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INSIDE THIS ISSUE

- No Outsourcing of Law?
WTO Law as Practiced by
WTO Courts
Petros C. Mavroidis
- Regulatory Takings in
Institutional Context:
Beyond the Fear
of Fragmented
International Law
Steven R. Ratner
- *Agora: Medellín*
David J. Bederman
Curtis A. Bradley
Steve Charnovitz
Carlos Manuel Vázquez

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AMERICAN JOURNAL OF INTERNATIONAL LAW

VOL. 102

July 2008

NO. 3

CONTENTS

PAGE

No Outsourcing of Law? WTO Law as Practiced by WTO Courts

Petros C. Mavroidis 421

The framers of the WTO defined the legal and policy space committed to the WTO, but the organization's adjudicating bodies decide on interpretation. Adjudicating bodies often refer to various extra-WTO elements as supplementary means of interpretation typically used only to support a conclusion already reached. A continuing neglect of non-WTO sources is likely to have an increasingly great impact as the character of trade disputes evolves and as WTO members assess whether WTO adjudication provides an effective forum for their disputes.

Regulatory Takings in Institutional Context: Beyond the Fear of Fragmented International Law

Steven R. Ratner 475

Claims of regulatory expropriation have been raised in diverse venues adjudicating international investment disputes. Although a basic consensus position has emerged on a state's power to affect private property rights without compensation to investors, the legality of such actions will and should depend on the specific regime and institutional context in which they are appraised. A uniform doctrinal answer is thus impossible and undesirable, and many worries about fragmentation of international law are misplaced.

Agora: Medellín

Medellín's New Paradigm for Treaty Interpretation *David J. Bederman* 529

Intent, Presumptions, and Non-Self-Executing Treaties *Curtis A. Bradley* 540

Revitalizing the U.S. Compliance Power *Steve Charnovitz* 551

Less than Zero? *Carlos Manuel Vázquez* 563

Editorial Comment

Military Commissions: Constitutional Limits on Their Role in the War on Terror
Detlev F. Vagts 573

Notes and Comments

The Francis Deák Prize 587

Current Developments

The 2007 Judicial Activity of the International Court of Justice *D. Stephen Mathias* 588

International Decisions

Edited by David J. Bederman

Brazil—Measures Affecting Imports of Retreaded Tyres (Kevin R. Gray) 610

World Trade Organization Appellate Body opinion on GATT Article XX exception for human health

<i>Saadi v. Italy</i> (Fiona de Londras)	616
European Court of Human Rights judgment on deportations of individuals outside the protective zone of the European Convention on Human Rights Article 3	
<i>Medellín v. Texas</i> (Margaret E. McGuinness)	622
U.S. Supreme Court opinion on state courts' obligation to respect an International Court of Justice judgment and on the president's power to enforce it	
<i>R (on the application of Al-Skeini) v. Secretary of State for Defence (Redress Trust Intervening)</i> (Ralph Wilde)	628
UK House of Lords opinions on whether the European Convention on Human Rights, as implemented through the 1998 Human Rights Act, has extraterritorial effect	

Contemporary Practice of the United States Relating to International Law

Edited by John R. Crook

Supreme Court Overturns Presidential Directive Seeking to Implement ICJ Decision	635
United States Recognizes Kosovo as an Independent State	638
U.S. Responses to Protestors' Attack on Embassy	640
Administration Seeks Additional Authority to Waive New Exceptions to Sovereign Immunity	641
D.C. Circuit Dismisses Suit Against Retired IDF General for Shelling UN Compound	642
United States Destroys Falling Satellite to Prevent Risk of Injury on Earth	646
President Submits Colombia Trade Agreement for Fast-Track Approval; Congress Changes the Rules; Prospects Uncertain	647
U.S. Views on Norms and Structures for Internet Governance	648
President Vetoes Legislation to Limit CIA Interrogation Methods; Superseded Justice Memorandum on Interrogation Techniques Fans Controversy	651
Continued Developments Involving Detentions at Guantánamo Bay	651
State Department Legal Adviser Discusses Human Rights Litigation in U.S. Courts	651
Court of Appeals Affirms Dismissal of Agent Orange Litigation	66
Continued U.S. Efforts to Counter Iran's Nuclear Program	66
United States Opposes Additional Arms Control Measures on Space Activities	66
Brief Notes	66

Recent Books on International Law

Edited by Richard B. Bilder

Review Essay

Terror Lawyers

Goldsmith, Jack. <i>The Terror Presidency: Law and Judgment Inside the Bush Administration</i> (Peter Raven-Hansen)	67
---	----

Book Reviews

Amerasinghe, Chittharanjan F. <i>Evidence in International Litigation</i> (Lucy Reed and Ruth Teitelbaum)	61
Malone, David M. <i>The International Struggle over Iraq: Politics in the UN Security Council, 1980–2005</i> (Michael J. Matheson)	61
Boas, Gideon. <i>The Milošević Trial: Lessons for the Conduct of Complex International Criminal Proceedings</i> (Daryl A. Mundis)	61
Schabas, William A. <i>The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone</i> (Jens Meierhenrich)	61
Kaikobad, Kaiyan Homi. <i>Interpretation and Revision of International Boundary Decisions</i> (Aaron Xavier Fellmeth)	71

Books Received

71

International Legal Materials. Contents, Vol. XLVII, No. 3 (May 2008); No. 4 (July 2008)	71
---	----