

INTERNATIONAL LOAN AND GUARANTEE AGREEMENTS

By Hugo J. Hahn*

I. International Loan Agreements

In the current practice of states and international organizations, loan agreements which are subject to international law are of considerable importance. It is, however, virtually impossible to make any universally applicable statements on this because of the wide variety of instruments, on the one hand, and the lack, on the other, of any statistical data, encompassing all creditors, differentiated according to the legal basis of the loan. The most recent Annual Report of the World Bank does provide a useful point of reference in its assessment of foreign debt of the developing countries vis-a-vis public-sector creditors as \$252.2 bn.¹ It can be assumed that the greatest part of this has been provided on the basis of international loan agreements.

1. Origins

Up until the immediate post World War II period, the major loan agreements were those concluded between states in connection with the pursuance of wars.² Since that time the majority of loans has been either for development aid or to bridge balance of payments difficulties. In economic terms, financial aid from the IMF³ amounts to a provision of credit, but from a technical point of view, what is involved is the "drawing" of foreign currency or SDRs against the deposit of a country's own currency.

The general consensus is that this process is to be regarded as a purchase with a repurchase obligation. The loan character is unanimously rejected.⁴ For this reason, despite its considerable importance, there will be no further discussion of IMF financial aid here.

2. The Legal Nature of some Agreements serving as Examples

a) There are two types of international loan agreements between states. A loan relationship can be established directly between states. Such agreements

* Institute for International Law, European Law and International Economic Law, University of Würzburg.