International Legal Developments in Review: 1998 - Introduction

John F. Murphy

Recommended Citation
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Introduction

JOHN F. MURPHY*

This year, the reports in International Legal Developments in Review:1998 are organized and presented under the general substantive law categories covered by the following Divisions of the Section: Business Regulation, Business Transactions and Disputes, and Public International Law. As mentioned previously in the Editor's Preface, the contributions from the Comparative Law Division will be published in the fall issue of The International Lawyer. Following the approach of past reviews, although the focus of these reports is on developments in 1998, in some instances developments in 1997, as well as late breaking developments in early 1999, are also covered. Unavoidably, 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.

1998 was an especially active year in international legal developments. To illustrate, consider just a few of the especially noteworthy developments. On July 17, 120 states voted in favor of a statute for a permanent international criminal court, with only seven (including the United States) voting against. For their part, the international criminal tribunals for Yugoslavia and Rwanda increased their activity greatly. Negotiations under the auspices of the Organization for Economic Cooperation and Development (OECD) toward a multilateral agreement on investment collapsed, throwing the future of the entire enterprise in doubt. In contrast the OECD's Convention on Combating Bribery to Public Officials in International Business Transactions, signed on December 17, 1997, went into effect on February 15, 1999. India and Pakistan conducted nuclear tests and created a crisis in Southeast Asia. The Frankfurt and London stock exchanges entered into an alliance that some view as a first step toward a pan European stock exchange. An effort was made and is still underway to extradite General Augusto Pinochet from the United Kingdom to stand trial in Spain for alleged torture and other international crimes. The Foreign Sovereign Immunities Act was amended to allow private claimants to execute judgments by attaching blocked or frozen assets of countries on the U.S. State Department's list of state sponsors of terrorism. An International Convention for the Suppression of Terrorist Bombing was adopted by the United Nations General Assembly. The dispute settle-

*John F. Murphy is a professor of law at Villanova University School of Law in Villanova, Pennsylvania. He serves as chair and editor of this annual review and chair of the Foreign Claims Committee.
ment mechanisms of the World Trade Organization labored under a "staggering" caseload, including especially bitter disputes between the United States and the European Union. The fiftieth anniversary of the Universal Declaration of Human Rights was celebrated around the world, including a celebration by the American Bar Association at the United Nations. There were extensive developments in the law of the sea but the United States still did not ratify the Law of the Sea Treaty. The Asian financial contagion continued and spread to Brazil and Russia, although there are signs at this writing that the situation may be stabilizing. The treaty banning land mines came into force, without the United States as a party, and the International Court of Justice had an active year, including cases involving the United States.

As suggested above, the United States often found itself opposing major international legal developments. U.S. opposition to the statute for a permanent international criminal court, its refusal to support the treaty banning land mines, and its failure to ratify the Law of the Sea Treaty or pay its dues to the United Nations are prime examples. The United States has also been sharply criticized for actions that allegedly violate international legal standards, most recently for the NATO bombing in Kosovo and Serbia. At a minimum these allegations raise serious issues regarding the U.S. commitment to the rule of law in international affairs. Arguably, they are not being subject to the searching discussion and debate they deserve. Perhaps the discussion in this review will contribute to a more meaningful dialogue.

In any event, my hope is that you will read the following pages with pleasure and profit.