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CONTENTS

PAGE

Editorial Comments

Conflicting Approaches to the U.S. Common Law of Foreign Official Immunity

Curtis A. Bradley 1

For more than a decade, U.S. courts have struggled to develop a common law immunity regime to govern suits brought against foreign government officials, and they are now divided on a number of issues, including the extent to which they should defer to the executive branch and whether to recognize a *jus cogens* exception. This Editorial Comment considers a more conceptual division in the courts, between an “effect-of-judgment” approach that would confer immunity only when the judgment that the plaintiff is seeking would be directly enforceable against the foreign state, and a broader “nature-of-act” approach that would confer immunity whenever the plaintiff’s case is challenging conduct carried out on behalf of the state. The Comment argues in favor of the nature-of-act approach and explains why analogies in this context to domestic civil rights litigation are misplaced.

Rethinking Derogations from Human Rights Treaties

Laurence R. Helfer 20

Numerous governments have responded to the COVID-19 pandemic by declaring states of emergency and restricting individual liberties protected by international law. However, many more states have adopted emergency measures than have formally derogated from human rights conventions. This Editorial Comment critically evaluates the existing system of human rights treaty derogations. It analyzes the system’s problems, identifies recent developments that have exacerbated these problems, and proposes a range of reforms in five areas—embeddedness, engagement, information, timing, and scope.

Lead Article

The *Monetary Gold* Principle: Back to Basics

Zachary Mollengarden and Noam Zamir 41

In *The Case of the Monetary Gold Removed from Rome in 1943*, the International Court of Justice concluded that it cannot decide a dispute in which a third party’s legal interests “would form the very subject-matter of the decision.” This Article argues that what has become known as the *Monetary Gold* principle conflicts with the Court’s obligation to decide cases submitted by consenting parties and should be abandoned.

Current Developments

International Law and the 2020 Amendments to the Russian Constitution

Lauri Mälksoo 78

International Decisions

Edited by Julian Arato

Australia—Anti-Dumping Measures on A4 Copy Paper (Weihuan Zhou and Delei Peng) 94

WTO Dispute Settlement Panel on remedies for a “particular market situation” under Article 2.2 of the Anti-Dumping Agreement, and use of proxies in calculating remedial duties

Republic of Slovenia v. Republic of Croatia (Brian McGarry) 101

Court of Justice of the European Union on jurisdiction over external arbitration agreements between members, territorial boundaries, and accession

Nevsun Resources Ltd. v. Araya (Beatrice Walton) 107

Supreme Court of Canada on private right of action against corporations for violations of customary international law and act of state doctrine

Contemporary Practice of the United States Relating to International Law

Edited by Kristen Eichensehr

Trump Administration Brokers Accords to Normalize Relations Between Israel and Six Countries 116

WTO Panel Rules Against U.S. Claim that Tariffs on Chinese Goods Are Justified as Necessary to Protect “Public Morals” 120

United States Pursues Regulatory Actions Against TikTok and WeChat Over Data Security Concerns 124

United States Terminates Hong Kong’s Special Status Due to National Security Law Imposed by Beijing 131

United States Imposes Economic Sanctions and Visa Restrictions on International Criminal Court Officials 138

United States Fails to Secure Multilateral Snapback Sanctions Against Iran 140

Congress and the Trump Administration Spar Over U.S. Arms Sales to the Saudi-Led Coalition in Yemen 146

Recent Books on International Law

Edited by Richard B. Bilder

Review Essay

The Limits of Human Rights Limits (Henry J. Richardson III)
Hannum, Hurst. *Rescuing Human Rights: A Radically Moderate Approach* 154

Book Reviews

Ramcharan, Bertrand G. *Modernizing the UN Human Rights System*
(B.S. Chimni) 171

Redse Johansen, Sigrid. *The Military Commander’s Necessity: The Law of Armed Conflict and Its Limits*
(Beth Van Schaack) 176

O'Connell, Mary Ellen. <i>The Art of Law in the International Community</i> (Neha Jain)	183
Delerue, François. <i>Cyber Operations and International Law</i> (Ido Kilovaty)	187
Books Received	193