

**International Law in National Law**

*Quick Reference Rules of Law*

	PAGE
<b>1. Customary International Law in U.S. Law.</b> Coastal fishing vessels, with their cargoes and crews, are exempt from capture as prizes of war. (The Paquete Habana)	73
<b>2. Customary International Law in U.S. Law.</b> International law is part of U.S. law. (Sosa v. Alvarez-Machain)	74
<b>3. Will Courts Apply International Law to the Acts of Foreign States?</b> Pursuant to the Act of State Doctrine, the judiciary will not examine the validity of a taking of property within its own territory by a foreign sovereign government, recognized by this country, in the absence of international agreements to the contrary, even if the taking violates customary international law. (Banco Nacional de Cuba v. Sabbatino)	75
<b>4. Constitutional Limitations on the Treaty Power.</b> Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States. (Missouri v. Holland)	77
<b>5. The Later-in-Time Rule.</b> Where a treaty and an act of legislation conflict, the one last in date will control. (Whitney v. Robertson)	78
<b>6. The Later-in-Time Rule.</b> When a statute that is subsequent in time is inconsistent with a treaty, the statute to the extent of conflict renders the treaty null. (Breard v. Greene)	79
<b>7. The Doctrine of Self-Executing and Non-Self-Executing Treaties.</b> When the terms of a treaty require a legislative act, the treaty cannot be considered law until such time as the legislature ratifies and confirms the terms. (Foster v. Neilson)	80
<b>8. The Doctrine of Self-Executing and Non-Self-Executing Treaties.</b> (1) The U.S. Constitution does not require state courts to honor a treaty obligation of the United States by enforcing a decision of the International Court of Justice. (2) The U.S. Constitution does not require state courts to provide review and reconsideration of a conviction without regard to state procedural default rules as required by a Memorandum by the President. (Medellin v. Texas)	81
<b>9. Interpreting Treaties; Statutory Interpretation in Light of International Obligations.</b> (1) The military commission established to try those deemed "enemy combatants" for alleged war crimes in the War on Terror was not authorized by the Congress or the inherent powers of the President. (2) The rights protected by the Geneva Convention may be enforced in federal court through habeas corpus petitions. (Hamdan v. Rumsfeld)	83
<b>10. Sole Executive Agreements.</b> The national government has complete power in the conduct of international affairs and states cannot curtail or interfere in that power. (United States v. Belmont)	84
<b>11. International Law in U.S. Constitutional Interpretation.</b> The opinion of the world community is relevant, though not controlling, to consideration of the juvenile death penalty in the United States. (Roper v. Simmons)	85

**12. International Law in the National Law of Other States.** The courts of the member states of the European Union (P) have jurisdiction to review measures adopted by the European Community that give effect to resolutions of the U.N. Security Council. (Kadi v. Council and Commission)

86

## The Paquete Habana

### Country at war (P) v. Fishermen (D)

175 U.S. 677 (1900).

**NATURE OF CASE:** Appeal from judgment condemning two fishing vessels and their cargoes as prizes of war.

**FACT SUMMARY:** The owners (D) of fishing vessels seized by officials of the United States (P) argued that international law exempted coastal fishermen from capture as prizes of war.



#### RULE OF LAW

Coastal fishing vessels, with their cargoes and crews, are exempt from capture as prizes of war.

**FACTS:** The owners (D) of two separate fishing vessels brought this appeal of a district court decree condemning two fishing vessels and their cargoes as prizes of war. Each vessel was a fishing smack, running in and out of Havana, sailing under the Spanish flag, and regularly engaged in fishing on the coast of Cuba. The cargoes of both vessels consisted of fresh fish, which had been caught by their respective crews. Until stopped by the blockading United States (P) squadron, the owners (D) had no knowledge of the existence of a war or of any blockage. The owners (D) had no arms or ammunition on board the vessels and had made no attempt to run the blockade after learning of its existence. The owners (D) did not offer any resistance at the time of capture. On appeal, the owners (D) argued that both customary international law and the writings of leading international scholars recognized an exemption from seizure at wartime of coastal fishing vessels.

**ISSUE:** Are coastal fishing vessels, with their cargoes and crews, exempt from capture as prizes of war?

**HOLDING AND DECISION:** (Gray, J.) Yes. Coastal fishing vessels, pursuing their vocation of catching and bringing in fresh fish, have been recognized as exempt, with their cargoes and crews, from capture as prizes of war. The doctrine that exempts coastal fishermen, with their vessels and cargoes, from capture as prizes of war, has been familiar to the United States (P) from the time of the War of Independence, and has been recognized explicitly by the French and British governments. Where there are no treaties and no controlling executive or legislative acts or judicial decisions, as is the case here, resort must be had to the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commentators, who are well acquainted with the field. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is. At the present time, by the general consent of the civilized nations

of the world, and independently of any express treaty or other public act, it is an established rule of international law that coastal fishing vessels, with their implements and supplies, cargoes, and crews, unarmed and honestly pursuing their peaceful calling of catching and bringing in fresh fish, are exempt from capture as prizes of war. Reversed.

#### ANALYSIS

In a dissenting opinion that was not published in the main body of this casebook, Chief Justice Fuller argued that the captured vessels were of such a size and range as to not fall within the exemption. The Chief Justice also contended that the exemption in any case had not become a customary rule of international law, but was only an act of grace that had not been authorized by the President.

#### Quicknotes

**BLOCKADE** When one country prevents materials or persons from entering or leaving another.

**CUSTOM** Generally any habitual practice or course of action that is repeated under like circumstances.

**INTERNATIONAL LAW** The body of law applicable to dealings between nations.

**Sosa v. Alvarez-Machain**

[Parties not identified.]

542 U.S. 692 (2004).

**NATURE OF CASE:** Appeal of judgment awarding damages to foreign national.

**FACT SUMMARY:** [Alvarez-Machain (P) claimed he was involuntarily detained by bounty hunters and brought to the United States.]

**RULE OF LAW**

International law is part of U.S. law.

**FACTS:** [Alvarez-Machain (P) claimed he was involuntarily detained by bounty hunters and brought to the United States.]

**ISSUE:** Is international law part of U.S. law?

**HOLDING AND DECISION:** (Souter, J.) Yes. International law is part of U.S. law. The law of nations comprises two principal elements. The first covers the general norms regarding the relationship of nation states, which is the purview of the Executive and Legislative Branches of government. The second aspect, which falls within the judicial sphere, is a body of judge-made law regulating the conduct of individuals situated outside domestic boundaries. Finally, there is a sphere in which the rules binding individuals for the benefit of other individuals overlaps with the norms of state relationships, including violation of safe conducts, infringement of the rights of ambassadors, and piracy. Thus, federal courts may consider international norms intended to protect individuals.

### ▶ ANALYSIS

This short case excerpt illustrates a seminal case for the concept that international law is part of U.S. domestic law, and that international norms may be considered in determining individual rights in federal cases.

**Quicknotes**

**DAMAGES** Monetary compensation that may be awarded by the court to a party who has sustained injury or loss to his person, property, or rights due to another party's unlawful act, omission or negligence.

**INTERNATIONAL LAW** The body of law applicable to dealings between nations.

**Banco Nacional de Cuba v. Sabbatino**

National financial institution (P) v. Court-appointed receiver (D)

376 U.S. 398 (1964).

**NATURE OF CASE:** Appeal from an action for conversion.

**FACT SUMMARY:** Banco Nacional de Cuba (P) assigned the bills of lading for a shipment of sugar contracted between Farr, Whitlock & Co., an American commodities broker and another Cuban bank, instituted this action, alleging conversion of the bills of lading and seeking to recover the proceeds thereof from Farr, and to enjoin Sabbatino (D), a court-appointed receiver, from exercising control over such proceeds.

**RULE OF LAW**

Pursuant to the Act of State Doctrine, the judiciary will not examine the validity of a taking of property within its own territory by a foreign sovereign government, recognized by this country, in the absence of international agreements to the contrary, even if the taking violates customary international law.

**FACTS:** Farr, Whitlock & Co. (Farr), an American commodities broker, contracted to purchase Cuban sugar from a wholly owned subsidiary of Compania Azucarera Vertientes-Camaquey de Cuba (CAV), a corporation organized under Cuban law whose stock was owned principally by United States residents. Farr agreed to pay for the sugar in New York upon presentation of the shipping documents. Shortly thereafter, a law was enacted in Cuba giving the government power to nationalize by forced expropriation of property or enterprises in which American nationals had an interest. The sugar contracted for by Farr was expropriated from Compania Azucarera. In order to obtain consent from the Cuban government before a ship carrying sugar could leave Cuba, Farr entered into contracts, identical to those it had made with CAV, with the Banco Para el Comercio de Cuba, an instrumentality of the Cuban government. This bank assigned the bills of lading to the Banco Nacional de Cuba (P), also an instrumentality of the Cuban government, who presented the bills and a sight draft as required under the contract to Farr in New York in return for payment. Farr refused the documents after being notified by CAV of its claim to the proceeds as rightful owner of the sugar. Farr was served with a court order that had appointed Sabbatino (D) as receiver of CAV's New York assets and enjoined it from removing the payments from the state. The Banco Nacional (P) then instituted this action, alleging conversion of the bills of lading seeking to recover the proceeds thereof from Farr, and to enjoin Sabbatino (D), the receiver, from exercising dominion over such proceeds. The district court granted summary judgment against Banco Nacional (P), holding

that the Act of State Doctrine does not apply when the questioned foreign act is in violation of international law. The court of appeals affirmed the judgment.

**ISSUE:** Does the judiciary have the authority to examine the validity of a taking of property within its own territory by a foreign sovereign even if the taking violated international law?

**HOLDING AND DECISION:** (Harlan, J.) No. The Judicial Branch will not examine the validity of a taking of property within its own territory by a foreign sovereign government, extant and recognized by this country at the time of suit, in the absence of a treaty or other agreement, even if the complaint alleges that the taking violates customary international law. The plain implication of past cases is that the Act of State Doctrine is applicable even if international law has been violated. The Act of State Doctrine does not deprive the courts of jurisdiction once acquired over a case. It requires only that when it is made to appear that the foreign government has acted in a given way on the subject matter of the litigation, the details of such action or the merit of the result cannot be questioned but must be accepted by our courts as a rule for their decision. It results that title to the property in this case must be determined by the result of the expropriation action taken by the authorities of the Cuban government. The damages of adjudicating the propriety of such expropriation acts, regardless of whether the State Department has, as it did in this case, asserted that the act violated international law, are too far-reaching for the judicial branch to attempt. The judgment of the court of appeals is reversed and the case remanded to the district court.

**DISSENT:** (White, J.) According to the majority opinion, not only are the courts powerless to question acts of state proscribed by international law, but they are likewise powerless to refuse to adjudicate the claim founded upon a foreign law; they must render judgment and thereby validate the lawless act. The Act of State Doctrine does not require American courts to decide cases in disregard of international law and of the rights of litigants to a full determination on the merits.

### ▶ ANALYSIS

In the instant case the Court also concluded that the Act of State Doctrine, even in diversity of citizenship cases, must be determined according to federal rather than state law. The Court stated that it is constrained to make it clear that

an issue concerned with a basic choice regarding the competence and function of the judiciary and national executive in ordering our relationships with other members of the international community must be treated exclusively as an aspect of federal law.

### Quicknotes

**ACT OF STATE DOCTRINE** Prohibits United States courts from investigating acts of other countries committed within their borders.

**ENJOIN** The ordering of a party to cease the conduct of a specific activity.

## Missouri v. Holland

State (P) v. Game warden (D)

252 U.S. 416 (1920).

**NATURE OF CASE:** Action seeking a declaratory judgment.

**FACT SUMMARY:** Missouri (P) brought this suit to prevent Holland (D), a game warden of the United States, from attempting to enforce the Migratory Bird Treaty Act on the ground that the statute was an unconstitutional interference with the rights reserved to the states by the Tenth Amendment.



### RULE OF LAW

Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States.

**FACTS:** This is a bill in equity brought by the state of Missouri (P) to prevent Holland (D), a game warden of the United States, from attempting to enforce the Migratory Bird Treaty Act, the enactment statute of a treaty between the United States and Great Britain proclaimed by the President. The ground of the bill is that the statute is an unconstitutional interference with the rights reserved to the states by the Tenth Amendment, and that the acts of Holland (D) done and threatened under that authority invade the sovereign right of the state of Missouri (P) and contravene its will manifested in statutes. A motion to dismiss was sustained by the district court on the ground that the act of Congress is constitutional.

**ISSUE:** Are treaties the supreme law of the land when made under the authority of the United States?

**HOLDING AND DECISION:** (Holmes, J.) Yes. It is contended that a treaty cannot be valid if it infringes the Constitution, that there are limits, therefore, to the treaty-making power, and that one such limit is that what an act of Congress could not do unaided, in derogation of the powers reserved to the states, a treaty cannot do. Although it is true that acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, treaties are declared to be so when made under the authority of the United States. Furthermore, valid treaties are as binding within the territorial limits of the states as they are elsewhere throughout the dominion of the United States. Since the Migratory Bird Treaty Act was made pursuant to a treaty between the United States and Canada, its provisions are the supreme law of the land and binding on the state of Missouri (P). The treaty and the statute must be upheld. The decree of the lower court is affirmed.

### ANALYSIS

Justice Sutherland, in discussing the foreign affairs power in *United States v. Curtiss-Wright Export Corp.*, 299 U. S. 304 (1936), stated that as a result of the separation from Great Britain by the colonies acting as a unit, the powers of external sovereignty passed from the Crown not to the colonies severally but to the colonies in their collective and corporate capacity as the United States. Even before the Declaration, the colonies were a unit in foreign affairs, and the powers to make treaties and maintain diplomatic relations, if they had never been mentioned in the Constitution, would have vested in the federal government as necessary concomitants of nationality.

### Quicknotes

**DECLARATORY JUDGMENT** An adjudication by the courts that grants not relief but is binding over the legal status of the parties involved in the dispute.

**EQUITY** Fairness; justice; the determination of a matter consistent with principles of fairness and not in strict compliance with rules of law.

**JURISDICTION** The authority of a court to hear and declare judgment in respect to a particular matter.

**TENTH AMENDMENT** The Tenth Amendment to the United States Constitution reserving those powers therein, not expressly delegated to the federal government or prohibited to the states, to the states or to the people.

**TREATY** An agreement between two or more nations for the benefit of the general public.

**Whitney v. Robertson**

Importer (P) v. Customs (D)

124 U.S. 190 (1888).

**NATURE OF CASE:** Appeal from judgment for defendant in customs dispute.

**FACT SUMMARY:** Whitney (P) claimed that a treaty between the U.S. and the Dominican Republic guaranteed that no higher duty would be assessed on goods from the Dominican Republic than was assessed on goods from any other country and that duties had been wrongfully assessed on his sugar imports.

**RULE OF LAW**

Where a treaty and an act of legislation conflict, the one last in date will control.

**FACTS:** Whitney (P) sought to recover the duties he had paid for importing sugar from the Dominican Republic. Whitney (P) alleged that sugar from Hawaii was admitted free of duty and that under the terms of a treaty, the United States could not assess a higher duty on imports from the Dominican Republic.

**ISSUE:** Where a treaty and an act of legislation conflict, will the one last in date control?

**HOLDING AND DECISION:** (Field, J.) Yes. Where a treaty and an act of legislation conflict, the one last in date will control. The act of Congress under which the duties were collected was passed after the treaty and therefore is controlling. Affirmed.

### ▶ ANALYSIS

A treaty is not abrogated or repealed by a later inconsistent statute. The treaty still exists as an international obligation. The terms of the treaty may not be enforceable, however.

**Quicknotes**

**TREATY** An agreement between two or more nations for the benefit of the general public.

**Breard v. Greene**

Convicted murderer (D) v. State (P)

523 U.S. 371 (1998).

**NATURE OF CASE:** Appeal from denial of habeas corpus.

**FACT SUMMARY:** Breard (D) claimed that his conviction should be overturned because of alleged violations of the Vienna Convention on Consular Relations.

**RULE OF LAW**

When a statute that is subsequent in time is inconsistent with a treaty, the statute to the extent of conflict renders the treaty null.

**FACTS:** Breard (D) was scheduled to be executed following his conviction for murder. Breard (D) filed for habeas relief in federal court, arguing that the arresting authorities had wrongfully failed to inform him that, as a foreign national, he had the right to contact the Paraguayan consulate (P).

**ISSUE:** When a statute that is subsequent in time is inconsistent with a treaty, does the statute render the treaty null?

**HOLDING AND DECISION:** (Per curiam) Yes. When a statute that is subsequent in time is inconsistent with a treaty, the statute to the extent of conflict renders the treaty null. Breard's (D) argument that the Vienna Convention was violated must fail because Congress enacted the Antiterrorism and Effective Death Penalty Act after the Vienna Convention. The Executive Branch has authority over foreign relations and may utilize diplomatic channels to request a stay of execution. Petition denied.

### ▶ ANALYSIS

The Court also held that the Eleventh Amendment barred suits against states. The Consul General of Paraguay (P) tried to raise a § 1983 suit. The Court found that Paraguay (P) was not authorized to do so.

**Quicknotes**

**42 U.S.C. § 1983** Provides that every person, who under color of state law subjects or causes to be subjected any citizen of the United States or person within its jurisdiction to be deprived of rights, privileges, and immunities guaranteed by the federal constitution and laws, is liable to the injured party at law or in equity.

**ELEVENTH AMENDMENT** The Eleventh Amendment to the United States Constitution prohibiting the extension of the judicial powers of the federal courts to suits brought against a state by citizens of another state, or of a foreign state, without the state's consent.

**HABEAS CORPUS** A proceeding in which a defendant brings a writ to compel a judicial determination of whether he is lawfully being held in custody.



**Foster v. Neilson**

Grantees (P) v. Land owner (D)

27 U.S. (2 Pet.) 253 (1829).

**NATURE OF CASE:** Appeal from decision for defendant in dispute over land.

**FACT SUMMARY:** Foster (P) and Elam claimed that a tract of land in Louisiana had been granted to them by the Spanish governor.

**RULE OF LAW**

When the terms of a treaty require a legislative act, the treaty cannot be considered law until such time as the legislature ratifies and confirms the terms.

**FACTS:** Foster (P) and Elam sued to recover a tract of land in Louisiana that the Spanish governor had granted them. Neilson (D) successfully argued that the grant was void because it was made subsequent to the transfer to France and the United States of the territory on which the land was situated. Foster (P) and Elam relied on a treaty between the United States and Spain that provided that all grants of land made by Spain would be ratified by the United States. The case was taken to the U.S. Supreme Court on a writ of error.

**ISSUE:** When the terms of a treaty require a legislative act, can the treaty be considered law before such time as the legislature ratifies and confirms the terms?

**HOLDING AND DECISION:** (Marshall, C.J.) No. When the terms of a treaty require a legislative act, the treaty cannot be considered law until such time as the legislature ratifies and confirms the terms. The treaty does not operate in itself to ratify or confirm title in land. The legislature must act before the terms of the contract are binding. Affirmed.

**ANALYSIS**

Some international agreements are self-executing. Others are non-self-executing. The court must decide whether an agreement is to be given effect without further legislation.

**Quicknotes**

**LAND GRANT** Donation of public lands for use by another entity.

**TITLE** The right of possession over property.

**TREATY** An agreement between two or more nations for the benefit of the general public.

**WRIT OF ERROR** A writ issued by an appellate court, ordering a lower court to deliver the record of the case so that it may be reviewed for alleged errors.

**Medellín v. Texas**

Mexican national (D) v. State (P)

128 S. Ct. 1346 (2008).

**NATURE OF CASE:** Appeal of death sentence.

**FACT SUMMARY:** After Texas (P) convicted José Medellín (D) of rape and murder, he appealed on the grounds that Texas (P) failed to inform him of his right to have consular personnel notified of his detention by the state, as required under the Vienna Convention. On appeal to the U.S. Supreme Court, Medellín (D) argued that a case decided by the International Court of Justice suggested that his conviction must be reconsidered to comply with the Vienna Convention.

**RULE OF LAW**

(1) The U.S. Constitution does not require state courts to honor a treaty obligation of the United States by enforcing a decision of the International Court of Justice.

(2) The U.S. Constitution does not require state courts to provide review and reconsideration of a conviction without regard to state procedural default rules as required by a Memorandum by the President.

**FACTS:** José Medellín (D), a Mexican national, was convicted and sentenced to death for participating in the gang rape and murder of two teenage girls in Houston. In his appeal, Medellín (D) argued that the state had violated his rights under the Vienna Convention, to which the United States is a party. Article 36 of the Vienna Convention gives any foreign national detained for a crime the right to contact his consulate. The U.S. Supreme Court dismissed the petition and Medellín's (D) case was remanded to the Texas Court of Criminal Appeals, which also denied him relief. The U.S. Supreme Court took up his case again, and Medellín's (D) argument rested in part on a holding by the International Court of Justice in *Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 12, that the United States had violated the Vienna Convention rights of 51 Mexican nationals (including Medellín (D)) and that their state-court convictions must be reconsidered, regardless of any forfeiture of the right to raise the Vienna Convention claims because of a failure to follow state rules governing criminal convictions. Medellín (D) argued that the Vienna Convention granted him an individual right that state courts must respect. Medellín (D) also cited a memorandum from the U.S. President that instructed state courts to comply with the I.C.J.'s rulings by rehearing the cases. Medellín (D) argued that the Constitution gives the President broad power to ensure that treaties are enforced, and that this

power extends to the treatment of treaties in state court proceedings.

**ISSUE:**

- (1) Does the U.S. Constitution require state courts to honor a treaty obligation of the United States by enforcing a decision of the International Court of Justice?
- (2) Does the U.S. Constitution require state courts to provide review and reconsideration of a conviction without regard to state procedural default rules as required by a Memorandum by the President?

**HOLDING AND DECISION:** (Roberts, C.J.)

- (1) No. The U.S. Constitution does not require state courts to honor a treaty obligation of the United States by enforcing a decision of the International Court of Justice. The Vienna Convention provides that if a person detained by a foreign country asks, the authorities of the detaining national must, without delay, inform the consular post of the detainee of the detention. The Optional Protocol of the Convention provides that the International Court of Justice is the venue for resolution of issues of interpretation of the Vienna Convention. By ratifying the Optional Protocol to the Vienna Convention, the United States consented to the jurisdiction of the I.C.J. with respect to claims arising out of the Vienna Convention. In 2005, however, after *Avena* was decided, the United States gave notice of withdrawal from the Optional Protocol. While *Avena* constitutes an international law obligation on the part of the United States, it does not help Medellín (D) because not all international law obligations automatically constitute binding federal law. *Avena* does not have automatic domestic legal effect such that the judgment if its own force applies in state and federal courts, because it is not a self-executing treaty, and Congress did not enact legislation implementing binding effect. Thus, the I.C.J. judgment is not automatically enforceable domestic law, immediately and directly binding on state and federal courts under the Supremacy Clause.
- (2) The U.S. Constitution does not require state courts to provide review and reconsideration of a conviction without regard to state procedural default rules as required by a Memorandum by the President. The presidential memorandum was an attempt by the Executive Branch to enforce a non-self-executing treaty without the necessary congressional action, giving it no binding authority on state courts.

**CONCURRENCE:** (Stevens, J.) Although the judgment is correct, Texas (P) ought to comply with *Avena*. *Avena* may not be the supreme law of the land, but it constitutes an international law obligation on the part of the United States. Since Texas (P) failed to provide consular notice in accordance with the Vienna Convention, thereby getting the United States into this mess, and since that violation probably didn't prejudice Medellín (D), Texas (P) ought to comply with *Avena*.

**DISSENT:** (Breyer, J.) the Supremacy Clause requires Texas (P) to enforce the I.C.J.'s judgment in *Avena*. The majority does not point to a single ratified U.S. treaty that contains the self-executing language it says is required in this case. The absence or presence of language in a treaty about a provision's self-execution proves nothing. The relevant treaty provisions should be found to be self-executing, because (1) the language supports direct judicial enforceability, (2) the Optional Protocol applies to disputes about the meaning of a provision that is itself self-executing and judicially enforceable, (3) logic requires a conclusion that the provision is self-executing since it is "final" and "binding," (4) the majority's decision has negative practical implications, (5) the I.C.J. judgment is well suited to direct judicial enforcement, (6) such a holding would not threaten constitutional conflict with other branches, and (7) neither the President nor Congress has expressed concern about direct judicial enforcement of the I.C.J. decision.

### ▶ ANALYSIS

Medellín (D) was executed on August 5, 2008, after last-minute appeals to the U.S. Supreme Court were rejected. Governor Rick Perry rejected calls from Mexico and Secretary of State Condoleezza Rice and Attorney General Michael Mukasey to delay the execution, citing the torture, rape, and strangulation of two teenage girls in Houston as just cause for the death penalty. Though a bill was introduced in the House of Representatives to respond to the Court's ruling, Congress took no action.

### Quicknotes

**INTERNATIONAL LAW** The body of law applicable to dealings between nations.

**TREATY** An agreement between two or more nations for the benefit of the general public.

## Hamdan v. Rumsfeld

### Detained terrorist (P) v. United States (D)

548 U.S. 557 (2006).

**NATURE OF CASE:** Appeal from circuit court holding that a military commission violated a detainee's rights under the Geneva Convention.

**FACT SUMMARY:** A U.S. military commission began proceedings against Hamdan (P), who was captured in Afghanistan. Hamdan (P) challenged the authority of the commission.



### RULE OF LAW

- (1) The military commission established to try those deemed "enemy combatants" for alleged war crimes in the War on Terror was not authorized by the Congress or the inherent powers of the President.
- (2) The rights protected by the Geneva Convention may be enforced in federal court through habeas corpus petitions.

**FACTS:** Salim Ahmed Hamdan (P) was captured by Afghani forces and imprisoned by the U.S. military in Guantanamo Bay. He filed a petition for a writ of habeas corpus in federal district court to challenge his detention. Before the district court ruled on the petition, a U.S. military commission began proceedings against Hamdan (P), which designated him an enemy combatant. Hamdan (P) challenged the authority of the commission, arguing that the commission trial would violate his rights under Article 102 of the Geneva Convention, which provides that a "prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power." The district court granted Hamdan's (P) habeas petition, ruling that a hearing to determine whether he was a prisoner of war under the Geneva Convention must have taken place before he could be tried by a military commission. The D.C. Circuit Court of Appeals reversed the decision, finding that the Geneva Convention could not be enforced in federal court and that the establishment of military tribunals had been authorized by Congress and was therefore not unconstitutional.

### ISSUE:

- (1) Was the military commission established to try those deemed "enemy combatants" for alleged war crimes in the War on Terror authorized by the Congress or the inherent powers of the President?
- (2) May the rights protected by the Geneva Convention be enforced in federal court through habeas corpus petitions?

**HOLDING AND DECISION:** [Judge not stated in casebook excerpt.]

- (1) No. The military commission established to try those deemed "enemy combatants" for alleged war crimes in the War on Terror was not authorized by the Congress or the inherent powers of the President. Neither an act of Congress nor the inherent powers of the Executive Branch laid out in the Constitution expressly authorized the sort of military commission at issue in this case. Absent that express authorization, the commission had to comply with the ordinary laws of the United States (D) and the laws of war.
- (2) Yes. The rights protected by the Geneva Convention may be enforced in federal court through habeas corpus petitions. The Geneva Convention, as a part of the ordinary laws of war, could be enforced by the U.S. Supreme Court, along with the statutory Uniform Code of Military Justice (UCMJ), since the military commission was not authorized. Hamdan's (P) exclusion from certain parts of his trial deemed classified by the military commission violated both of these, and the trial was therefore illegal. Article 3, or "Common Article 3" as it is sometimes known, does apply to Hamdan (P), despite a holding to the contrary by the court of appeals, and arguments to the contrary by the government. Common Article 3 provides minimal protection to individuals associated with neither a signatory nor a non-signatory "Power" who are involved in a conflict in the territory of a signatory. Common Article 3 is applicable here and requires that Hamdan (P) be tried by a "regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

### ▶ ANALYSIS

Many U.S. and international human rights organizations have determined that violations might occur through the non-application of the Geneva Convention to detainees in the U.S. war on terrorism.

### Quicknotes

**GENEVA CONVENTION** International agreement that governs the conduct of warring nations.

**HABEAS CORPUS** A proceeding in which a defendant brings a writ to compel a judicial determination of whether he is lawfully being held in custody.

**United States v. Belmont**

Government (P) v. Banker (D)

301 U.S. 324 (1937).

**NATURE OF CASE:** Appeal from denial of claim for payment of money deposited by Russian corporation.

**FACT SUMMARY:** The United States (P) claimed that it was due funds deposited in a U.S. bank by a Russian corporation that had been nationalized by the Soviet government.

 **RULE OF LAW**

The national government has complete power in the conduct of international affairs and states cannot curtail or interfere in that power.

**FACTS:** A Russian corporation had deposited money in Belmont (D), a private bank in New York City, prior to the 1918 nationalization and liquidation by the Soviet government of the corporation. In 1933, the Soviet Union and the United States (P) agreed to a final settlement of claims and counterclaims. The Soviet Union agreed to take no steps to enforce claims against American nationals and assigned and released all such claims to the United States (P). When the U.S. (P) sought to recover the money, the court held that the *situs* of the bank deposit was within the state of New York and was not an intangible property right within Soviet territory and that it would be contrary to the public policy of the State of New York to recognize or enforce the nationalization decree. The United States (P) appealed and the U.S. Supreme Court granted certiorari.

**ISSUE:** Does the national government have complete power in the conduct of international affairs?

**HOLDING AND DECISION:** (Sutherland, J.) Yes. The national government has complete power in the conduct of international affairs and states cannot curtail or interfere in that power. The United States (P) recognized the Soviet government coincidentally with the assignment of all claims. The President has the power to conduct foreign relations, without the consent of the Senate. In respect of foreign relations generally, state lines disappear. Reversed and remanded.

 **ANALYSIS**

The Court noted that recognition of the Soviet Union and the release of all claims were interdependent. Thus it was purely in the realm of foreign policy to make this agreement. States cannot interfere in the conduct of foreign relations.

**Quicknotes**

**CERTIORARI** A discretionary writ issued by a superior court to an inferior court in order to review the lower court's decisions; the Supreme Court's writ ordering such review.

**TREATY** An agreement between two or more nations for the benefit of the general public.

**Roper v. Simmons**

Convicted murderer (D) v. State (P)

543 U.S. 551 (2005).

**NATURE OF CASE:** U.S. Supreme Court review of a state court determination involving a death sentence for a juvenile offender.

**FACT SUMMARY:** After Christopher Simmons (D) was convicted of a murder he committed when he was 17 years old, the Missouri Supreme Court ruled that the death penalty was unconstitutional as applied to persons under the age of 18. The U.S. Supreme Court reviewed the decision.

 **RULE OF LAW**

The opinion of the world community is relevant, though not controlling, to consideration of the juvenile death penalty in the United States.

**FACTS:** The state of Missouri (P) convicted Christopher Simmons (D) of a murder he committed when he was 17 years old. The Missouri Supreme Court ruled that the death penalty was unconstitutional as applied to persons under the age of 18, and set aside the sentence of death imposed on Simmons (D). The U.S. Supreme Court reviewed the decision, and in the process of reaching its conclusion, considered the opinion on the matter of the international community.

**ISSUE:** Is the opinion of the world community relevant, though not controlling, to consideration of the juvenile death penalty in the United States?

**HOLDING AND DECISION:** (Kennedy, J.) Yes. The opinion of the world community is relevant, though not controlling, to consideration of the juvenile death penalty in the United States. Precedent suggests that reference to the laws of other countries and to international authorities for interpretation of the prohibition of "cruel and unusual punishments" is proper. Every country in the world has ratified the U.N. Convention on the Rights of the Child, which contains an express prohibition on capital punishment for crimes committed by juveniles under 18, except Somalia and the United States. Since 1990, only seven countries other than the United States have executed juvenile offenders, and since then each country, except the United States, has either abolished capital punishment for juveniles or made public disavowal of the practice. The United Kingdom's abolishment of the death penalty for juveniles, which is particularly relevant given the ties between the United Kingdom and the United States, occurred before the international conventions on the subject were created. International opinion against the death penalty for minors is based in large part on the understanding that the instability and emotional imbalance of young

people may often be a factor in the crime, and that opinion, while not controlling, is relevant. The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders under the age of 18 when the crime was committed. Affirmed.

 **ANALYSIS**

Not stated in the casebook excerpt is that the Court applied the "evolving standards of decency" test. Justice Kennedy cited a body of sociological and scientific research that found that juveniles have a lack of maturity and sense of responsibility compared to adults. The Court reasoned that in recognition of the comparative immaturity and irresponsibility of juveniles, almost every state prohibited those under age 18 from voting, serving on juries, or marrying without parental consent. Kennedy reasoned that the trend internationally against the death penalty for minors was relevant because of its basis in this evolving notion that the death penalty is inappropriate for juvenile offenders because of their instability and emotional imbalance.

**Quicknotes**

**EIGHTH AMENDMENT** The Eighth Amendment to the federal Constitution prohibits the imposition of excessive bail, fines, and cruel and unusual punishment.

**FOURTEENTH AMENDMENT** Declares that no state shall make or enforce any law that shall abridge the privileges and immunities of citizens of the United States. No state shall deny to any person within its jurisdiction the equal protection of the laws.





## Kadi v. Council and Commission

Terrorists (D) v. European Union (P)

European Court of Justice, 2008 E.C.R. \_\_\_\_ (2008).

**NATURE OF CASE:** Appeal of judgment by a European Community Court of First Instance.

**FACT SUMMARY:** A regulation of the Council of the European Union (P) froze the funds of Yassin Abdullah Kadi (D) and Al Barakaat International Foundation (D), following a resolution by the U.N. Security Council. The EU Court of First Instance ruled that it did not have jurisdiction to review measures adopted by the European Community (EC) giving effect to resolutions of the Security Council adopted against the Al Qaeda and Taliban terrorist networks. Kadi (D) and Al Barakaat (D) appealed.

### RULE OF LAW

The courts of the member states of the European Union (P) have jurisdiction to review measures adopted by the European Community that give effect to resolutions of the U.N. Security Council.

**FACTS:** In its effort to fight terrorism, the U.N. Security Council imposed sanctions under Chapter VII of the U.N. Charter against individuals and entities allegedly associated with Osama bin Laden, the Al-Qaeda network, and the Taliban. The U.N. Sanctions Committee made a list of alleged offenders, and sanctions included freezing such persons' and entities' assets. To give effect to the Security Council resolutions, the Council of the European Union (P) adopted a regulation ordering the freezing of the assets of those on the list, which included Yassin Abdullah Kadi (D), a resident of Saudi Arabia, and Al Barakaat International Foundation (D). Kadi (D) and Al Barakaat (D) began proceedings in the Court of First Instance (CFI) and requested annulment of the Council regulation, arguing that the Council lacked jurisdiction to adopt the regulation and that the regulation infringed several of their fundamental rights, including the right to respect for property, the right to be heard before a court of law, and the right to effective judicial review. The CFI rejected all claims and confirmed the validity of the regulation, ruling specifically that it had no jurisdiction to review the validity of the contested regulation and, indirectly, the validity of the relevant Security Council resolution, except in respect of *jus cogens* norms. Kadi (D) and Al Barakaat (D) appealed.

**ISSUE:** Do the courts of the member states of the European Union (P) have jurisdiction to review measures adopted by the European Community that give effect to resolutions of the U.N. Security Council?

**HOLDING AND DECISION:** [Judge not stated in casebook excerpt.] Yes. The courts of the member states

of the European Union (P) have jurisdiction to review measures adopted by the European Community that give effect to resolutions of the U.N. Security Council. EC courts have the power to review the legality of all Community acts, including the contested regulation, that aim to give effect to resolutions adopted by the Security Council under the U.N. Charter. The review of lawfulness applies only to the EC act purporting to give effect to the international agreement, not to the international agreement itself. Thus, EC courts do not have competence to review the legality of a resolution adopted by an international body, even if the courts limited their review to examination of the compatibility of that resolution with *jus cogens* norms. A judgment by an EU court that an EC measure is contrary to a higher rule of law in the EC legal order would not implicate a challenge to the legitimacy of that resolution in international law.

### ANALYSIS

This case marks the first time that the ECJ confirmed its jurisdiction to review the lawfulness of a measure giving effect to Security Council resolutions. It also constitutes the first time the ECJ quashed an EC measure giving effect to a UNSC resolution for being unlawful.



### Quicknotes

**JUDICIAL REVIEW** The authority of the courts to review decisions, actions, or omissions committed by another agency or branch of government.

**JURISDICTION** The authority of a court to hear and declare judgment in respect to a particular matter.

**JUS COGENS NORM** Universally understood principles of international law that cannot be set aside because they are based on fundamental human values.

