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The influence of international customary law on the U.S. Supreme Court's jurisprudence

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Abstract
Over the last two decades, there has been much discussion over how traditional global law is applied in American courts. Those who hold the "modernist" view argue that traditional international legal standards constitute de facto federal law that may be enforced in federal courts and will take precedence over incompatible state law regardless of the lack of statutory or administrative authorization. However, "revisionists" contend that conventional international legal norms are not concerns of federal law and are subject to state law until explicitly stated otherwise by Congress or a U.S. treaty.

Keywords: U.S. legal system, treaties, foreign law, national legislation, judicial precedent, and the laws of the United States.

Introduction

The Modernists: “The Modern View Is that Customary International Law Is Federal Law and Its Determination by the Federal Courts Is Binding on the State Courts”

The standing of conventional international laws in U.S. courts has garnered significant attention and evoked strong emotions inside the United States. There has been much scholarly and judicial discourse over the applicability of norms of traditional international law inside the United States, specifically about whether they are subject to federal or state law, as well as the circumstances under which U.S. courts may use these rules. These many experts have reached significantly divergent and mostly unresolvable conclusions about these issues. Based on references to constitutional provisions and judicial precedent, a substantial body of legal scholarship has reached the consensus that customary international law is generally considered to be presumptive federal law. Consequently, it is directly applicable in United States courts and takes precedence over conflicting state laws, even when there is no explicit authorization from the federal legal or executive branches. Drawing upon references to other constitutional articles and established legal precedents, an alternative authoritative entity has reached the determination that, in the event of a lack of legislative action by the United States Senate or the absence of a ratified treaty, customary international law norms will often fall within the purview of state law. Another perspective in the scholarly discourse suggests alternative methods to treating customary international law. One viewpoint posits that traditional international law should be considered a variant of general common rule and, therefore, susceptible to autonomous evolution within state and federal courts. Alternatively, it is proposed that conventional global law could be considered a distinct category of "non-pre-emptive federal law." In this study, we aim to investigate the impact of social media usage on mental health (Born, 2010) [1].

Composition of Customary International Law

As a theoretical idea, customary international law is generally recognized as a consensus in the field. While the precise parameters of customary international law remain a source of heated discussion and complex legal conflicts, its fundamental contours are universally accepted. It entails two essential components: (1) extensive practice among states and (2) broad recognition of this practice as binding among states. There have been difficulties in applying this idea in practice. Two fundamental obstacles have prevented a clear definition of conventional international law from emerging: the need for widespread application and universal acceptance as law. For example, the earlier-provided description of classical international law is rather broad and without any concrete limits. However, agreement is seldom reached on definitions that provide clear limits or offer valuable criteria. Given the difficulties involved, it is clear that defining "general implementation" and "general acceptance as law" within the framework of customary international legislation is a challenging end eavor. Nonetheless, a summary of the most contentious arguments regarding what should be considered mandatory in terms of procedure is in order. There needs to be more space to rewrite the user's material in an academic format (Kundmueller, n.d.) [2].

Current understanding of the customary international law in U.S. courts

In one of its first decisions, the Supreme Court of the United States noted that the application of established international law in American courts unavoidably gives rise to innovative and complicated problems. Migrations of sovereignties within a sovereign state are observed. Complex questions arise for U.S. courts when applying customary international law because of the presence of multiple sovereignties, including the governments of both states and the federal government, as well as the interaction of different divisions within those governments, such as the legislative, Executives, and Judicial branches. These questions are challenging since no unambiguous constitutional wording or binding judicial precedent exists. Current approaches to the study of customary international law must be revised to answer the many questions from this area of study. As we'll see, the modernist view ignores severe limits on the federal judiciary's authority and other domestic rules that stem from international law, as will be made clear in the following debate. Therefore, such an attitude generates a broad approach incompatible with the treatment of agreements or

the limited power of federal courts in defining federal common law. Given that prior judgments have often rejected the modernists' expansive understanding of judicial power in making legislation, the position stated is similarly irreconcilable with established legal norms. Instead, a deeper dive into the motivations of the various political branches and the nitty-gritty of global law is necessary. However, the revisionist view ignores the importance of a unified national approach to interpreting and approving customary international law and the federal government's authority over issues relating to U.S. foreign relations (Born, 2010) [1].

Therefore, this approach yields an overly broad norm incompatible with the Constitution's allocation of authority concerning foreign affairs of the United States. It's also worth noting that the revolutionary attitude opposes the courts' power. In the post-Erie period, where this issue is relevant, the federal courts of the United States consistently applied customary international law as if it were federal law. The revisionists' position that the branches of politics should have the last say on whether or not international laws may be used in domestic courts runs counter to both constitutional authority and precedent. Historically, domestic courts have made considerably more extensive use of international law. In addition, the constitutional wording, framework, and judicial authority must be more consistent with other techniques proposed for evaluating the legal status of customary international law. They give rise to unique forms of American law, such as -preemptive federal statutes, that are at odds with both broad national foreign relations authority and narrow federal court jurisdiction. To no one's surprise, these methods have yet to be adopted by courts in the United States (Born, 2010) [1].

Analysis of customary international law

Numerous judges and legal analysts have pointed to precedent in trying to convince the federal government to consider customary international law similar to federal common law. In the Filartiga case, the court asserted that the Convention on Contracts for the International Sale of Goods (CISG) has consistently constituted an integral component of American federal common law. The proposition that conventional international law has equivalent standing to national law has been firmly established by prior judicial decisions, which have relied on historical precedent to support their rationale. Likewise, several scholars have posited that customary international law served as the de facto benchmark for federal law throughout the nineteenth century. Judges and commentators often use terminology derived from earlier Supreme Court cases to substantiate their viewpoints, whereby foreign law is shown as being "incorporated within the regulations of the nation" or "constituting an integral component of American law." The judges and commentators are insinuating that customary international law ought to be accorded the same level of authority as it had throughout the eighteenth century. Much scholarly discourse exists about the extent to which historical considerations should be accorded significance in legal analysis.

Furthermore, the justification for historical direction must be derived from theoretical frameworks rather than relying on historical events. My attention is directed towards something other than the aforementioned scholarly inquiry, but rather towards the notion that customary international law had an equivalent status to federal law throughout the 19th century. The historical record indicates that courts and observers need to read the statements made by the Supreme Court and that the incorporation of conventional international legal principles as federal law did not occur during the mid-nineteenth century (Bradley, 1998) [2].

When federal courts were established in the early eighteenth century, they adopted a body of law called "general law" or "general common law." Rather than coming from a centralized government, universal regulations were seen as the product of "collective traditions and consensus among different sovereign entities." As stated by Justice Holmes, the more comprehensive common law is a supranational legal foundation that is not limited to or derived from any one state but is binding inside each state unless changed by statute. American courts utilized this legal framework without insisting it be tied to any supreme body. For the present purposes, it is essential to remember that general common law was not considered part of the federal legal system. It was determined that it did not fall within the "Laws of the United States" heading, as those terms are used in Articles III and VI of the United States Constitution. It has been maintained that federal court decisions on general law matters are not binding on the states, as Bradley (1998) explains. It's also worth noting that national issue competence cannot be invoked in a case based on comprehensive common law (Bradley, 1998) [2].

Importance of Eerie in the Customary International law

The absence of federal standard law status for customary international law throughout the nineteenth century does not automatically mean it should not possess such quality today. There is a potential for further arguments beyond those rooted in historical context to support the contemporary recognition of traditional international law as federal law. This context does not provide an appropriate platform for an exhaustive rebuttal to the above arguments, many of which have been discussed explicitly in the scholarly work co-authored by Prof. Goldsmith and myself. For the purposes at Hand, it is essential to acknowledge that to achieve success, these arguments must address various constitutional considerations. These include the concern that unelected judges, who derive law from sources mainly unrelated to the local political process, may act against the majority's will.

There is also concern about the separation of powers, as judges interpret and enforce such laws without explicit authorization from the political branches. Lastly, there is the federalism concern, where federal judges establish dominant federal law in this domain, which becomes binding on the states. The primary objective of this analysis does not revolve around the constitutional issues themselves but instead centers on a specific occurrence that significantly weakens the contemporary assertion that conventional global law has the standing of federal common law. The event mentioned above refers to the legal ruling made by the Supreme Court in the case of Erie Railroad v. Tompkins. The Erie judgment has received significant attention from federal courts and academics specializing in civil process. However, proponents of the perspective that conventional international law has become part of federal common law have overlooked this decision mainly. The assertion is unexpected since Erie has significant pertinence to that perspective on several fronts (Bradley, 1998) [2].

As mentioned, throughout the nineteenth century, the federal courts tended to autonomously establish their own comprehensive body of common law, apart from the common law established by state courts. The court asserted that there is no overarching federal common law by overturning the long-standing Swift v. Tyson rule, which had previously sanctioned this conduct. Consequently, by its interpretation of the Rules of Judgment Act, the court determined that "unless about subjects regulated by the Federal Constitution or Acts of Congress, the applicable law in any given case is that of the respective state. As shown by historical records, customary international law was regarded as a kind of universal common law throughout the nineteenth century. The ruling of the Erie case may be seen as explicitly prohibiting the federal courts from independently applying customary international law. Undoubtedly, the esteemed jurist Learned Hand reached the decision in question. One evident counterargument to this assertion, offered by Professor Philip Jessup in the immediate aftermath of the Erie ruling, is that despite its expansive wording, the Court in Erie "undoubtedly did not have international law in mind." While the statement presented may possess a degree of validity, it lacks the necessary elements to constitute a compelling and convincing argument. The court in the Erie case did not explicitly consider additional fields of law that are within the scope of its ruling. The court was primarily concerned with addressing the appropriate function of the federal judiciary in law-making. The analysis of the issue is independent of the specific statute being considered. Regardless of the ruling in Erie, the rationale behind the case raises more doubts about the assertion that modern federal courts possess autonomous authority to enforce customary international law (Bradley, 1998)[2]. The user's text needs to be longer to be rewritten academically (Bradley, 1998) [2].

According to Justice Frankfurter's subsequent elucidation, the Erie decision overturned a long-standing legal precedent and had broader implications. It invalidated a particular perspective on legal interpretation. The court in the Erie case explicitly rejected two fundamental principles of nineteenth-century legal philosophy. Firstly, it dismissed the notion that federal courts can apply laws not derived from a recognized governing leader. Secondly, it refuted the belief that courts are essentially passive observers who uncover pre-existing standards of law rather than actively shaping it. The court emphasized that the rejection of the first concept was based on the assertion that the federal courts' approach to formulating their comprehensive customary law was founded on a flawed premise. This misconception pertains to the presumption, as articulated by Justice Holmes that there exists a "transcendental corpus of law beyond any specific jurisdiction, yet binding within it unless modified by legislation." According to the Court, as cited by Holmes, it is said that contemporary legal systems need a clear source of authority to be considered as law (Bradley, 1998) [2].

Analysis of Customary International Law

The extent to which acceptance must be prevalent to satisfy the "general practice" criteria remains unresolved without a definitive examination or measure. Individuals argue that this particular element of customary international law has yet to present any significant challenges in terms of legal theory. Nevertheless, determining or establishing the existence of a widespread practice among states and afterward discerning its exact nature may prove to be a complex task in practical terms. Commentators often employ extensive language to provide a more tangible and applicable understanding of the term "general practice" in the context of customary international law. However, these end eavors often result in longer-term definitions that are not necessarily more precise than those they seek to elucidate. In his work titled "International Law as Law of United States," Jordan J. Paust clarifies the first element of customary international law. The behavioral aspect of custom, which refers to general practice, is noteworthy because it does not need complete uniformity. It is based not only on the methods of States but also on the rules of all actors involved in the international legal process. According to Kundmueller (n.d.), a nation-state may have differing opinions on the customary nature of a particular norm and may even violate such standards. However, the nation-state would still be obligated if the norm is upheld by prevailing patterns of legal expectations and complying behavior throughout the neighborhood. If the prevalence of violations reaches a significant extent, it might result in the erosion of one of the fundamental pillars of customary law (Kundmueller, n.d.) [3]

Put otherwise, the concept of broad practice must possess a general nature. However, it is not necessarily obligated to be universally applicable. If the practice lacks generality, it fails to satisfy the criteria for the first element of customary international law. This explanation fails to provide more elucidation of the first element of the norm for customary international law beyond the term "general practice," it concurrently encounters the issue of lacking widespread consensus. Karol Wolfke presents a contrasting perspective, asserting that the significance of the "number of states engaged in the process of custom formation" is negligible. According to the author in the work titled "Custom in Present International Law," it is argued that the establishment of a custom might occur when the actions of a single state are implicitly acknowledged as a legal obligation or entitlement by another state, resulting in the development of a local customary norm that imposes obligations on both governments involved. In the pursuit of elucidating the matter concerning the duration and number of states engaged for a practice to attain the status of "general," Wolfke's analysis reveals her disagreement with Paust. However, she cannot provide a definitive definition, similar to Paust, as the criterion of an uninterrupted, constant, and ongoing practice is no longer deemed valid. The outcome of each situation is contingent upon certain contextual factors.

Undoubtedly, the occurrence of pauses and irregularities in the execution of a particular activity often hinders the establishment of customary behavior. Nevertheless, it should be noted that not every abnormality or disruption necessarily warrants such a repercussion. Conversely, resuming a previous habit after a period of interruption might indicate the influence of conformity on the behavior of nations without impeding the creation of a customary norm. According to Kundmueller (n.d.), Wolfke argues that establishing customary international law may be achieved by a single occurrence. However, it should be noted that the destruction of customary international law may only sometimes be adequately shown by a single event (Kundmueller, n.d.) [3].

In her analysis, the individual acknowledges the divergence between theoretical constructs and the actual implementation of customary international law. The meaning of the term "general" in the broader aspect of customary international law is best described by broad generalizations, which are of limited usefulness in defining relevant rules due to their dependence on specific circumstances. The concept of "practice" has engendered a scholarly discourse over the definition and limits of State practice. As mentioned above, the address has yielded several specific proposals, although it has yet to achieve a prevailing agreement. In the article titled "Custom, Authority, and the Authority of Rules," Michael Byers examines the ongoing discourse around the determination of State practice and its boundaries. Byer (year) characterizes the division between authors who maintain that State practice is limited to actions alone and others who advocate for a more expansive interpretation. The phenomenon of polarization is evident in the ongoing debate about how resolutions and declarations issued by international bodies contribute to the development of customary international law. According to Byers, several non-industrial Nations and a considerable number of scholars have argued that resolutions and declarations have significance as forms of State practice that can shape customary international law, either by fostering innovation or by serving as indicators of such norms. However, criticism has been expressed towards this notion by several influential states and some authors (Kundmueller, n.d.) [3].

Case study examples of Customary International Law

In the case involving the Genocide in Guatemala, the Spanish Constitutional Court conducted an in-depth analysis of a wealth of foreign law before concluding that the concept of universal jurisdiction was not contingent on establishing a 'connection' with national interests. They came to this result after deciding that the case should be heard in Spain. The German Constitutional Court laid out its two-pronged approach to determining customary international law in the Yemeni Citizens Extradition case and then delved deeply into the case law of other countries to determine whether or not a suspect's having been lured out of their home country would be a bar to extradition. When considering whether there is a waiver to state resistance to severe breaches of human rights based on customary law, the Polish supreme court in the Natoniewski case examined domestic statutes and court decisions (i.e., the actual state practice), treaties, ICJ case law, ECtHR case law, and doctrine (Ryngaert & Hora Siccama, 2018) [4].

Comparison with domestic courts of justice

When it comes to determining what constitutes customary international law, the majority of domestic courts have a deferential stance toward international courts. Individuals may choose to do so due to their deference to international courts' enhanced expertise and legitimacy in international law matters. This inclination may stem from their perception of international courts occupying a higher position within the judicial hierarchy. Additionally, individuals may be motivated by their desire to ensure the consistent implementation of international laws across various jurisdictions. Once again, there are several instances. While domestic courts are not obligated to see foreign case law as legally obligatory, it is evident that they regard it as having persuasive influence, similar to how the unfamiliar Court of Justice (ICJ) has interpreted pertinent case law from the International Criminal Tribunal for the former Yugoslavia (ICTY) in the Bosnia Holocaust Case. Nevertheless, domestic courts increasingly rely on international courts to determine customary international law standards, similar to how they rely on legal theory for this purpose. Typically, international courts refrain from engaging in an exhaustive legal decision process when dealing with a particular issue. Domestic courts may not give much thought to the fact that foreign courts, at times, rely on inadequate evidence to support their technique of law formation. In light of the considerations mentioned above, it is reasonable to anticipate that domestic courts would exhibit deference towards international courts due to the latter's authoritative standing, which is rooted in their greater competence. Local courts may choose not to utilize relevant international judiciary procedures when determining a customary international law norm. This does not necessarily mean that they replace the world's courts' process of determining the law with their own. (Ryngaert & Hora Siccama, 2018) [4].

Three distinct possibilities may be identified. Initially, domestic courts may sometimes express concern over the tendency of international courts to declare legal principles without engaging in a comprehensive analysis to establish their validity. FOR EXAMPLE, the U.S. Court of Appeals declined to consider pertinent rulings of the International Court of Justice (ICJ) and the European Court of Human Rights (ECHR) due to the belief that these tribunals lack the authority to establish legally binding traditional standards of international law. Additionally, the court asserted that the findings of these tribunals cannot be regarded as the primary sources of international law. The perspective mentioned above may first seem comprehensible, although it poses a risk to the consistent implementation of established standards and prompts consideration as to whether domestic courts are more competent than international tribunals in adjudicating matters of international law. Furthermore, domestic courts have the discretion to abstain from enforcing a customary rule recognized by an international court if it conflicts with constitutional rights under domestic law, which are regarded as superior to any other legal standards (Ryngaert & Hora Siccama, 2018) [4].

This perspective is acceptable because the constitutional law standard is 'consubstantial' with a different international norm. In conclusion, domestic courts can assert that legal principles acknowledged by international tribunals, while entirely legitimate in inter-state interactions, lack significance in domestic law. Similarly, the German Constitutional Court determined that using the concept of 'necessity' as a defense in international law cannot be used to defend the failure to fulfill contractual responsibilities owed to private debtors. This ruling was made because such obligations are governed by domestic personal law, while decisions in international courts pertain to legal relationships under the laws of other nations. Similarly, a French appeals court determined that it is possible to deduce from the International Court of Justice (ICJ) jurisprudence that customary international rules are exclusively applicable to states. The invocation of international law for or against private parties in domestic contexts can significantly limit the domestic application of global law (Ryngaert & Hora Siccama, 2018) [4].

Constitutional Basis

From the inception of the United States, customary international law has been integrated into civil and criminal cases, either directly or indirectly. However, it is worth noting that the Constitution only explicitly mentions the "law of nations" about a specific Congressional power, namely Article I, Section 8, Clause 10. However, it is too reductionist to posit that the inclusion of customary international law must have a sufficient constitutional foundation. Furthermore, it is overly reductionist to assert that customary international law can be incorporated solely as a form of "common law." This perspective fails to acknowledge the explicit authority of Congress to include such law within a statutory framework or, more specifically (as recognized by the Supreme Court in some instances), to incorporate such law "by a reference."

Contrary to the claims mentioned above, it is apparent that several amendments to the United States Constitution, particularly the ninth amendment, are designed to uphold human rights rooted in customary international law. Consequently, it is plausible to incorporate various traditional rights using specific constitutional amendments. Therefore, in these particular cases, distinct constitutional foundations exist for incorporation, which result in a status that is significantly unlike that of ordinary common law or even a legislative enactment. Moreover, it is widely acknowledged that customary international law, as a whole, is an integral component of the legal framework inside the United States. The user's text needs longer to be rewritten academically (Paust, 1990) [5].

Therefore, customary international law has significance about the obligation and authority of the Executive, as outlined in Article II, section 3, to ensure the faithful execution of laws. The Supreme Court and other legal decisions about the exercise of Presidential war powers have acknowledged the binding nature of customary international law on the Executive branch. Furthermore, it has been noted by court decisions and the views of Attorneys General that customary international law can potentially restrict the exercise of Congressional authority that would otherwise be deemed legitimate. As a result, it may serve as a tool in evaluating the scope of constitutional grants of power. Moreover, customary international law may play a significant role in effectively interpreting different forms of Congressional authority, enhancing its functionality. The second type of incorporation may involve an amplification of the power given to Congress under Article One, section 8, clause 18 to pass laws that are "necessary and proper" for implementing all other powers granted by the Declaration of Independence to the United States administration or any of its departments or officers. The user's text needs longer to be rewritten academically (Paust, 1990) [5].

Despite common misconception, courts have the inherent authority to determine the applicable customary international law in instances that would otherwise be brought before them. Article III, section 2, clause 1 of the United States Constitution recognizes that issues concerning customary international law may arise within other provisions of the Constitution (as indicated above) or treaties and under "the Laws of the United States." The initial Chief Justice of the United States acknowledged that "the rules of the United States of America" included the traditional "law of nations." Although Article III provides an explicit legal basis for treaties, the term "Laws of the United States" in the same article provides a fundamental basis for judicial integration of customary international law. Treaties and "the Laws of the United States" are "the final Law of the Land," as stated in Article VI, clause 2 of the Constitution (Paust, 1990) [5].

Discussion

Customary international law often originates from the general and in-line practice of nations, which they adhere to out of a feeling of legal responsibility. The Reaffirmation (Third) of Foreign Relations Law 1987 officially embraced the stance that customary international law and international treaties of the United States have the status of law inside the United States and take precedence over the laws of individual states. Advocates of this standpoint often draw to the well-referenced comment made by the Supreme Court in Paquete Habana, which asserts that "international law is an integral component of our legal system [8]." According to a federal circuit court ruling, it was said that the law of nations is an essential component of the general common law and was incorporated into the common law of the United States with the ratification of the Constitution [9]. Furthermore, the court affirmed that federal jurisdiction over international law issues is unambiguous. The sweeping statements disregard previous rulings of the Supreme Court, which have explicitly stated or asserted that some matters involving the customary law of countries do not fall within the purview of the United States Constitution or its laws [10]. Under contemporary perspectives, scholars Curtis Bradley and Jack Goldsmith, as revisionist commentators, initially argued that the modern position inaccurately portrayed the pre-Erie case law and did not endure the court's declaration that there exists no federal general common law [11]. For most of American history, according to Bradley and Goldsmith, customary international law was treated as "general ordinary law [12]." From a constitutional perspective, it is necessary for legislation to be officially recognized at the federal level by incorporation by the political branches [13]. Subsequently, Bradley, Goldsmith, and Prof David Moore expressed their support that some jurisdiction-giving acts might be interpreted as affording authority for the judiciary to incorporate customary international law as federal law [14]. In the specific context of war powers following the events of 9/11, Bradley and Goldsmith expressed their viewpoint that while the international conventions of war serve as a framework for defining the scope of authorization granted by the Authorization for Use of Military Force (AUMF), it should be noted that the AUMF generally permits actions that align with the laws of war, rather than explicitly incorporating the restrictions outlined in these laws.

In other words, according to their perspective, international rules about warfare augment the President's authority during times of conflict without naturally imposing any limitations on this authority [15]. This position stems from their viewpoint that international law should be understood as a body of general law rather than positivist law, in which the United States has played a role in its formation. Moreover, they argue that there is a compelling case to be made that the President possesses constitutional authority within the domestic sphere to breach customary international law. Scholarly discourse proposing the potential application of customary international law in line with conflict-of-law principles maintains that customary international law should

be seen as a kind of "general" law [17]. This is probably due to confusion between the different past sections of the law of nations, a legal positive thinking that is too limited in scope, an Anglo-centric view of "common law" in the law of nations, or worry about the proper place or impact of modern international human rights law in the United States [18]. The field of international law relating to human rights emerged primarily in the aftermath of World War II [19]. It aims to establish the rights and responsibilities among sovereign nations and people within their respective territories and jurisdictions [20]. This legal framework fundamentally differs from the traditional notion of international-state law that was prevalent during the framing of the Constitution. Consequently, a distinct legal analysis is needed. The comprehension of the position of conventional customary international law, namely international rules governing war, inside the legal framework of the United States should be guided by the inter-nation-state notion of international law [21].

Conclusion

In sum, U.S. court decisions have made several significant acknowledgments about customary international law's nature, origins, and position. Many legal foundations are pertinent to the proper integration of customary international law. This body of law has been integrated in various ways, in both direct and indirect ways, to serve numerous objectives, such as acknowledging and regulating rights, obligations, and authorities. Customary international law has significance as the "law of the United States," as defined by several constitutional clauses, impacting the limitation and augmentation of executive, legislative, and judicial authorities. According to the Constitution, specifically the third paragraph of Article III, section 2, clause one and Article VI, clause 2, the judiciary is obligated to acknowledge and interpret customary international law in cases that fall within their jurisdiction, as long as there is no conflict with any other constitutional provision. The temperature is 6 degrees Celsius. Ultimately, it is essential to acknowledge that we are active contributors to the establishment and development of legislation. However, it is worth considering the significant impact and achievements that those who participated may attain.

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6. Restatement (third) of foreign relations law § 102(2) (Am. law inst. 1987); see also Statute of the International Court of Justice art. 38(1)(b), June 26, 1945, 59 Stat. 1055, 1060 (defining “international custom” as “a general practice accepted as law”).
7. Restatement (third) of foreign relations law § 111(1); id. CMT. d.
8. Vázquez, supra note 36, at 1516 “The canonical expression of the modern position is the statement in The Paquete Habana 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.’” (quoting The Paquete Habana, 175 U.S. 677, 700 (1900) (footnote omitted) (alteration in original))).
9. Filartiga v. Pena-Irala, 630 F.2d 876, 886–87 (2d Cir. 1980).
10. Am. Ins. Co. v. 356 Bales of Cotton (Canter), 26 U.S. (1 Pet.) 511, 545 (1828) (referring to admiralty law); see also N.Y. Life Ins. Co. v. Hendren, 92 U.S. 286, 286–87 (1875) (holding no extant issue of federal law because “the general laws of war, as recognized by the law of nations applicable to this case, were [not] in any respect modified or suspended by the constitution, laws, treaties, or executive proclamations, of the United States” (emphasis added)).
11. Bradley & Goldsmith, supra note 27, at 868, 870.
12. Id. at 850.
13. Id. at 868 (“The Supreme Court’s modern federalism jurisprudence suggests the broader conclusion that [customary international law] is never supreme federal law in the absence of some authorization from the federal political branches.”).
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15. Curtis A. Bradley & Jack L. Goldsmith, Congressional Authorization and the War on Terrorism, 118 HARV. L. REV. 2047, 2097 (2005).
16. For a different view, see generally John C. Dehn, The Commander-in-Chief and the Necessities of War: A Conceptual Framework, 83 TEMP. L. REV. 599 (2011) (distilling and explaining doctrines of military and public necessity from the Supreme Court’s wartime jurisprudence, both of which are limited by specifically applicable international or domestic law).
17. Bradley & Goldsmith, supra note 64, at 2099.
18. Young, supra note 32, at 370; see also William A. Fletcher, Lecture, International Human Rights in American Courts, 93 V.A. L. REV. 653, 672 (2007).
19. Bradley, supra note 30, at 809 (“The modern position has become widely accepted only in the last twenty years, and to date it has been invoked primarily in international human rights litigation. The potential consequences, however, are far greater than merely opening the. federal courts to alien–alien suits under the

Alien Tort Statute."); see also Bellia & Clark, supra note 31, at 744 ("Modern and revisionist positions have attempted to use historical materials and judicial precedents to formulate a uniform rule governing how federal courts should treat all rules of customary international law, be they traditional sovereignty-respecting rules or later-emerging sovereignty-limiting rules.").

20. The first international human rights instrument purporting to articulate general human rights shared by all persons was the G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948), http://www.un.org/en/universal-declaration-human-rights.
21. International Covenant on Civil and Political Rights, supra note 41, art. 2(1) ("Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant").