

Volume 112 ■ Issue 2 ■ April 2018

ISSN 0002-9300

AJIL

American Journal of International Law

INSIDE THIS ISSUE

- The *Jus ad Bellum's* Regulatory Form
Monica Hakimi
- Specially-Affected States and the
Formation of Custom
Kevin Jon Heller
- Notes and Comments:
The Specially-Affecting States Doctrine
Shelly Aviv Yeini
- The 2017 Judicial Activity of
the International Court of Justice
Christine Gray



American Society
of International Law

CAMBRIDGE
UNIVERSITY PRESS

AMERICAN JOURNAL OF INTERNATIONAL LAW



Vol. 112

April 2018

No. 2

CONTENTS

PAGE

The *Jus ad Bellum*'s Regulatory Form *Monica Hakimi* 151

This article argues that a form of legal regulation is embodied in decisions at the UN Security Council that condone but do not formally authorize specific military operations. Such decisions sometimes deflect or go beyond what the *jus ad bellum* permits through its general standards—that is, under the prohibition of cross-border force and small handful of exceptions. Recognizing that this form of regulation is both part of the law and different in kind from regulation through the general standards should change how we think about the *jus ad bellum*.

Specially-Affected States and the Formation of Custom *Kevin Jon Heller* 191

Although the United States has relied on the ICJ's doctrine of specially-affected states to claim that it and other powerful states in the Global North play a privileged role in the formation of customary international law, the doctrine itself has never been systematically developed by the ICJ or by legal scholars. This article fills that lacuna by addressing two questions: (1) what makes a state "specially affected"?; and (2) what is the importance of a state qualifying as "specially affected" for the formation of custom? It concludes that a theoretically coherent understanding of the doctrine would give states in the Global South significant power over custom formation.

Notes and Comments

- The Specially-Affecting States Doctrine *Shelly Aviv Yeini* 244
 The 2017 Judicial Activity of the International Court of Justice *Christine Gray* 254

International Decisions

Edited by Ingrid Wuerth

- Khlaifia and Others v. Italy* (Jill I. Goldenziel) 274
 European Court of Human Rights judgment on the rights of migrants
STC 3729/2017. Upon Unconstitutionality Actions 3729, 3751; Against Legislative Bill Bulletin No. 9895-11. (Ángel R. Oquendo) 280
 Decision by the Constitutional Court of Chile on abortion
Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) (Jason Rudall) 288
 International Court of Justice judgment on compensation for environmental damage

Contemporary Practice of the United States Relating to International Law

Edited by Kristina Daugirdas and Julian Davis Mortenson

Executive Branch Imposes Limited Russia-Related Sanctions After Summary Deadlines	296
Time-Limited Provisions of the Foreign Intelligence Surveillance Act Reauthorized Through 2023	303
President Trump Recognizes Jerusalem as the Capital of Israel	306
Trump Administration Ends Participation in Global Compact on Migration, Citing Concerns Regarding U.S. Sovereignty	311
United States Reaches Agreement to Limit Arctic Fishing	313
Trump Administration Continues Push to Reshape American Trade Relations by Imposing Tariffs on Steel and Aluminum Imports	315
Responses by the United States to Attacks on the Rohingya in Burma	322
President Trump Issues Executive Order Keeping the Guantánamo Bay Detention Camp Open	326
Recent Books on International Law	
Book Reviews	
Hathaway, Oona A., and Scott J. Shapiro. <i>The Internationalists: How a Radical Plan to Outlaw War Remade the World</i> (Anna Spain Bradley)	330
Putnam, Tonya L. <i>Courts Without Borders: Law, Politics and U.S. Extraterritoriality</i> (Peter D. Trooboff and Mawuse Barker-Vormawor)	335
Allott, Philip. <i>Eutopia: New Philosophy and New Law for a Troubled World</i> (Richard Falk)	343
Borch, Fred L. <i>Military Trials of War Criminals in the Netherlands East Indies 1946-1949</i> (Gary Solis)	349
Books Received	355
International Legal Materials, Contents, Vol. 57, No. 1, No. 2	358