

[国際決済銀行\(BIS\) \(日銀サイト\)](#) は、[第一次世界大戦後のドイツ賠償の支払いとの関連で設立された](#)。

1930 年の[国際決済銀行に関する条約](#) 1 条は、「下記の設立文書(Constituent Charter)に法的効力を持たせること」をスイス政府に義務づけている。そして、同条約の附属文書たる[設立文書](#)は、BIS が法人として設立されること (1 項) および BIS の活動内容は[定款\(Statutes\)](#)に定められること (2 項) を定めている。すなわち、BIS はスイス法人として設立されている。

当初、BIS の株式は私人によっても保有されていたが、2000 年になり、BIS の公的目的の故に株式保有を中央銀行に限定する提案がなされ、強制的な自社株買いにより私人から株式を剥奪することが決定された。これを不満に思う株主 (私人) が、定款 54 条 1 項に基づく[仲裁を申し立てた](#)。

この申立を審理する過程において、BIS の法的地位が問題となった。それについて、仲裁廷は以下のような判断を下した([Partial Award, 22 November 2002](#))。

105. The Tribunal notes that the rather complicated manner in which the Bank was established must be seen in light of the stage of development of international law in 1930. Apparently, at that time some of the parties to the treaty had doubts as to whether a treaty could establish under public international law a company limited by shares and whether such a company could be generally recognized.

[...]

108. The Constituent Instruments confirm that the Bank was established under international law in conformity with a treaty [...]. By approving the Convention, the Swiss Parliament gave the Swiss Government the competence to ratify this treaty and to grant the Constituent Charter, which is an integral part of the Convention. [...] Article 2 of the said Charter added that the constitution, the operations and the activities of the Bank were “defined and governed by the annexed Statutes”. The Statutes of the Bank and its Constituent Charter were thus determined by an intergovernmental agreement and were annexed to the Convention. The granting of the Charter by Switzerland did not thereby subordinate the Bank to Swiss law.

[...]

113. Moreover, the functions of the Bank were quintessentially public international in their character.

[...]

115. The Bank has cited a number of international instruments that explicitly recognize the Bank as an international organization:55 the Headquarters Agreement with Switzerland of 1987, the Host Country Agreement Between the Bank and the People’s Republic of China of 1998, and the Host Country Agreement with Mexico of 2002.

[...]

118. For the above reasons, the Tribunal finds that the Bank for International Settlements is a sui generis creation which is an international organization.

【問】上記判断は、国際司法裁判所の国連賠償勧告的意見 (1949 年) と比較して、何か違いがあるだろうか。