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CURRENT PROBLEMS IN TRANSNATIONAL BANKING: A REPORT ON THE KÖNIGSTEIN BANKING SYMPOSIUM

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1. Introduction

In early June of 1982, the International Faculty for Corporate and Capital Market Law sponsored a symposium on "Current Problems in Transnational Banking". Thirty-five persons from Germany, the Netherlands, Switzerland, the United Kingdom, and the United States participated in the symposium, which was held at the Conference Center of the Dresdner Bank AG in Königstein, Germany [1]. The conference was organized and chaired by the authors of this report. Because the symposium encouraged frank exchanges of views among the invited participants, this report is limited to describing the discussion without attributing opinions to any particular person.

2. The universal banking system as a model

The first working session of the conference explored the extent to which the universal banking system prevailing in Germany, Austria, the Netherlands, and Switzerland can serve as a model for structural changes in other countries such as the United States. An introductory report described the historical development and present structure of the German banking industry. In analyzing the pros and cons of the universal banking system, the report made clear that the issue could only be evaluated in the context of the society and legal structure in which a banking system functions. For example, in Germany, banks played a major role in industrial reconstruction and development in the late nineteenth century and also after World Wars I and II. At those times there did not exist a developed capital market to which German industry could look for support. The report also pointed out that universal banking enables substantial spreading of risks within a bank. The report concluded that this ability allowed the German banking industry to achieve relatively great stability.

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The report questioned whether bank dominance of the capital markets accounted for the weakness of Germany's capital markets, particularly the weakness of its equity market. It concluded that a number of factors account for this weakness (including a substantial public aversion to the risk of direct participation in capital markets because of unhappy investment experience), but that the existence of the universal banking system is not a major factor. The report detailed other aspects of the universal banking system including interlocking directorships (on the Aufsichtsrat) among major banks and major industrial companies and bank control of the proxy system, both of which arguably impede innovation in German companies.

The report recommended some specific reforms but no fundamental changes: "To be sure we do not deem the universal banking system an exportable model, but we believe that it should be left to the banks themselves to develop as universal or specialized banks in a competing market. Regulation should be aimed at specific issues but not at the system itself" [2].

Discussion focused on three aspects of the report. It was agreed that there is a general movement in the direction of universal banking. The United Kingdom appears to have moved furthest in this direction, and there are also significant movements in the United States. The U.S. participants did not believe that there would be an early repeal of the Glass–Steagall Act (which generally divorces commercial banking from investment banking), or the McFadden Act or the Douglas Amendment to the Bank Holding Company Act (which generally seek to confine commercial banks to operating in one state). However, as a practical matter, many of these statutory restrictions have been circumvented and U.S. banks operate nationally and engage in a variety of activities which formerly were viewed as primarily the province of investment bankers. Conversely, non-banks such as Merrill Lynch and American Express engage in activities which have been traditionally associated with banks. Unlike universal banks, however, U.S. banks are not generally permitted to own stock of industrial companies, or to be controlled by a company which also controls industrial companies.

German participants asked why non-banks which engage in banking activities are not regulated like banks. They pointed out that they would be so regulated under German law. American participants contended that, as a practical matter, imposing new regulation on near-banks runs against the current of the Reagan Administration's deregulation philosophy. Further, many U.S. banks may view the activities of their competitors as providing an opportunity for reconsideration of the necessity for the heavy regulatory burden which they believe the banks presently bear.

U.S. participants were particularly interested in the degree to which the German banking system promoted concentration of power and limited competition. The German participants pointed out that there were generally three major categories of banks: (a) private (Deutsche Bank, Dresdner Bank, Commerzbank); (b) public (Westdeutsche Landesbank Girozentrale, Bayerische Landesbank Girozentrale, Hessische Landesbank Girozentrale); and (c) cooperative (Deutsche Genosscaschaftsbank). They were confident that competition among the banks in these categories is intense, and that competition within the categories is also intense. However, the intensity of competition varies among different lines of business. For instance, entry into syndicated underwritings remains difficult; but this difficulty, the German participants argued, may result from the premium placed on experience and expertise. In other lines of business, corporate clients are more willing to search out the most favorable banking connection for specific transactions. The German banking industry is much less concentrated than that of Switzerland or the Netherlands, where the three or four largest banks respectively share over 50% of the market, including foreign business.

The U.S. participants were also interested in the role of German banks which are primarily responsible for the welfare of client corporations ("Hausbank"). The German participants asserted that the Hausbank seems to be a relationship on the wane. Medium and even small enterprises increasingly borrow from several banks. Therefore, no single bank will feel a special responsibility to an enterprise when it faces difficulty. The Baukrecht and Wienerwald bankruptcies were presented as recent examples of this attitude. Furthermore, handling the financial reorganization of a big corporation may exceed the capacity of a single bank. Thus, larger companies generally prefer to develop close connections with two or three lending institutions.

3. Changes in the U.S. banking system

3.1. General developments

The second working session focused on changes in the American banking system. The report pointed out that U.S. commercial banks have traditionally been subject to intense regulation in the United States. These laws and regulations take various forms, but the most important are the obligation to deposit with the Federal Reserve substantial amounts of non-interest-bearing reserves, limitations on the activities in which banks can engage (they may not own industrial enterprises and are barred from many financially related businesses such as underwriting and distribution of securities and insurance), ceilings on interest rates which may be paid to retail depositors, limitations on the geographic markets within the United States where banks can engage in retail business, and a slow and ponderous regulatory process that overall inhibits banks from effectively responding to market demands. These laws and regulations reflect banking as it was half a century ago, rather than the way it is today.

Within the past 10–15 years, forces of change have entered the marketplace. These forces are so strong that they will reshape permanently the financial landscape and eliminate many banks and bankers in their wake. The principle forces of change were identified as: inflation; technological developments, especially in the fields of telecommunications and data processing; an awareness by bank customers, both individuals and institutions, of the true value of the cash flow that results from their labor or production; and the entry into the banking business of many newcomers who might be considered to be near-banks but are not subject to the banking laws and regulations. These newcomers are providing increasingly effective competition in both the retail banking field and the commercial banking field. In the U.S. marketplace they include names such as Merrill Lynch, G.E. Credit, Prudential/Bache, American Express–Shearson, and Phibro/Solomon. The list is expanding.

For more than a century, banks in the United States have been funding their operations principally through deposits for which they paid little or no interest. Banks managed to hold these cheap deposits by offering largely paper-based payment and other services to their customers, instead of paying them interest at, or close to, market rates. As the years went by, the volume, complexity, and cost of these payment services increased greatly, but very few banks had sufficient incentive to find out what their deposits really cost them in terms of employees, branches, data-processing charges, and capital investments.

As a result of a federal law passed in early 1980, ceilings are scheduled to end in 1968 on interest rates payable by banks and thrift institutions on today's approximately $1.6 trillion of consumer deposits. Recent events suggest that the ceilings will end earlier than 1986.

Many depositors who are dissatisfied with the pace of decontrol on banks' interest rates are leaving the banking system to enjoy the market rates offered on money market funds. Money market funds are investment pools which hold short-term high-yielding money market instruments and offer their investors instant withdrawal or liquidity privileges. Almost $200 billion has been invested in such funds in the past three years. The Garn-St. Germain Depository Institutions Act of 1982 allowed banks to offer accounts which could compete directly with money market mutual funds. In the first two months after the new bank accounts were offered, money fund assets declined by roughly 15%. In that period, the new bank accounts accumulated $254 billion in assets.

The impact of these changes on the deposit base of the U.S. financial system is enormous. The thrift industry – consisting of roughly 4,500 institutions which hold about $700 billion in assets – is going through a profound shock as a result of holding long-term assets earning 9.5% that are funded at a cost of over 11%. It was estimated that as many as 1,000 of these institutions will have to be liquidated or merged if rates do not decline significantly. In fact, rates have declined significantly.

The forces of change are not limited to impacting the liability or deposit side of U.S. banks' balance sheets. They also impact the asset side. The savings that are promised by new technology have not, for the most part, yet been realized. Operating expenses (for personnel, rental, increasingly complicated equipment, and other expenses) are increasing at a rate of more than 15% per year. As interest and operating costs of the business increase and the competitive impact of the near-banks begins to be felt, the spreads on loans are rapidly narrowing. In order to maintain an adequate rate of return on equity, the thinner loan spreads must be offset by adding more loans, thus increasing the size of the banks' balance sheets, which in turn forces bank capital ratios to decline. This cycle has prompted U.S. regulators to express grave concern about U.S. bankers' ambitions of expanding their business, and has forced the banking industry to start charging for those services once conveniently covered under the blanket of the low-cost deposits.

Bankers are beginning to realize that they are in two distinct, but related, businesses. One business is that of managing risk, or credit, in the broadest sense of the word. The other business is that of manufacturing transactions, or the execution of payments, between one party and another.

It is quite possible to imagine banks which will fund themselves entirely in the global money markets using only "large denomination deposits", or large denomination notes, debentures, or some other label for a debt security. These banks would be pure financial intermediaries. They would earn their keep by assuming and managing a variety of risks – principally risks involving credit quality, interest rate spreads, foreign exchange, and sovereign risks. They would earn a profit because their risk management abilities, capital, and earnings diversification would make it possible for them to borrow in the market place at a lower rate than those to whom they extend credit.

A second business, the manufacture of transactions, arises from U.S. banks' traditional, but no longer unique, role as a provider of payment services in conjunction with demand deposits. The manufacture of payment transactions, by use of rapidly evolving technology, is really growing into more of a telecommunications than a banking business. This transaction, or telecommunications, business over time will likely squeeze the paper-based float out of the banking system and make all payment transactions instantanenous. An ever-growing number of banks that previously existed on the subsidy of non-interest-bearing demand deposits are now aggressively promoting the benefits of "cash management" accounts for corporations and so-called "sweep accounts" for retail customers, all through the use of electronic banking. This new competition in the use of technology will inevitably eliminate the hidden subsidy that banks have enjoyed.

In the future, some banks will anticipate earlier than others the withering away of funding through low-cost deposits and will concentrate on pure risk management. To the extent that these banks choose to carry the credit risk for their own account, they will fund themselves increasingly in wholesale money markets. To the extent that these banks choose to pass on some of the credit risks in order to manage their balance sheets, they will do so through a variety of devices, such as institutional private placements and underwritings in which institutions such as pension funds, insurance companies, mutual funds, and government agencies will invest. Eventually the public might be invited to participate.

Some banks, on the other hand, will concentrate on serving the individual consumer. These banks will offer close-to-market rates for deposits, with the cost of collecting funds (branches, automated teller machines, telephone, mail, and the like) accounting for the difference between the actual rate paid and the theoretical market rate. These banks will book variable rate loans to avoid getting caught in a rate squeeze like that in which virtually all thrift institutions are caught today. They will impose explicit charges on services and transactions, either directly or through sub-contracting.

Some banks (and other institutions) will concentrate exclusively on delivering transaction-processing services. These services will be offered to those banks – again on an explicitly priced basis – that prefer to have others perform their data and transaction processing and avoid direct involvement in today's highly complex and rapidly developing technology.

Before commercial banks can engage in all of the various businesses described, it will be necessary to repeal or significantly change an important portion of the existing laws and regulations. That process is under way. Proposals are circulating (1) to allow bank-holding companies to enter into any competitive financial services business of a non-traditional nature so long as that business is conducted through a separate subsidiary; (2) to simplify the existing complex regulatory process for getting into new financial services businesses; (3) to liberalize the outdated geographic limits currently imposed on U.S. banks; and (4) to accelerate the pace of deposit deregulation in order to prevent the continuing drain of deposits from smaller banks into money market funds.

These and various other deregulatory proposals face a pragmatic reality – the desire of those who already have a place in the market to avoid more competition. Representatives of non-bank financial service industries – the Securities Industries Association, the Investment Company Institute, the Association of Data Processing Service Organizations, the National Association of Insurance Agents, and many other non-bank trade associations – are likely to oppose any change in the laws and regulations that would enable U.S. commercial banks to compete in new areas. At the same time, the thrift and small bank trade associations also want to remain protected. In some respects they seek to maintain the status quo; however, they also want new subsidies, exemptions, and special treatment. In addition, the Federal Reserve Board continues to feel that any deregulatory moves will weaken its monetary policy control tools. The process of bringing about appropriate legislative change will be complex and will have to take account of significant political interests.

The report on developments in the United States prompted further questions and comments on why "near-banks" which increasingly penetrate the traditional banking business are not subjected to banking-type regulation. For example, it was pointed out that the reasons for protecting depositors in banks may be equally applicable for protecting depositors in other mass transaction and savings accounts, *e.g.* money market investments. In the United Kingdom, the troubles of near-banks required intervention by U.K. banks. Would similar troubles in the United States lead to U.S. bank rescue efforts? The U.S. participants pointed out that U.S. banks' lines of credit often backed-up commercial paper issues. They also stated that in the past banks felt a sense of obligation to the community. Bank aid in connection with the Hunt brothers silver speculation crisis and their participation in the bail-out of New York City were offered as examples. But there was a warning that if the banks no longer see themselves as the dominant force in the financial markets, their concern for its safety might lessen.

3.2. Trends in providing financial services

The next report summarized likely trends for the major categories of firms involved in providing financial services, as follows.

Thrift institutions. The current crisis will force many of them to close or to merge. Those which survive will engage in a broader set of banking activities.

Commercial banks. The trend to concentration and consolidation will continue. Both interstate combinations (*e.g.* multibank holding companies) and franchise banking (for instance, a chain modelled on McDonald's restaurants) will be permitted. At the same time, market segmentation will increase.

Insurance companies. A recent study (the Heimann Report) completed for the Governor of New York shows a decrease in traditional whole life insurance business. Insurance companies are offering life insurance combined with a variety of investment options. They are thus competing directly with other providers of investment opportunities.

Investment bankers and brokers. In this field, too, it may be expected that the number of enterprises will further decrease and that those which remain will increasingly compete with services offered by the banking business. Cash management accounts will become a standard product and the question will be who can efficiently provide the widest range of ancillary services.

The report concluded that foreign banks' activity in the United States will be affected but will not be substantially impaired by these anticipated changes. The key advantage to any participant, foreign or domestic, will be experience in providing desired services. Foreign universal banks traditionally have provided the wide range of servives which are now opening for U.S. financial institutions. That experience could give foreign institutions a substantial advantage.

3.3. *The reciprocity issue*

A short final report by a European participant discussed the issue of reciprocity in permitting foreign banking in European countries. This report stressed the importance of EEC directives in liberalizing the establishment of banks within the European Economic Community. Although banks from non-member countries are presently subject to the regulations of individual EEC states, those regulations have generally not been restrictive. In fact, such regulations were cited favorably in a recent U.S. Treasury Report [3]. However, the discussion raised the question of whether reciprocity was an appropriate test for determining whether to allow entry to a foreign bank. If, for example, a foreign supervisory regulation has no domestic equivalent, should that "lack of reciprocity" dictate barring banks from that country? It was agreed that conferring equal national treatment was normally the preferable standard for determining whether a bank from that country should be permitted entry. Reciprocity could best be viewed as a tool for implementing other policy objectives.

4. Domestic responsibility for banking abroad

The general theme of the two final working sessions was the extension of the home country's responsibility for banking activities abroad. First, the responsibility of the home bank for the liabilities of its foreign branches or subsidiaries was discussed with regard to both economic and political risks.

The introductory report, presented by an American participant, pointed out that it is difficult to make a clear distinction between economic and political risks, but there is a basis for distinguishing home country liability for branch and subsidiary obligations. Even when they are established abroad, branches are dependent parts of the bank's organization. Thus, the home country bank would normally be fully responsible for liabilities assumed by branches. This responsibility may not exist when host country regulations prevent the branch from performing its obligations or in the event of other host country events such as civil disorder. The bank is in a better legal position to avoid liability if it makes clear to its clients the limitations on its duty to perform.

These points are illustrated by the recent ruling in *Vishipco Line v. Chase Manhattan Bank, N.A.* [4]. In that case, Vishipco corporation had made piastre-denominated demand deposits in the Saigon branch of the Chase Manhattan Bank. Chase closed the branch shortly before the Communist take-over of Saigon. On taking over Saigon, the Communist forces confiscated the assets of all banks in Saigon and took over their management. Unable to receive their deposits in Saigon, the depositors sought to recover them from the Chase home office in New York City. The Court of Appeals for the Second

Circuit held that the depositors were entitled to recovery in a dollar amount equal to the value of the piastre deposit at the time Chase closed its Saigon branch without giving the depositors a prior opportunity to withdraw their funds. It stated:

> A bank which accepts deposits at a foreign branch becomes a debtor, not a bailee, with respect to its depositors. In the event that unsettled local conditions require it to cease operations, it should inform its depositors of the date when its branch will close and give them the opportunity to withdraw their deposits or, if conditions prevent such steps, enable them to obtain payment at an alternative location. ... In the rare event that such measures are either impossible or only partially successful, fairness dictates that the parent bank be liable for those deposits which it was unable to return abroad. To hold otherwise would be to undermine the seriousness of its obligations to its depositors... [5].

The opinion suggested that the result might have been different if the Saigon office had been organized as a subsidiary or if an explicit waiver of the right to proceed against the home office had been included in the deposit contract.

Although the court in *Vishipco* indicates that under U.S. law the parent company bank has a substantial opportunity to escape liability for the obligations of its subsidiary banks, the banker participants were very clear that the technical legal distinction between bank branch and bank subsidiary should not be dispositive. They asserted that the parent bank had a responsibility to stand behind the obligations of its subsidiary, except in those unusual cases (for example, a freeze on assets imposed by the host country) in which the bank would not be responsible for the obligations of its branches [6].

There was considerable discussion as to how far the bankers were willing to require parent bank responsibility for the obligations of subsidiaries. Would it apply if assumption of the obligations would bankrupt or seriously impair the financial stability of the parent company? Does this responsibility apply only to banking subsidiaries? Should it apply to partially owned subsidiaries? Should liability be limited to those cases in which the subsidiary implies that its obligations are backed by the parent company? Would it make a difference whether the subsidiary uses the name of the parent company bank in its name?

These questions were also discussed in light of the comfort letters which the Bank of England seeks from the parents of banks which do business in the United Kingdom. In part, these moral obligation letters are designed to skirt home country prohibitions against a bank's guarantee of obligations. On the other hand, they express at a minimum a moral obligation and may create enforceable expectations on the part of those who deal with the subsidiary. Although no precise legal conclusion emerged from this discussion, it was clear that the tendency was to enlarge parent bank liability. This tendency had a parallel in the increased focus on the responsibility of the home country supervisor for the safety and soundness of the consolidated enterprise.

5. Consolidated financial statements

Several short reports were next presented on the consolidation of financial statements that must be filed with supervising authorities. Consolidated statements allow the supervisory authority to assess the strength of the entire enterprise. It was noted that there are substantial differences among countries in the definition of certain terms and thus balance sheet comparisons and regulatory judgments arising from them are quite disparate. For example, the ability of a bank to maintain substantial hidden reserves makes its apparent capital ratios different from a bank operating in a jurisdiction where hidden reserves are not permitted. Requiring different equity ratios in different jurisdictions affects the ability of banks to compete for business.

There was also a lively debate on the recent efforts to apply consolidation principles to German banks. Application of consolidation principles to German banks implies that Germany's minimum capital ratio requirements will be imposed on a consolidated basis, which would increase required capital for the present bank and might force a curtailment of its lending capacity. The major criticism was a caution against moving too quickly to force consolidation because international requirements may make it necessary for banks to increase their lending capacity and regulatory restraints might aggravate an already dangerous tendency to retreat sharply from commitments, particularly to LDC borrowers. Thus, German and U.S. participants expressed the hope that any new standards would be phased in so that disruptive results could be minimized.

6. Supervisory authorities

6.1. Managing country risk

The final session dealt with the work of bank supervisory authorities. The first subject discussed related to country risk assessments. The participants supported the approach to the supervision of country risk taken by the Bank for International Settlements Committee of Banking Supervisors (the Cooke Committee). They expressed approval for the Committee's conclusion that the management of country risk is a matter for the commerical judgment of each bank and that the role of bank supervisors should be to ensure that each bank has effective procedures for managing country risk so that exposure to risk is not excessive relative to the bank's capacity to bear losses. While acknowledging the difficulty in obtaining appropriate data for assessing country risk, it was urged that bankers and supervisors should look not only to standard economic indicators, but also to a country's responses to past economic crises, and the competence and continuity of the country's economic management.

Two policy problems were highlighted. The first concerned the necessary provision for loans in default or loans being rescheduled. Such loans have not met the expectations of the lenders, and there was some sentiment for requiring recognition of this unpleasant fact in the lender's financial statements. But no specific solution emerged as clearly appropriate. In many countries, and particularly in the United States, the tax authorities are cautious about granting tax deductions for the creation of loan loss reserves. A suggestion for imposing regulatory measures, such as the imposition of mandatory reserves or charges against loans for the determination of capital adequacy, was countered by the need to carefully phase in any restrictions so as to minimize the impact on the ability to make international loans in the coming critical period. Many of the participants emphasized that international lending markets were under considerable stress because of the sluggish state of the world economy, political instability in several strategic areas, and the debt-servicing difficulties already experienced by several borrowers. Supervisory restrictions on foreign lending might result in several additional borrowers having to default on their obligations.

One participant focused on the problems arising from the number and diversity of banks involved in international loan syndications. He noted that the number and diversity of lenders (including an increasing number with limited experience in international lending) leads to difficulties in achieving coordinated action among banks, whether in accelerating payments (as in the case of Iranian loans) or in averting a formal declaration of default (as in the case of the Polish loans). He observed that these problems are exacerbated by the attempts of government to use banks as if they were instruments of foreign policy. He emphasized that the presence of banks that have no special long-term commitment to the international market can often obstruct the adoption of a coordinated policy until they are, in effect, bought out by other participants. He also expressed a concern that the presence of relatively unsophisticated banks in some syndicates could make the syndicate managers vulnerable to anti-fraud suits under the U.S. federal securities laws. Some U.S. banks had a foretaste of this problem in the mid-seventies in the *Colocotronis* case [7], which involved a domestic loan syndicate. The participant thought that the supervisory process could be helpful by insisting that all banks involved in international lending develop competent country risk management practices.

But in the final analysis, it was agreed that banks must protect themselves by carefully choosing their syndicate partners. One U.S. banker pointed out that, in reviewing its willingness to participate in redeposit relationships, his bank examines the quality of syndicates that the bank has put together. If a lead bank includes a number of unsophisticated banks in its syndicates, the judgment of that bank's managers is called into question and relationships may be adjusted accordingly.

A German participant urged that supervisory authorities make explicit a willingness to provide a "safety net" to cover country risk losses. He argued that such a commitment was appropriate because bank exposure (and overexposure) had been contracted to serve governmental needs (facilitation of a country's exports and recycling the surplus revenues of oil-exporting countries). Those suggestions elicited sharp responses. Several participants believe that acceptance of the concept that central banks should share the risk of loss is unwise and inappropriate. Doing so would give governments a lever with which to interfere in ostensibly private lending decisions. There seemed to be disagreement about the extent to which such interference presently occurs.

There was also discussion about when a safety net might be required. Normally, the safety net is available to deal with liquidity problems. Should it be available to assist a bank whose solvency is in question? How can one know whether a particular problem is a liquidity rather than solvency problem? One participant argued that there is too great an ambiguity about which institutions (if any) would be provided assistance. The supervisors and some of the bankers stated that such ambiguity is healthy. It is hard to define, in advance, the circumstances under which assistance is appropriate. In addition, ambiguity requires bank officials to continue to have the primary responsibility to make hard business decisions and not to rely on government assistance to bail them out of their mistakes.

A European participant stated that lack of prudence by banks accounted for much of the overexposure which presently exists. He asked whether, for example, loans to Brazil for seven to eight years at 3/8 of 1% over the London Interbank Offer rate could be defended as prudent? If margins on loans are very thin, how can adequate reserves be accumulated to absorb risks? He also worried about the practice of lending on floating rates and thereby shifting the interest rate risk to the borrower. He thought such a practice converts interest rate risk into credit risk.

6.2. Conflicts between home and host country supervision

The next working session evaluated conflicts between home country control of international banking activities and host country supervision. Problems arising from bank secrecy laws, and difficulties arising from differences in supervisory practices and legal systems, were emphasized.

Bank secrecy laws may create difficulties for transmission of data across country lines from foreign branches and affiliates to the parent bank or to the parent bank's supervisory authority, and between the supervisory authority in the host country and the supervisory authority in the home country. In addition, bank secrecy laws in the host country may hamper the home country's bank examination process. Substantial difficulties may arise for bank managers and their supervisors. If inadequacy of information impairs the parent bank's ability to control the risk exposure of its foreign offspring, prudential risks may develop, particularly in light of the previous discussion's conclusion that a parent bank should normally take full responsibility for the obligations of any controlled affiliate. On the supervisory side, considerable progress is being made in the sharing of banking information, particularly when practical guarantees of secrecy can be given. Under U.S. law supervisory officials cannot fully guarantee secrecy against demands for information by Congress or, under certain circumstances, the courts. However, the supervisory authorities have had excellent success in shielding information received in bank examinations.

International differences in supervisory practices can lead to unfair competition unless the host supervisory authority can hold resident foreign banks to the same standards applied to domestic banks. Standards of capital adequacy raise particularly difficult problems for resident branches of foreign banks. In addition, differences in supervisory practices produce pressures on the most restrictive supervisory authorities to soften regulations and procedures. Banks may engage in "arbitrage between supervisors" by shifting activities to centers where the supervisory climate is most congenial, particularly in cases in which banks are not supervised on a consolidated basis.

Substantial progress has been made in mitigating problems arising from differences in supervisory practices, chiefly because increasing personal contacts among supervisors in various countries had led toward a convergence of views on supervisory problems. During the 1970s a number of groups formed to afford supervisors regular opportunities for exchange of views. Such groups included the Groupe de Contact in the European Community, the Bank for International Settlements Committee of Banking Supervisors (Cooke Committee), the Offshore Supervisors Group, and the Latin American and Caribbean Group of Supervisors.

6.3. Information flow

The final working session discussed the tensions between the increasing capacity to gather, organize, and transmit information and the concern for protecting the privacy of data relating to individuals and for safeguarding national security. One participant outlined some of the statutory and other governmental responses to that tension and warned of the need for business organizations to understand what is at stake.

The session concluded with a brief discussion of the recent SEC attempts to secure information from Swiss banks about the identity of their customers who had traded in U.S. securities [8].

Notes

[1] *See* the appendix to this article for a list of participants in the symposium.

[2] For a full discussion of Germany's universal banking system, *see* Büschgen, *The Universal Banking System in the Federal Republic of Germany*, 2 J. Com. Corp. L. & Sec. Reg. 1 (1979); Immenga, *Participatory Investments by Banks: A Structural Problem of the Universal Banking System in Germany*, 2 J. Com. Corp. L. & Sec. Reg. 29 (1979).

[3] U.S. Department of the Treasury, *Report to Congress on Foreign Government Treatment of U.S. Commercial Banking Organizations*, 1979.

[4] 660 F. 2d 854 (2d Cir. 1981).

[5] *Id.* at 864.

[6] This discussion preceded the Banco Ambrosiano episode, which involved the unwillingness of the parent Italian bank to stand behind the obligations of its Luxemburg subsidiary.

[7] *See In re Colocotronis Tanker Securities Litigation*, 449 F. Supp. 828 (S.D.N.Y. 1978).

[8] For a discussion of the relevant cases and a description of the accommodation worked out between the Swiss and U.S. governments, *see* Siegel, *United States Insider Trading Prohibition in Conflict with Swiss Bank Secrecy* 4 J. Comp. Corp. L. & Sec. Reg. 353 (1982).

Appendix: List of participants in the Königstein Banking Symposium

At the conference, reports were made by:

Hans H. *Angermüller*, Vice Chairman of Citibank;
Dr. Ekkehard *Bauer*, Chief Division Manager of the Deutsche Bundesbank;
Willie *ten Berg*, General Manager of Algemene Bank Nederland;
Robert *Carswell*, Partner at Shearman & Sterling, former Deputy Secretary of the U.S. Treasury;
George W. *Coombe, Jr.*, Senior Vice President and General Counsel of Bank of America;
Frederick *Dahl*, Associate Director of the Federal Reserve Board;
John G. *Heimann*, Chairman of the Executive Committee of Warburg, Paribas, Becker, Inc.;
Professor Alain *Hirsch*, University of Geneva, member of the International Faculty, member of the Swiss Banking Commission;
Professor Dr. Dr. Klaus *Hopt*, University of Tübingen, member of the International Faculty;
Dr. Dietrich *Köllhofer*, member of the Vorstand of the Bayerische Vereinsbank AG;
Dr. Klaus *Kohler*, Syndikus of Deutsche Bank AG;
Dr. Manfred *Meier-Preschany*, member of the Vorstand of the Dresdner Bank AG;
David *Nendick*, Deputy Head of the Banking Supervision of the Bank of England;
Williams S. *Ogden*, Chairman of the Interim Board of Directors, Institute of International Finance;
Dennis *Weatherstone*, Chairman of the Executive Committee of Morgan Guaranty Bank.

In addition, these participants took part in the dicussions:

Dr. Helmut *Becker*, Chefjustititiar of the Commerzbank AG;
Prof. Dr. Dr. h.c. mult. Helmut *Coing*, University of Frankfurt;
Dr. Albert *Dormanns*, Manager of the Bundesverband deutscher Banken;
Prof. Jack M. *Guttentag*, University of Pennsylvania;
Douglas W. *Hawes*, partner at LeBoeuf, Lamb, Leiby & MacRae and member of the International faculty;

Dr. Theodor *Heinsius*, Chefsyndikus of Dresdner Bank;
Dr. Thorwald *Hellner*, Chefsyndikus of the Bundesverbandes deutscher Banken;
Prof. Richard J. *Herring*, University of Pennsylvania;
Prof. Dr. Friedrich *Kübler*, University of Frankfurt, member of the International Faculty;
Dr. Robert *von Malapert-Neufville*, Syndikus of the Commerzbank AG;
Prof. Robert H. *Mundheim*, Dean of the Law School and University professor of Law and Finance at the University of Pennsylvana Law School, member of the International Faculty;
Dr. Wilhelm *Schlaus*, Syndikus of the Deutsche Bank AG;
Dr. Robert *Studer*, General Manager of the Swiss Bank Union;
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