



## Panel: What is International Law?

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## Reference Materials

### I. Key Cases.

*Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003) (striking down California insurance law regarding disclosure by foreign companies of Holocaust-era practices as inconsistent with foreign policy of the United States).

*Asakura v. Seattle*, 265 U.S. 332 (1924) (striking down a Seattle ordinance that discriminated against Japanese as inconsistent with a U.S.-Japan commercial treaty, and thus regarding the treaty as self-executing).

*Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 128 (Mar. 31) (finding that U.S. courts should reconsider whether the failure to accord a consular notification right under the Vienna Convention on Consular Relations resulted in prejudice in death penalty cases).

*Baker v. Carr*, 369 U.S. 186 (1962) (identifying six factors that weigh against judicial review, including in cases touching on foreign relations).

*Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964) (application of the act of state doctrine so as to decline to pass upon the legality of the conduct of the government of Cuba taken in its own territory).

*Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000) (finding Massachusetts sanctions law against Myanmar unconstitutional under the Supremacy Clause because there already existed a federal sanctions program).

*Dames & Moore v. Regan*, 453 U.S. 654 (1981) (sustaining the use of an executive agreement to terminate civil actions in U.S. courts and transfer them to

an international forum).

*Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314 (1829) (finding that the language of a U.S.-Spain treaty contemplated further action by political authorities, and thus the treaty could not be regarded as self-executing).

*Goldwater v. Carter*, 617 F.2d 697 (D.C. Cir. 1979), vacated, 444 U.S. 996 (1979) (Circuit Court decision finding that the President may unilaterally terminate a treaty vacated by the Supreme Court on political question/mootness grounds).

*Missouri v. Holland*, 252 U.S. 416 (1920) (finding that the scope of the federal treaty power is not constrained by the powers enumerated in Article I of the Constitution, nor by the reservation of power to the several states under the Tenth Amendment).

*Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804) (U.S. law should be construed in a manner so as to be consistent with international law whenever possible).

*Natural Resources Defense Council v. Environmental Protection Agency*, 2006 WL 2472144 (D.C. Cir. Aug. 29, 2006) (declining to give legal effect in U.S. law to a decision of the conference of the parties to the Montreal Protocol on Ozone Depletion).

*The Paquete Habana*, 175 U.S. 677 (1900) (finding that international law “ is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination.” ).

*Reid v. Covert*, 354 U.S. 1 (1957) (by a plurality decision, finding that a Constitutional right may not be impinged when implementing U.S. obligations under an international agreement).

Roper v. Simmons, 125 S. Ct. 1183 (2005) (referring to the U.N. Convention on the Rights of the Child, to which the United States is not a party, in the course of finding Missouri’ s juvenile death penalty in violation of the Eighth Amendment’ s prohibition on “ cruel and unusual punishment” ).

Sosa v. Alvarez-Machain, 542 U.S. 692 (2004) (reiterating that “ [f]or two centuries we have affirmed that the domestic law of the United States recognizes the law of nations.” ).

United States v. Belmont, 301 U.S. 324 (1937); United States v. Pink, 315 U.S. 203 (1942) (recognizing the power, by an executive agreement that recognized the USSR and settled US-USSR claims, to preempt contrary state law).

United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936) (expressing the important role of the President in the exercise of the foreign affairs power).

Whitney v. Robertson, 124 U.S. 190 (1888) (finding that where there is a conflict between a treaty and a statute, the later-in-time prevails).

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952) (the “ Steel Seizure” case) (expressing the limits on presidential power in the area of foreign relations).

Zschernig v. Miller, 389 U.S. 429 (1968) (striking down state probate statute which entailed judicial inquiry into the quality and nature of foreign governments, since such inquiry “ affects international relations in a persistent and subtle way” ).

## II. Statute Discussed.

Alien Tort Statute, 28 U.S.C. § 1350 (2000)(ATS) (conferring original jurisdiction on federal district courts over “ any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” ).

### III. Treaties Discussed.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. TREATY DOC. NO. 100-20 (1988), 1465 U.N.T.S. 85

North American Free Trade Agreement, Dec. 12, 1992, U.S.-Can.-Mex., 32 I.L.M. 289 (1993).

U.N. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

### IV. Secondary Sources

#### A. International Law

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Thomas Buergenthal & Sean D. Murphy, *Public International Law in a Nutshell* (4th ed. 2007).

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Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (1994).

Robert Jennings & Arthur Watts, *Oppenheim's International Law* (9th ed. 1992).

Peter Malanchuk, Akehurst's *Modern Introduction to International Law* (7th rev. ed. 1997).

Stephen C. McCaffrey, *Understanding International Law* (2006).

Sean D. Murphy, *Principles of Public International Law* (2006).

## B. U.S. Foreign Relations Law

Joseph D. Becker, *The American Law of Nations: Public International Law in American Courts* (2001).

John Hart Ely, *War and Responsibility: Constitutional Limitations of Vietnam and Its Aftermath* (1993).

Louis Fisher, *Presidential Spending Power* (2d ed. 1975).

Louis Fisher, *Presidential War Power* (2d ed. 2004).

Thomas M. Franck, *Political Questions/Judicial Answers: Does the Rule of Law Apply to Foreign Affairs?* (1992).

Sofie Geeroms, *Foreign Law in Civil Litigation: A Comparative and Functional Analysis* (2004).

Michael Glennon, *Constitutional Diplomacy* (1990).

Louis Henkin, *Foreign Affairs and the United States Constitution* (2d ed. 1996).

Harold Koh, *The National Security Constitution: Sharing Power After the Iran-Contra Affair* (1990).

James M. Lindsay, *Congress and the Politics of U.S. Foreign Policy* (1994).

Jordan Paust, *International Law as Law of the United States* (2d ed. 2003).

John M. Rogers, *International Law and United States Law* (1999).

Abraham D. Sofaer, *War, Foreign Affairs, and Constitutional Power* (1984).

Ralph Steinhardt & Anthony D' Amato, eds., *The Alien Tort Claims Act: An Analytical Anthology* (1999).

Restatement (Third) of the Foreign Relations Law of the United States (1987) (2 vols.).

#### V. Useful Internet Cites

<<http://www.eisil.org>>. The Electronic Information System for International Law (E.I.S.I.L.), created by the American Society of International Law, operates as an open database of primary and other authenticated international law materials. E.I.S.I.L. has links to international organizations, international courts, treaty collections, and other international law materials.

<<http://www.un.org>>. The United Nations Internet site has links to U.N. created tribunals and courts, including the International Court of Justice, the Tribunal for the Law of the Sea, the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda (see prior section). The site also contains treaty information, committee information and extensive documents (such as maps and photographs) covering both U.N. history and current events relating to international law.

<<http://www.state.gov>>. The U.S. Department of State Internet site contains extensive information relating to U.S. involvement in international law and institutions, as well as many related links to Internet sites. For example, the

Internet sites of the World Trade Organization, North American Free Trade Agreement, Free Trade Area of the Americas, and Asian-Pacific Economic Cooperation can all be accessed by links from the “ Trade Policy and Programs” page on the Department of State Internet site.

<<http://www.asil.org>>. The American Society of International Law Internet site provides links to publications and activities of the American Society of International Law, as well as “ Insights” papers on topics of current interest.

<[http://LLRX.com/international\\_law.html](http://LLRX.com/international_law.html)>. LLRX is a free Internet journal focused on international law issues. This Internet site provides an international law resource center containing numerous links to international law articles and resources.

Several academic institutions worldwide have created Internet sites designed to provide extensive links to other Internet sites relating to international law or institutions, such as:

<[http://www.law.gwu.edu/burns/research/intl/intl\\_toc.htm](http://www.law.gwu.edu/burns/research/intl/intl_toc.htm)> (maintained by the George Washington University Law School).

<<http://www.law.cornell.edu/library/guides/forin/forin.html>> (maintained by Cornell University).

<<http://www.library.northwestern.edu/govpub/resource/internat/igo.html>> (maintained by Northwestern University).