

Introduction

ROBERT E. LUTZ

Paraphrasing Charles Dickens, 1996 was the worst of times and it was the best of times . . .¹—that is, for international legal developments affecting the private and public practitioner. During the past year, we have witnessed the inability of international law to harness the capacity of some to cruelly inflict pain and suffering on their fellow men. But examples also abound indicating the system's capacity to respond to the need for new institutions and rules that create a more just and equitable society. Agreements bolstered by the force and effect of the international legal system led to the cessation of long-standing bloody civil wars, and international judicial bodies began the difficult process of reaffirming global humanitarian precepts essential for a peaceful and humane world. Scores of international agreements and conventions, touching upon every conceivable transnational commercial activity and facilitating jurisdictional complications associated with doing business across borders, demonstrated the power and significance of a world governed by the rule of law. All told, it was a good year for international legal developments.

Whether we take stock of these achievements on an annual basis or less often, it is important for us, as lawyers, to regularly review our past. As Holmes wrote, "The life of the law . . . has been experience."² Since the historical method is inherent to the international lawmaking process, it is more important for us who are engaged in the public and private practice of international law to periodically examine what has transpired in our fields of law. We use the past to help us anticipate future legal developments; and the body of customary international law and, today, the ascertainment of soft law, which is prominent in many emerging legal areas, rely significantly on experience gained from past developments. Thus, the following snapshot of 1996 international legal developments will serve the practitioner and academic alike in performing their professional functions.

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1. The first two clauses of the first sentence of the classic novel by CHARLES DICKENS, *A TALE OF TWO CITIES* (1859), read: "It was the best of times, it was the worst of times."

2. OLIVER WENDELL HOLMES, *THE COMMON LAW* (1881). Also, in a speech in Boston on January 8, 1897, he said, "The law is the witness and external deposit of our moral life. Its history is the history of the moral development of the race."

A perusal of this volume prompts me to make several brief observations. Firstly, developments in 1996 emphasize the wide-ranged scope and extent of activity occurring in international public and private lawmaking and compliance efforts. Most practitioners usually anticipate that public law developments would fill the pages of an international law year in review, but this review reveals the rich depth and breadth of international private law developments as well.

Secondly, the complexity of the field, loosely called "international law," is also illustrated by this review of 1996 legal developments. Although occasionally still referred to as a primitive legal system, a careful reading of this volume demonstrates that the international legal system is evolving to quite a sophisticated and complex one. The fingers of international legal activity today reach into every conceivable area of human activity, indicating the proliferation of international legal instruments and institutions.

A third observation has to do with the significant role played by the United States in so many of these reported public and private law developments. Perforce of our economic, political, military, and even legal authority in the world, the United States will continue to play important roles in legal developments in the international private and public law sectors. This power to influence the international lawmaking process is burdened with a responsibility to use this authority to build a better society for all countries and peoples.

It is my conviction that an informed legal profession is one of the best ways to ensure that that goal is achieved. This annual review is dedicated to that end. I hope you enjoy using this volume; I enjoyed working with the many authors to bring it to you.

Happy Reading!