International Law at a Crossroads

Oona A. Hathaway, Sabria McElroy, Sara Aronchick Solow

During the first hundred and seventy years of US history, courts generally applied a strong presumption that treaties could be used by private litigants to press their claims. That presumption began to erode in the wake of World War II, and in 2008 the United States Supreme Court effectively reversed it. Following the Supreme Court's lead, lower courts have increasingly concluded that treaties could not be enforced in US courts absent express treaty language requiring it. That constraint has undermined the reliability of US treaties, including those that have long formed the backbone of US international commercial relations. This article offers three proposals to respond to this new challenge.

A deep puzzle lies at the heart of international law. It is "law" binding on the United States[1] and yet it is not always enforceable in US courts. One of the great challenges for scholars, judges, and practitioners alike has been to make sense of this puzzle—some might call it a paradox—and to figure out when international law can be used in US courts and when it cannot.

The Supremacy Clause in the US Constitution would seem to solve this puzzle. It states, after all, that "Treaties made, or which shall be made, under the Authority of the United States, shall be supreme Law of the Land."[2] Yet early in the country's history, the Supreme Court distinguished between treaties "equivalent to an act of the legislature"—and therefore enforceable in the courts—and those "the legislature should execute"—meaning they could not be enforced in the courts until implemented by Congress and the president.[3] Thus emerged a cottage industry devoted to determining when international law was enforceable in the courts.

Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School; J. D. Yale Law School (2010); and J. D. Yale Law School (2011). This article is adopted from Oona A. Hathaway, Sabria McElroy, and Sara Aronchick Solow, *International Law at Home: Enforcing Treaties in US Courts*, Yale Journal of International Law, Volume 27 (2012), pp. 51–106 [hereinafter Hathaway, McElroy & Solow, *International Law at Home*].

Just when scholars had more or less come to a settled understanding of the status of international law in the courts—or at least agreed to disagree—the Supreme Court entered the fray. Beginning in the 1990s, foreign nationals convicted of capital offenses in the United States had begun challenging their convictions on the grounds that the arresting authorities violated the Vienna Convention on Consular Relations.[4] A case involving fifty-one Mexican nationals, including Jose Ernesto Medellín, reached the International Court of Justice (ICJ). In a stunning defeat for the United States, the ICJ held that the country had breached its obligations under the Convention by failing to notify the Mexican consulate when Mexican citizens were arrested.[5] The ICJ declared that the United States was obligated to provide the petitioners "review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention."[6]

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Medellín returned to Texas to seek the review and reconsideration called for by the ICJ, but the Texas courts refused to reopen the case. The dispute eventually reached the US Supreme Court, which surprised many observers by affirming the Texas courts. The treaties granting jurisdiction to the ICJ, the Court concluded in *Medellín v. Texas*,[7] were not enforceable in US courts unless implemented into law by Congress and the president.

This article examines the status of treaties in US courts and demonstrates how the international legal commitments expressed in US treaties "come home." We begin with an account of *Medellín*, examining trends in the case law that preceded the decision and showing how the case has been interpreted and applied by lower courts. This provides the context for three proposals that, if adopted, would strengthen the enforcement of international law in US courts in a post-*Medellín* world.

I. The History of International Law at Home

To understand modern jurisprudence on the enforcement of international law in US courts, it is important to disentangle the meaning of "self-executing treaties," "private rights," and "private rights of action." A *self-executing treaty* is a treaty that creates a domestic legal obligation in the absence of implementing legislation. A *private right* is a right that accrues to an individual. A *private right of action* allows a private party to seek a remedy from a court for the violation of a private right provided by a treaty.

For most of US history, the Supreme Court treated the issues of self-execution, private rights, and private rights of action as essentially indistinguishable. Between 1790 and 1947, in at least 22 cases the Court found that private litigants could bring suits to enforce their treaty-based rights.[8] The Court's reasoning throughout this period followed a consistent pattern: *if* the treaty created a private right—for example, a property right or contract right—*then* the treaty was "self-executing" and there was *necessarily*

a private right of action enabling individuals to enforce that right in the courts. The Court reasoned that a treaty conferring rights on private individuals did not "address itself"[9] to the legislature and therefore did not require congressional action to have effect. Instead, such treaties spoke to the judiciary, whose role it was to enforce individual rights under the treaties.[10]

The Court's approach during this era is exemplified by the seminal case of *Ware v. Hylton*.[11] In *Ware*, the Court held that the Treaty of Peace, signed between the United States and Great Britain in 1783, enabled a British creditor to recover a debt owed to him by an American.[12] The Court reasoned that because the Peace Treaty between the United States and Britain created a private right for British creditors, the treaty automatically gave rise to an implied private right of action. The treaty aimed to protect the contractual rights of British creditors, and the Court regarded judicial enforcement of that right as the necessary means to the treaty's end.[13]

The presumption that treaties were self-executing whenever they created a private right was applied consistently by US courts, including the Supreme Court, from the country's founding through the early twentieth century. When examined more closely, these cases form an interesting pattern. At the Supreme Court level, the treaties in those cases created one of four types of private, common law rights: contractual, property and inheritance, detention and habeas corpus, or the right to carry on a trade.[14] The Supreme Court may have been quick to infer that treaty-based rights could be enforced through private rights of action in part because the underlying rights at issue had always been judicially enforceable under English common law.

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A shift in the approach of the courts to treaty enforcement in the period following World War II coincided with a change in the nature of the treaties concluded during this period. After the horrors of World War II, treaties increasingly concerned human rights and public law issues. Courts were less familiar with these treaties and were more wary of inferring private rights of action to enforce them.

Even more important than their novelty, however, was the nature of the individual rights they created—rights of individuals to be protected from violations of their civil and political rights by their own governments—and the political context in which these new treaties were made. Almost immediately, political leaders began to voice concern that the new human rights treaties might be used to challenge Jim Crow laws in the South. American Bar Association President Frank Holman illustrated the irrational fears this new crop of treaties provoked when he asserted (incorrectly) in the late 1940s that if a white person driving through Harlem were to accidentally run over a black child, the driver could be extradited to an international tribunal or foreign court on charges of genocide.[15] Holman's views were extreme but influential. John Foster Dulles cautioned against the "trend toward trying to use the treaty-making power to effect internal social changes."[16] A series of constitutional amendments were proposed in the Senate in the earlier 1950s, often referred to collectively as the "Bricker Amendment."

Supporters of the Amendment aimed to effectively reverse the Supremacy Clause, not just for human rights treaties, but for all treaties. The last version of the Amendment was defeated in Congress by only a single vote.[17]

It is often said that judges read the newspapers, and this was no exception. Though the Bricker Amendment failed, the courts got the message. The controversy surrounding the debate over international law and the new and growing body of treaty law—including human rights treaties—underscored the political backlash in the United States against treaties that could lead to challenges to domestic laws, norms and institutions. Courts thus began scrutinizing such claims with increased caution and growing skepticism.

In the period following World War II, both the Supreme Court and the lower federal courts adopted a more inconsistent approach to the enforcement of treaties in US courts. The Supreme Court continued to enforce treaties affecting commercial relations and those addressing transnational litigation.[18] Yet when it came to new treaties dealing with public international law, such as the International Covenant on Civil and Political Rights (ICCPR),[19] or an extradition treaty with human rights implications,[20] the Court was more hesitant to declare that the treaty provided a private right of action.

The lower federal courts developed a similarly bifurcated approach to treaty enforcement. They continued to infer a private right of action in cases that involved economic or commercial relations, but they were hesitant to enforce treaties that regulated relationships between sovereign states and between a sovereign state and an individual. The lower federal courts avoided issuing remedies or judgments in cases involving these latter types of treaties in one of two ways. They either concluded that the treaty was not self-executing, meaning it required implementing legislation by Congress before a court could enforce its terms; or they concluded that the treaty was not intended to benefit private individuals (hence it was irrelevant whether the treaty was self-executing or not because a private individual could not state a claim for relief).[21]

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II. *Medellín* and its Aftermath

Even in the years leading up to *Medellín*, the federal courts' growing reluctance to employ a presumption in *favor* of private rights of action had not resulted in a consistent and uniform presumption *against* them. Rather, the lower courts generally looked to the text and the history of the ratification process to determine whether a treaty was meant to be self-executing and, thus, gave rise to a private right and a private right of action. Moreover, lower courts tended to maintain the presumption in favor of private rights of action for bilateral treaties and for treaties protecting private, common-law rights. It was these last two threads of the earlier framework that *Medellín* would cut.

In the three years since *Medellín* was handed down, the decision has already led to significant changes in US courts' approach to treaties. First, *Medellín* has led lower

courts to increasingly adopt a strong presumption that treaties neither protect private rights nor are self-executing—and therefore cannot contain private rights of action—unless strong textual clues in the treaties evidence otherwise. Consider, for example, the Second and Eleventh Circuits' decisions in *Mora v. New York*[22] and *Gandara v. Bennett*.[23] Both *Mora* and *Gandara* concerned whether plaintiffs could be awarded damages when state officials violated their rights under the Vienna Convention on Consular Relations. Both the *Mora* and *Gandara* courts refused to let the cases proceed, holding that the Convention did not give rise to private rights in the first place. Citing *Medellin*, the *Mora* court explained "international agreements, even those directly benefiting private persons, generally do not create private rights,"[24] and "treaties do not create privately enforceable rights in the absence of express language to the contrary."[25]

Other cases have similarly required express language that a treaty is self-executing or gives rise to private rights before enforcing the treaty's requirements. For instance, in *Toor v. Holder*,[26] a Washington D.C. district court concluded that the Council of Europe Convention on the Transfer of Sentenced Persons[27] was not self-executing because the Convention did not contain "any express language to rebut a presumption" *against* self-execution. Again, the *Medellín*-inspired presumption against inferring that treaties create private rights of action was decisive.

Second, *Medellín* has led lower courts to apply the presumption against direct treaty enforcement universally, eliminating the carve-out for private law treaties that persisted through the post-War period. The starkest example of this trend can be seen in *McKesson Corp. v. Islamic Republic of Iran*, a case decided by the DC Circuit in 2008. The case spans the period before and after *Medellín* and thus offers an unusual opportunity to witness the impact of the decision on lower courts' decision-making.[28] A group of US corporations, collectively called "McKesson," and the Overseas Private Investment Corporation, a federal agency that helps American businesses invest abroad, brought a complaint against Iran alleging that Iran had illegally expropriated McKesson's interest in an Iranian dairy company following the Iranian Revolution of 1979. They asserted that the nationalization of the company violated McKesson's rights under the US-Iran Treaty of Amity.[29]

In 2001, the DC Circuit court held that the Treaty of Amity created a private right of action for American corporations. It reasoned that since "[t]he Treaty of Amity . . . explicitly creates property rights for foreign nationals," it "contemplates judicial enforcement of those rights" in both American and Iranian courts.[30] In other words, the court found private rights and then inferred a private right of action to enforce them, reflecting the common approach to bilateral treaties prior to *Medellín*.

On a petition for *writ of certiorari* to the Supreme Court in 2002, however, the newly elected Bush administration argued that the entire action should be dismissed because the Treaty of Amity did not confer a private right of action on the McKesson Corporation.[31] The Supreme Court rejected the petition for *certiorari*, but the DC Circuit directed the district court to reconsider the case in light of the government's position.[32] The district court rejected the argument, Iran appealed, and in 2008 the suit once again landed before the DC Circuit. The sole question at issue was whether the Treaty of Amity created a private right of action that would allow enforcement of the Treaty in US courts.

While the case was pending, the Supreme Court issued its decision in *Medellín*. The DC Circuit subsequently abandoned its 2001 position and, drawing heavily from *Medellín*, concluded that the Treaty of Amity did *not* create a private right of action. Although the panel acknowledged that the "Treaty of Amity, like other treaties of its kind, is self-executing,"[33] it found that nothing in the Treaty overcomes the *Medellín* presumption against finding a private right or private right of action. While the Treaty of Amity did "benefit McKesson," in establishing that monetary compensation should be provided to parties like McKesson if its property was taken, the Treaty did not specify *how* compensation should be provided. In other words, the treaty created a right but not a remedy, and its "silence on this [latter] point makes all the difference."[34] The DC Circuit's reluctance to infer a private right of action in the Treaty of Amity with Iran, despite its 2001 decision to the contrary, suggests that *Medellín* has, indeed, changed judicial practice.

III. How to Strengthen International Law at Home

Today, the courts of the United States are less willing than at any previous time in history to directly enforce the Article II treaty obligations of the United States. The gap left by the decline in direct enforcement has been filled in part by other forms of enforcement.[35] Yet there is more that can and should be done to ensure that the United States can honor its international legal commitments.

The ability to enforce treaty-based rights abroad is, after all, essential for the 4.5 million Americans who live overseas and the 60 million who traveled abroad last year,[36] as well as the American businesses whose billions of dollars in investments are protected by international treaties. If US courts do not allow private litigants to enforce treaties through bringing lawsuits, the United States will not be in a position to ask foreign countries to provide such opportunities to its citizens and nationals. The United States also has deep interest in demonstrating that it is a reliable treaty partner, so that it can continue to pursue agreements with foreign countries.[37]

Here we briefly outline three proposals for more effective enforcement of US international legal obligations: the passage of legislation to provide for enforcement; a clear statement by the political branches as to whether they intend the treaty to be self-executing and to give rise to a private right of action; and a Public Right of Action. The proposals do not place the responsibility for enforcing international law solely in the hands of the courts, but instead call on the other branches of government to do their part to ensure that the country lives up to its international legal obligations.

First, Congress could pass legislation declaring that certain *classes* or *categories* of treaty obligations are self-executing and enforceable through private rights of action. Congress is currently considering a more limited bill of this kind. The Consular Notification Compliance Act, currently pending in the Senate, would provide both a retrospective and prospective remedy for non-citizen defendants who were sentenced to death by a US court without first receiving timely notice of their consular rights.[38] Those convicted and sentenced to death before the Act enters into force would have one year to request judicial review of their capital sentences. Going forward, any

individual would be entitled to raise "a claim of violation of Article 36(1)(b) or (c) of the Vienna Convention," and if the court were to find that a defendant's consular rights had in fact been violated, proceedings would be postponed to allow for consular access.[39] We suggest broadening this approach by passing statutes that address entire classes of treaty obligations, rather than just a single treaty. One area of potential focus could be international commercial law—particularly treaties of friendship, commerce, and navigation, which form the backbone of longstanding economic and business relationships.

Second, we propose a "Clear Statement Rule," to be adopted by the president and Senate when ratifying a treaty, which would help clarify the political branches' intent about the legal effect of a treaty in US courts. In an ideal world, when a treaty is intended to be directly enforceable in court, it would include explicit language to that effect. This is often possible in bilateral treaties, but it is more difficult in multilateral treaties with numerous signatory parties. As scholars have observed and as Justice Breyer noted in his dissent in *Medellín*, every country has its own internal laws governing how treaties become domestic law. For that reason, the conventional practice has been not to specify matters of enforcement in the text of the legal instrument itself.[40]

Our Clear Statement Rule offers an alternative approach. Under the new Rule, when the president submits a treaty to the Senate for its advice and consent, the president would include a statement indicating whether particular obligations in the treaty are understood to be self-executing and whether they should be directly judicially enforced or not. The Clear Statement would be embedded in a formal "Declaration" or "Understanding" as part of the treaty package approved by the Senate. Including such a statement would ensure that the Senate and president have a shared understanding of the terms of the agreement, and it would also provide clear message to US treaty partners.[41]

The Clear Statement Rule builds on the decades-long and now common practice of many US presidents of attaching proposed "declarations" designating treaties as non-self-executing.[42] Declarations of self-execution (as opposed to non-self-execution) are, admittedly, a newer phenomenon, but are becoming more common. The president and Senate began to attach such declarations to treaties in the wake of *Medellín*.[43] In 2008 alone, over a dozen treaties were ratified with affirmative declarations of self-execution[44] and some declarations even made the important but subtle distinction between self-execution and judicially enforceable rights.[45]

Third, we propose a "Public Right of Action" through which the executive branch may seek an injunction against state and municipal agencies violating an international law obligation of the United States. A Public Right of Action can be traced to a line of cases at the turn of the century, allowing the federal government to sue various parties to enforce its sovereign rights and obligations.[46] The cases culminated in the Supreme Court's 1895 decision in *In re Debs*,[47] in which the federal government sought to protect interstate commerce by requesting an injunction prohibiting railroad workers from striking. The Court concluded that seeking equitable decrees was an appropriate means for the federal government to "enforce in any part of the land the full and free exercise of all national powers."[48] It reasoned that "[e]very government, entrusted by

the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other."[49] In subsequent years, courts have used this reasoning to allow the federal government to bring lawsuits against public and private actors in the interest of the national welfare by, for example, enforcing civil rights laws and preventing interference with interstate commerce.[50]

There are recent signs that the government regards a Public Right of Action as a viable option for enforcing treaties against recalcitrant states. The Legal Adviser to the US Department of State has contended to the Supreme Court that there is a "longstanding principl[e]" that the United States can "bring an action in court to enforce compliance with a treaty obligation" without statutory authorization.[51] And in a September 2011 report recommending that the Senate ratify a bilateral investment treaty with Rwanda,[52] the Senate Committee on Foreign Relations indicated that it shared this view. The report recognized several provisions of the treaty were not self-executing, such as provisions relating dispute resolution procedures under the treaty, but suggested the federal government could use a Public Right of Action to enforce the treaty should states refuse to comply.[53]

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The Public Right of Action is thus an option available to the government, but one that is likely to be used sparingly. The Public Right of Action places the federal government in an adversarial position vis-à-vis a state or local government. In many cases, normal political channels, such as discussions between the federal government and local officials, will prove more effective at changing state or local government behavior to comply with international law obligations of the United States. Nonetheless, the Public Right of Action remains an important tool, and perhaps a bargaining chip, for the president in instances where a state or local entity has placed the entire country in violation of an international legal obligation.

IV. Conclusion

Today more than ever before, international law is a part of daily life. The United States is party to hundreds of treaties, many of them covering topics of the gravest importance to the country, ranging from the economy, to criminal law enforcement, to national security. It is thus of no small importance that the Supreme Court has cast the legal status of significant numbers of these treaties into doubt with its decision in *Medellín v. Texas*. As we have seen, lower courts have read *Medellín* to endorse the conclusion that the only treaty that may be directly enforced in court is the rare one that expressly states as much. Yet the problem of international law enforcement is not simply one for the courts to solve. The proposals we offer here—for legislative enactment, for clear statements by the executive and Senate, and for the federal government's use of a Public Right of

Action – call for Congress and the president to respond to a need that is as much within their power and responsibility to address as it is within the courts'. The president and the Senate, after all, concluded that treaties should be called into doubt – and they must now work, along with the courts, to put those doubts to rest. Y

– Judith Heistein Sabba served as Lead Editor for this article.

NOTES

[1] Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331 ("Every treaty in force is binding upon the parties to it and must be performed by them in good faith.").
[2] U.S. Const. art. VI, cl. 2.
[3] Foster v. Neilson, 27 U.S. (2 Pet.) 253 (1829), *overruled on other grounds*, United States v. Percheman, 32 U.S. (7 Pet.) 51 (1833).
[4] Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261.
[5] Avena and Other Mexican Nationals (Mex. v. U.S.), 2004 I.C.J. 12 (Mar. 31).
[6] *Id.* at 51 (quoting *LaGrand*, 2001 I.C.J. 466).
[7] Medellín v. Texas, 552 U.S. 491 (2008).
[8] These cases are cited in Justice Breyer's Appendix to *Medellín*. Medellín v. Texas, 552 U.S. at 568 app. A (2008) (Breyer, J., dissenting).
[9] Foster v. Neilson, 27 U.S. (2 Pet.) 253, 314 (1829).
[10] *Id.*
[11] Ware v. Hylton, 3 U.S. (3 Dall.) 199 (1796).
[12] 3 U.S. (3 Dall.) at 199.
[13] *Id.* at 239 ("If a British subject . . . prosecuted his just right, it could only be in a court of justice.").
[14] *See* Hathaway, McElroy & Solow, *International Law at Home*, *supra* note 1.
[15] Duane Tananbaum, The Bricker Amendment Controversy: A Test of Eisenhower's Political Leadership 13 (1988).
[16] *The Bricker Amendment: A Cure Worse than the Disease?*, Time, July 13, 1953, at 20.
[17] *See* Oona A. Hathaway, *Treaties' End*, 117 Yale L. J. 1236, 1303 (2008).
[18] *See, e.g.*, Société Nationale Industrielle Aérospatiale v. United States Dist. Ct. for Southern Dist. of Iowa, 482 U.S. 522, 524, 533 (1987); Trans World Airlines, Inc. v. Franklin Mint Corp., 466 U.S. 243, 252 (1984); Kolovrat v. Oregon, 366 U.S. 187 (1961); United States v. Warren, 340 U.S. 523, 526 (1951);
[19] *See* Sosa v. Alvarez-Machain, 542 U.S. 692, 735 (2004).
[20] *See* United States v. Alvarez-Machain, 504 U.S. 655 (1992).
[21] Hathaway, McElroy & Solow, *International Law at Home*, *supra* note 1.
[22] 524 F.3d 183 (2d Cir. 2008).
[23] 528 F.3d 823 (11th Cir. 2008).
[24] *Mora*, 524 F.3d at 200 (quoting Medellín v. Texas, 552 U.S. 491, 505 n.3).
[25] *Id.* at 201 (quoting *Medellín*, 552 U.S. at 505 n.3).
[26] 717 F. Supp. 2d 100 (D.D.C. 2010).
[27] Council of Europe Convention on the Transfer of Sentenced Persons, March 21, 1983, T.I.A.S. No. 10, 824.
[28] 539 F.3d 485 (D.C. Cir. 2008).
[29] Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran art. IV, cl. 2, Aug. 15, 1955, 8 U.S.T. 899, 903, 284 U.N.T.S. 93.
[30] McKesson HBOC, Inc. v. Islamic Republic of Iran, 271 F.3d 1101, 1107-08 (D.C. Cir. 2001).
[31] McKesson Corp. v. Islamic Republic of Iran, 539 F.3d 485, 487 (D.C. Cir 2008) (recounting the procedural history of the case).
[32] McKesson HBOC, Inc. v. Islamic Republic of Iran, 320 F.3d 280, 281 (D.C. Cir. 2003).
[33] *McKesson Corp.*, 539 F.3d at 489.
[34] *Id.*
[35] Elsewhere we describe the "indirect enforcement, defensive enforcement, and interpretive enforcement" of Article II treaties. See Hathaway, McElroy & Solow, *International Law at Home*, *supra* note 1.
[36] *Fulfilling Our Treaty Obligations and Protecting Americans Abroad: Hearing on S. 11994 Before S. Comm. on the Judiciary*, 112th Cong., 1 (2011) (statement of Undersecretary Patrick F. Kennedy, US Dep't of State).
[37] For more on this, see Oona A. Hathaway & Scott S. Shapiro, *Outcasting: The Enforcement of Domestic and International Law*, 121 Yale L. J. 252 (2011).

[389] S. 1194, 112th Cong. § 4 (2011).

[39] *Id.* § 4(a) & (b).

[40] *See* Curtis A. Bradley, *Intent, Presumptions, and Non-Self-Executing Treaties*, 102 Am. J. Int'l L. 540, 543-44 (2008); Carlos Manuel Vázquez, *Treaties as Law of the Land: The Supremacy Clause and the Judicial Enforcement of Treaties*, 122 Harv. L. Rev. 599, 679-80 (2008). For Justice Breyer's endorsement of this position, see *Medellín*, 552 U.S. at 547-50 (Breyer, J., dissenting).

[41] Such a practice seems to be emerging already. For example, a tax convention with Hungary on which the Senate Committee on Foreign Relations voted to recommend the Senate give its advice and consent included a declaration – highlighted and reaffirmed in the Senate Report – that the Convention "is self-executing, as is the case generally with income tax treaties." Tax Convention with Hungary, S. Exec. Rep. No. 112-4, at 4–5 (2011).

[42] *E.g.*, Message from the President of the United States Transmitting Four Treaties Pertaining to Human Rights, S. Exec. Doc. Nos. C, D, E, F, 95-2, at VI, XVIII (1978).

[43] *See, e.g.*, Tax Convention with Hungary, *supra* note 42, at 5.

[44] Vázquez, *supra* note 41, at 670. Early examples of this new practice can be found at 154 Cong. Rec. S9328–32 (daily ed. Sept. 23, 2008) (detailing senatorial advice and consent for mutual legal assistance, extradition, and tax treaties, all of which contain a declaration stating, "This Treaty is self-executing").

[45] *See, e.g.*, An Amendment and Three Protocols to the 1980 Conventional Weapons Convention, S. Exec. Rep. No. 110–22, at 14 (2008) ("With the exception of Articles 7 and 8, this Protocol is self-executing. This Protocol does not confer private rights enforceable in United States courts.").

[46] *See* Richard H. Fallon, Daniel J. Meltzer & David L. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 811-20 (4th ed. 1996); *see also* United States v. American Bell Tel. Co., 128 U.S. 315, 367 (1888) (allowing the Attorney General to sue in equity for the revocation of certain fraudulently obtained patents).

[47] 158 U.S. 564 (1895).

[48] *Id.* at 582.

[49] *Id.*

[50] *See, e.g.*, United States v. Republic Steel Corp., 362 U.S. 482, 492 (1960); United States v. California, 332 U.S. 19, 26-27 (1947); United States v. City of Jackson, 318 F.2d 1, 11–16 (5th Cir. 1963), *reh'g denied*, 320 F.2d 870 (1963) (per curiam).

[51] Brief for United States as Amicus Curiae Supporting Respondents at 15, Bustillo v. Johnson, 546 U.S. 1213 (2006) (No. 04–10566).

[52] Treaty Between the Government of the United States of America and the Government of the Republic of Rwanda Concerning the Encouragement and Reciprocal Protection of Investment, U.S.-Rwanda, Feb. 19, 2008, S. Treaty Doc. No. 110–23.

[53] *Id.* at 11.