

Introduction

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Following the pattern of last year, the reports in *International Legal Developments in Review: 1997* are organized and presented under the general substantive law categories covered by the Divisions of the Section: Business Transactions and Disputes, Business Regulation, Foreign Law, and Public International Law. The only variance from last year is that the contributions from committees in the Business Transactions and Disputes and Business Regulation Divisions have been combined to form one section. Although the focus of these reports is on developments in 1997, in some instances developments in 1996, as well as late breaking developments in early 1998, are covered as well. Inevitably, there is some overlap, but every effort has been made to keep this to a minimum and limit such instances to providing different perspectives on the same developments.

There were numerous significant developments in 1997 that will be of practical use to those who specialize in the particular subject matter covered. We would encourage readers, however, to roam beyond the immediate concerns of their practices. There is a rich treasure trove to be found throughout this year's Review.

Such roaming may be especially beneficial due to the increasing artificiality of distinctions drawn between private international law, on the one hand, and public international law, on the other. As these materials demonstrate, in today's legal environment, the proficient international lawyer must be well versed in both fields. A knowledge of significant developments in foreign legal systems is becoming increasingly indispensable for the proficient international lawyer as well. There are many such developments reported in the pages that follow.

Not surprisingly, the reports reflect the key role that the United States plays in many of these international legal developments. This U.S. role, however, is subject to sharp criticism. Unilateral U.S. economic sanctions, for example, have been challenged on both legal and political grounds. In United Nations (U.N.) negotiations on the possible establishment of a permanent international criminal court, the United States has taken positions on issues contrary to those of the great majority of other states involved in the negotiations. Recent changes in U.S. immigration and nationality legislation have been subject to the sharpest scrutiny. In a number

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of instances, the United States has declined to sign or ratify international treaties or conventions strongly supported by most member states of the world community.

Readers may judge for themselves the validity of these criticisms as well as the validity in general of positions the United States is taking in international forums. In this connection, it should be noted that, on April 14, 1998, the state of Virginia executed Angel Francisco Beard, a Paraguayan citizen, despite a contrary Order issued unanimously on April 9th by the International Court of Justice (the Court). That Order, based on the case brought by Paraguay against the United States, stated that the United States should take all measures at its disposal to prevent the execution. Paraguay had alleged in its case that the United States had violated the Vienna Convention on Consular Relations when the state of Virginia failed to advise Beard of his right to communicate with, and receive assistance from, the consular officers of Paraguay, as required by article 36(1)(b). It is not clear that an Order of the Court, as opposed to a Judgment, constitutes a binding "decision" of the Court that must be complied with under article 94(1) of the U.N. Charter.¹ In any event, it is clear that "compliance with the internal laws of the Commonwealth of Virginia and of the federal laws of the United States cannot relieve the U.S. from international responsibility for an admitted violation of the Vienna Convention and a potential violation of the U.N. Charter."²

My hope is that you will read the following pages with pleasure and profit.

1. The International Court of Justice acted under article 41 of the ICJ Statute, which gives the Court the power to indicate provisional measures of protection (roughly injunctive relief) in order to protect the respective rights of the parties pending its final decision. Article 94(1) of the U.N. Charter requires a member state of the United Nations to comply with a "decision" of the International Court of Justice in any case in which it is a party. Under article 94(2) of the U.N. Charter, if any party to a case fails to comply with a "judgment" rendered by the Court, the other party may petition the U.N. Security Council to take action to give effect to the judgment.

2. Peter H.F. Bekker & Keith Highet, *International Court of Justice Orders U.S. to Stay Execution of Paraguayan National in Virginia*, ASIL FLASH INSIGHT, Apr. 1998, at 2.