

Digest
of
United States Practice
in
International Law
1977

by
John A. Boyd

*Office of the Legal Adviser
Department of State*

References :

- Bevans Treaties and Other International Agreements of the United States of America 1776-1949, compiled under the direction of Charles I. Bevans.
- EAS Executive Agreement Series, issued singly in pamphlets by the Department of State (until replaced in 1945 by the TIAS).
- LNTS League of Nations Treaty Series.
- P.L. Public Law of the United States.
- Stat. United States Statutes at Large.
- TIAS Treaties and Other International Acts Series, issued singly in pamphlets by the Department of State.
- TS Treaty Series, issued singly in pamphlets by the Department of State (until replaced in 1945 by the TIAS).
- UNTS United Nations Treaty Series.
- U.S.C. United States Code.
- UST United States Treaties and Other International Agreements (volumes published on a calendar-year basis beginning as of January 1, 1950).

Earlier volumes :

- 1973 Digest of United States Practice in International Law
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INTRODUCTION

This 1977 edition of the *Digest of United States Practice in International Law*, following essentially the same format of its predecessors, attempts to publish the significant materials relating to international legal practice in the contemporary record of Federal legislation and regulations, treaties and executive agreements, Federal court decisions, testimony and statements before congressional and international bodies, speeches, diplomatic notes, correspondence, and internal memoranda. The year 1977 provided a great many materials, especially in the areas of human rights, international waterways, treaty law, fisheries, economic law, and arms control, which will be of interest to members of the public as well as officials of governments and international organizations, lawyers, and scholars.

In outlining the objectives of the Administration's foreign policy on March 22, 1977, President Carter described America's commitment to human rights as the first of five cardinal principles upon which U.S. policy rests. The material in this *Digest*, in the chapter dealing with the individual in international law, includes such items as the text of the first public speech of Cyrus Vance as Secretary of State outlining the issues the United States considers in implementing its human rights policy, a speech by Assistant Secretary of State Patricia M. Derian describing how this human rights policy is taking form in the Western Hemisphere, statements by Ambassador Andrew Young explaining U.S. human rights initiatives at the United Nations, Ambassador Arthur Goldberg's opening statement at the Belgrade meeting examining the implementation of the Helsinki Final Act, and reports of other U.S. actions with regard to various human rights issues in Czechoslovakia, South Africa, Southern Rhodesia, the Soviet Union, and Uganda.

Several contributions to U.S. practice in the law of treaties resulted from the signing on September 7, 1977, of the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. In connection with the negotiation of the Panama Canal Treaty, Attorney General Griffin Bell issued an opinion on August 11, 1977, on the constitutionality of the transfer to Panama by treaty of U.S. property.

This *Digest* also reports interesting developments arising from litigation concerning the return of the Crown of St. Stephen to Hungary on January 6, 1978.

Among the significant items published in the law of the sea materials in this *Digest* are the regulations issued by the National Oceanic and Atmospheric Administration of the Department of Commerce implementing the Fishery Conservation and Management Act of 1976, which when put into effect on March 1, 1977, was described by Secretary of Commerce Juanita Kreps as "by far the most significant marine fishery legislation of our history . . ." Also published is material on the Fishery Conservation Zone Transition Act and subsequent amendments approving bilateral agreements with a number of countries for fisheries within two hundred miles of U.S. coastlines, portions of the informal composite negotiating text resulting from the Third U.N. Conference on the Law of the Sea, and information concerning the announcement on August 1, 1977, by Secretary of Transportation Brock Adams that the LOOP consortium agreed to accept a license to build and operate America's first deepwater port near Grand Isle, Louisiana.

The chapter on international economic law contains information on the Foreign Corrupt Practices Act of 1977 and several significant treaties, including the U.S.-Canadian Agreement concerning Transit Pipelines signed on January 28, 1977, and the Agreement on Principles Applicable to a Northern Natural Gas Pipeline signed on September 20, 1977. The latter undertaking, which authorizes construction of a pipeline to transport Alaskan natural gas through Canada to the lower 48 States, and at a later time Canadian gas to Canadian markets, was described in a joint statement by President Carter and Prime Minister Pierre-Elliott Trudeau on September 8, 1977, as the "largest single private energy project in history." Other economic treaties reported include the Agreement establishing the International Fund for Agricultural Development (IFAD), the International Sugar Agreement of 1977, the Fifth International Tin Agreement, and the Patent Cooperation Treaty done on June 19, 1970, and proclaimed by President Carter on December 14, 1977, as entering into force with certain exceptions on January 24, 1978. Lutrelle Parker, Acting Commissioner of Patents and Trademarks, characterized this last mentioned treaty as the "most important treaty on patents the United States has joined in 100 years."

Several significant developments occurred in 1977 with regard to the international legal regulation of the use of force. On November 4, 1977, the United States joined the other members of the U.N. Security Council in voting unanimously in favor of Resolution 418, imposing a mandatory arms embargo against South Africa. This was the first

time that sanctions under Chapter VII of the U.N. Charter had ever been adopted against a member of the United Nations.

On April 7, 1977, President Carter outlined new U.S. efforts to control the further proliferation of nuclear explosive capability, and on May 19, 1977, he issued a policy statement establishing new restrictions on U.S. conventional arms transfers to other countries. In a related effort, Secretary of Defense Harold Brown issued a memorandum on September 2, 1977, providing guidance on the control of exports of critical U.S. technology which could make a significant contribution to the military potential of any other nation in a fashion detrimental to U.S. national security.

The other chapters in this 1977 *Digest* report many other important developments in U.S. international law practice. With respect to self-determination of states, the chapter on subjects of international law contains portions of Vice President Mondale's statement of May 20, 1977, regarding Southern Rhodesia, Namibia, and South Africa. There are also materials in this chapter on President Carter's Proclamation of October 24, 1977, declaring that the Constitution of the Northern Mariana Islands would come into full force and effect on January 9, 1978, and on the announcement of March 9, 1977, removing restrictions on U.S. citizens traveling to Cambodia, Cuba, North Korea, and Vietnam.

The chapter dealing with state representation contains President Carter's letter of October 25, 1977, to all U.S. ambassadors reaffirming their role among U.S. officials operating abroad, as well as information on efforts by the Department of State to protect the rights of U.S. citizens in foreign countries, including a Special Consular Services Handbook on the protection of American nationals arrested, on trial, or imprisoned abroad. This chapter also reports on the passage of Public Law 95-45, authorizing the Department of State to provide emergency medical attention and dietary supplements for those U.S. citizens incarcerated abroad who are unable to obtain such services otherwise.

In the material dealing with state territory, jurisdiction, and jurisdictional immunities, there is information on the Antitrust Guide for International Operations issued on January 26, 1977, by the Department of Justice; on the passage on October 28, 1977, of the Act on Treaties for the Transfer of Offenders to or from Foreign Countries; on the entry into force on November 30, 1977, of the Treaty between the United States and Mexico on the Execution of Penal Sentences; and on the Treaty between the United States and Canada on the Execution of Penal Sentences, which was signed on March 2, 1977, and entered into force on July 19, 1978.

Developments in aviation law in 1977 included the Agreement between the United States and the United Kingdom concerning Air Service, signed at Bermuda on July 23, 1977; the litigation with regard to the landing rights in New York of the operators of the Concorde; and the implementation in several bilateral agreements of President Carter's low cost fare policy.

The chapter dealing with state responsibility for injuries to aliens publishes for the first time several decisions by the Department of State on claims by U.S. citizens against the Egyptian Government pursuant to the Claims Agreement between the United States and Egypt signed on May 1, 1976.

The environmental materials report portions of the affidavits and the environmental impact statement in the litigation involving the moratorium by the International Whaling Commission on the killing of bowhead whales. Included as well is information on the steps taken by the U.S.-Canadian International Joint Commission to prevent transfrontier pollution.

The 1977 *Digest* also includes an appendix reporting summaries of Department of State decisions concerning the immunities of foreign states, their agencies and instrumentalities, their property, and their nondiplomatic and nonconsular officials from 1952 until the entry into force of the Foreign Sovereign Immunities Act of 1976. In this appendix the text of dozens of previously unpublished diplomatic notes are reported to show how U.S. practice with regard to these issues of international law evolved during the last quarter of a century.

In his August 19, 1977, World Law Day Proclamation, President Carter observed that the "past twenty-five years have been marked by the unprecedented development of international law" and spoke of the hope of fostering through cooperation and mutual respect "a climate of justice and liberty in which each individual can achieve his or her full potential." The annual *Digest of United States Practice in International Law* is published in the hope that a better understanding by the world community of the international law practice of the United States will help to foster such a climate.

HERBERT J. HANSELL
Legal Adviser
Department of State

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