unter der Überschrift "Grenzüberschreitungen" den von Schwarzenberger in Großbritannien zurückgelegten Weg, insbesondere seine wissenschaftliche Entwicklung vom klassischen Völkerrecht hin zur Lehre der internationalen Beziehungen. Spannend und bedrückend zugleich ist der kurze Abschnitt über Schwarzenbergers ersten Besuch im Nachkriegsdeutschland des Jahres 1947 und seine ablehnende Haltung gegenüber den Aufforderungen zur Rückkehr trotz der schlechten Aussichten auf eine Professur in Großbritannien (S. 176 ff.). Das dritte Kapitel (S. 182-221) ist

den Arbeiten Schwarzenbergers an seinem der induktiven Methode verpflichteten *International Law as Applied by International Courts and Tribunals* gewidmet und beschäftigt sich mit seiner Rolle als Außenseiter im akademischen Leben der britischen Völkerrechtslehre.

Am Ende der Lektüre steht der Wunsch nach weiteren Informationen über diesen Teil der jüngeren Wissenschaftsgeschichte des Völkerrechts. Man wird dazu mit Gewinn mehrere Blicke in den Anhang mit Werkverzeichnis, Quellen- und Literaturverzeichnis sowie einem Personenregister werfen können, die das Buch abrunden. Frank Schorkopf, Karlsruhe/Heidelberg

Stoiber, Carlton/Baer, Alec/Pelzer, Norbert/Tonhauser, Wolfram: Handbook on Nuclear Law. Wien: International Atomic Energy Agency (IAEA) (2003), 188 S. € 80,–

Entgegen dem durch die deutsche Atomausstiegsdiskussion und -gesetzgebung vermittelten Anschein, bei der Kernenergie und -technik handle es sich um ein Auslaufmodell, ist im Weltmaßstab sogar ein diesbezüglicher Aufschwung festzustellen. Neue Kernreaktoren befinden sich im Bau oder in der Planung (z.B. Finnland, China, Indien), Betriebszeiten bestehender Anlagen werden verlängert (USA) und allgemein wird die Bedeutung der Stromerzeugung aus Kernkraft im Zeichen wachsenden Strombedarfs und gleichzeitig des Gebots der Umweltschonung auf internationaler Ebene (z.B. Weltenergierat, EU) klar erkannt.

Es war deshalb eine gute und zeitgemäße Idee der Internationalen Atomenergie-Behörde (IAEA), der 136 Staaten angehören, ein kurzgefasstes "Handbook on Nuclear Law" herauszugeben und dafür vier Autoren zu gewinnen, die sämtlich erstrangige Kenner des Atomrechts sind und daher für Qualität bürgen. Während ein Großteil der atomrechtlichen Literatur für Spezialisten mit vorrangigem Interesse an der vertiefenden Behandlung spezieller Fragestellungen von Interesse ist, verfolgt das "Handbook" ein anderes Ziel: Es soll eine Einführung in die Grundfragen und -linien des Atomrechts insbesondere für solche Staaten bieten, in denen der Zugang zu atomrechtlicher Literatur mit Schwierigkeiten verbunden ist. Eine zweite Besonderheit kommt hinzu: Das Werk richtet sich nicht an den mit atomrechtlichen Spezialfragen befassten Rechtsanwender, sondern an den Gesetzgeber, der vor die Notwendigkeit atomrechtlicher Normsetzung gestellt ist. Um das Urteil vorwegzunehmen: Das Werk erfüllt den mit ihm verfolgten Zweck vorzüglich. Es stellt eine gelungene Art juristischer und insbesondere gesetzgeberischer Entwicklungshilfe im besten Sinne des Wortes dar.

Entsprechend dieser in Vorworten des Generaldirektors der IAEA, Mohamed El Baradei, und der vier Autoren näher erläuterten Konzeption des Buches werden in fünf Teilen (I. Elements of Nuclear Law, II. Radiation Protection, III. Nuclear and Radiation Safety, IV. Nuclear Liability and Coverage, V. Non-Proliferation and Physical Protection) mit 14 Kapiteln sämtliche Fragenkomplexe des Atomrechts systematisch behandelt, denen sich ein nationaler Gesetzgeber, der auf dem Gebiet des Atomrechts tätig zu werden beabsichtigt, stellen muss. Der Index erschließt den Inhalt des Werkes sehr gut. Die sehr systematisch angelegte und

durch prägnante Kurzerläuterungen ergänzte Darstellung der einzelnen Kapitel (Beispiel: Kap. 10. Radioactive Waste and Spent Fuel: background, objective, scope, activities and facilities requiring a licence, conditions for the issuance of a licence, specific issues) liefert damit eine Art Checkliste oder "Kursbuch" für einen nationalen Gesetzgeber, der Gesetzgebungsvorhaben auf dem Gebiete des Atomrechts betreibt. Die mit der Darstellung verbundene Tendenz zur inhaltlichen Standardisierung nationaler Rechtssetzung ist sinnvoll und wünschenswert: Zum einen ist der Gegenstand des Atomrechts von nationalen Rechtstraditionen so gut wie völlig unabhängig. Zum anderen ist das Atomrecht in hohem Maße durch völkerrechtliche Rechtsquellen, insbesondere Übereinkommen, vorgeprägt. Dies gilt in besonderer Weise für die Komplexe der nuklearen Sicherheit, der nuklearen Haftung und der Nicht-Weiterverbreitung von Nuklearwaffen (Non-Proliferation).

Es wäre zu kurz gegriffen, in dem Werk lediglich eine Handreichung für weltweite Atomgesetzgebung zu sehen. Es eignet sich darüber hinaus besonders für alle Benutzer, denen es darum geht, sich einen systematischen Überblick über die Regelungsbereiche und -gegenstände des Atomrechts zu verschaffen. Hilfreich sind gerade auch aus dieser Perspektive die weiterführenden bibliographischen Hinweise am Ende eines jeden Kapitels. Ihr Wert könnte in weiteren Auflagen noch gesteigert werden, wenn sie über die einschlägigen völkerrechtlichen Abkommen hinaus auch jeweils einige geeignete neue Übersichtsdarstellungen aus international verbreiteten Monographien und Zeitschriften erfassten.

Insgesamt handelt es sich um einen überaus gelungenen und nützlichen Wegweiser durch ein eher abgelegenes und daher nicht leicht zugängliches Rechtsgebiet. Es ist hervorragend geeignet, dem Leser die vielfach vorhandene Berührungsangst vor dem Atomrecht zu nehmen. Gunther K ü h n e, Clausthal/Göttingen