

Bases of Jurisdiction

Quick Reference Rules of Law

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Al-Skeini v. Secretary of State for Defence

Families of deceased (P) v. United Kingdom (D)

U.K. House of Lords, [2007] UKHL 26.

NATURE OF CASE: Wrongful death proceedings under international convention.**FACT SUMMARY:** The families (P) of six Iraqi civilians who were killed in Basra in 2003 where the United Kingdom (D) was an occupying power appealed a decision by U.K. authorities not to conduct an independent investigation into the circumstances of the deaths, arguing that the Human Rights Act 1998 has extraterritorial application where the United Kingdom (D) is an occupying power.**RULE OF LAW**

The Human Rights Act 1998 applied to acts of a U.K. public authority performed outside its territory only where the victim was within the jurisdiction of the United Kingdom (D) for purposes of the European Convention on Human Rights.

FACTS: Six Iraqi civilians were killed in Basra in 2003 where the United Kingdom (D) was an occupying power. Five of them were shot dead by members of U.K. armed forces in the course of patrol operations, and the sixth was arrested and died in a military base. U.K. authorities refused to conduct an independent investigation into the circumstances of the deaths. The U.K. government argued that the deaths occurred outside the territory of the United Kingdom (D), and consequently the European Convention for Human Rights, which imposes an obligation for independent and thorough investigation, does not apply. The families (P) of the deceased sued.**ISSUE:** Did the Human Rights Act 1998 apply to acts of a U.K. public authority performed outside its territory only where the victim was within the jurisdiction of the United Kingdom (D) for purposes of the European Convention on Human Rights?**HOLDING AND DECISION:** (Rodger of Earlsferry, L. [for the majority]) Yes. The Human Rights Act 1998 applied to acts of a U.K. public authority performed outside its territory only where the victim was within the jurisdiction of the United Kingdom (D) for purposes of the European Convention on Human Rights. The rule of statutory construction adopted by Lord Bingham must be taken against the background of international law, and jurisdiction under the HRA should be co-extensive with the interpretation given by the European Court to jurisdiction under the Convention. The Convention applies outside the territory of the United Kingdom (D) where the deceased were linked to the United Kingdom (D) when they were killed. The HRA does not have a more restrictive jurisdictional scope than the Convention rights it was meant to implement. With the exception of the

claimant who had been mistreated inside a British military detention unit, the claimants were not within U.K. jurisdiction within the meaning of the Convention.

DISSENT: (Bingham of Cornhill, L.) No. The Human Rights Act 1998 has no extraterritorial application. To succeed in this case, the claimants have to show that a public authority acted in contravention of the European Convention on Human Rights and the Human Rights Act 1998. Typically, claims relate to conduct within the borders of contracting states, such as the United Kingdom (D), and the only question is whether a claimant's Convention right has been violated, and if so, by whom. Here, however, the alleged violations took place in Iraq, which is not a contracting state. The rule of statutory construction urged by the U.K. government is that unless contrary intention appears, Parliament should be taken to intend an act to extend to each territory of the United Kingdom (D) but not to any territory outside the United Kingdom (D). In passing the HRA, Parliament could not have intended to legislate for foreign lands, because between 1953 and 1997, British forces were almost always involved in hostilities or peacekeeping activities in some part of the world, and such situations must have been on the minds of members of Parliament when they passed the HRA. Had they intended to legislate for activity by British soldiers in foreign lands, they would have expressly stated as much.**ANALYSIS**

There were actually four Lords forming the majority (Lord Rodger included), and Lord Bingham was the sole dissenter. Lord Rodger's basic rule is that the presumption against extraterritoriality must be seen against the background of international law, that Parliament had a legitimate interest in regulating the conduct of its citizens, and therefore could intend its legislation to affect their position in other states.

Quicknotes**INTERNATIONAL LAW** The body of law applicable to dealings between nations.**JURISDICTION** The authority of a court to hear and declare judgment in respect to a particular matter.**STATUTORY CONSTRUCTION** The examination and interpretation of statutes.**United States v. Aluminum Co. of America**

Federal government (P) v. Corporation (D)

148 F.2d 416 (2d Cir. 1945).

NATURE OF CASE: Appeal from a prosecution for violation of the Sherman Act.**FACT SUMMARY:** The United States (P) brought this action against the Aluminum Co. of America (D) and Aluminum Limited (D), a Canadian corporation formed to take over the properties of Aluminum Co. of America (D) outside the United States, for violation of the Sherman Act by the participation of each company in a foreign cartel called the Alliance.**RULE OF LAW**

Any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders that the state reprehends.

FACTS: A foreign cartel called Alliance, a Swiss corporation, was created by an agreement entered into in 1931 among a French corporation, two German corporations, one Swiss corporation, one British corporation, and Aluminum Limited (D). Aluminum Limited (D) was a Canadian corporation formed to take over properties of the Aluminum Co. of America (D) outside the United States. The original 1931 agreement provided for the issuance of shares to the signatories and a quota of production for each share, the shareholders to be limited to the quantity measured by the number of shares held by each. Alliance was free to sell at any price it chose. No shareholder was to obtain or sell aluminum produced by anyone not a shareholder. Another agreement in 1936 abandoned the system of unconditional quotas and substituted a system of royalties. The shareholders agreed that imports into the United States should be included in the quotas. Thereafter, the United States (P) brought this action against the Aluminum Co. of America (D) and Aluminum Limited (D) for violation of the Sherman Act that prohibits every contract, combination, or other conspiracy in restraint of trade among the several states or with foreign nations. The district court found that the 1931 and 1936 agreements did not suppress or restrain the exportation of aluminum to the United States (P) and that America (D) was not a party to the Alliance. The United States (P) appealed.**ISSUE:** May a state impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders?**HOLDING AND DECISION:** (L. Hand, Swan, and A. Hand, J.) Yes. It is settled law that any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within

its borders that the state reprehends. Under the Sherman Antitrust Act, both the 1931 and the 1936 agreements of the Alliance would clearly have been unlawful had they been made within the United States (P); and, though made abroad, both are unlawful if they were intended to affect imports and did affect them. The evidence shows that the shareholders of Alliance intended to restrict imports, thus shifting the burden of proof of whether they in fact restricted imports into the United States to Limited (D). In the first place, a depressant on production, as was encompassed within the 1936 agreement, which applies generally, may be assumed to distribute its effect evenly upon all markets. Again, when the parties in the instant case specifically made the depressant apply to a given market, there is reason to suppose that they expected the effect to be a lessening of what would otherwise have been imported. Since the underlying doctrine of the Sherman Act was that all factors that contribute to determining prices must be kept free to operate unhampered by agreements, this court must conclude that the 1936 agreement violated the Act.

ANALYSIS

The general words of the Sherman Antitrust Act should not be read without regard to the limitations customarily observed by nations upon the exercise of their powers. Thus, one should not impute to Congress an intent to punish all whom its courts can catch, for conduct that has no consequences within the United States. There may be agreements made beyond the borders of the United States not intended to affect imports or exports that do affect them. Almost any limitation of the supply of goods in Europe, for example, or in South America, may have repercussions in the United States if there is trade between the two. Yet, when one considers the international complications likely to arise from an effort in the United States to treat such agreements as unlawful, it is safe to assume that Congress certainly did not intend the Sherman Antitrust Act to cover them.

Quicknotes**ANTITRUST ACTS** Federal and state statutes to protect trade and commerce from unlawful restraints, price discrimination, price fixing, and monopolies.**CARTEL** An agreement between manufacturers or producers of the same product so as to form a monopoly.

Hartford Fire Insurance Co. v. California

Foreign-based reinsurer (D) v. State (P)

509 U.S. 764 (1993).

NATURE OF CASE: Appeal from a judgment as to jurisdiction and application of domestic law to a foreign company in a federal antitrust action.

FACT SUMMARY: Claiming that Hartford Fire Insurance Co. (D) and other London-based reinsurers (D) had allegedly engaged in unlawful conspiracies to affect the market for insurance in the United States, California (P) instituted an action against Hartford (D), under the Sherman Act, which the reinsurers (D) sought to dismiss under the principle of international comity.

**RULE OF LAW**

Where a person subject to regulation by two states can comply with the laws of both, jurisdiction may be exercised over foreign conduct since no conflict exists.

FACTS: California (P) brought an action against Hartford Fire Insurance Co. (D) and other London-based reinsurers (D) alleging that they had engaged in unlawful conspiracies to affect the market for insurance in the United States and that their conduct in fact produced substantial effect, thus violating the Sherman Act. Hartford (D) argued that the district court should have declined to exercise jurisdiction under the principle of international comity. The court of appeals agreed that courts should look to that principle in deciding whether to exercise jurisdiction under the Sherman Act but that other factors, including Hartford's (D) express purpose to affect U.S. commerce and the substantial nature of the effect produced, outweighed the supposed conflict, requiring the exercise of jurisdiction in this case. Hartford (D) appealed.

ISSUE: Where a person subject to regulation by two states can comply with the laws of both, may jurisdiction be exercised over foreign conduct since no conflict exists?

HOLDING AND DECISION: (Souter, J.) Yes. Where a person subject to regulation by two states can comply with the laws of both, jurisdiction may be exercised over foreign conduct since no conflict exists. The Sherman Act applies to foreign conduct that was meant to produce and does in fact produce some substantial effect in the United States. Even assuming that a court may decline to exercise Sherman Act jurisdiction over foreign conduct, international comity would not prevent a U.S. court from exercising jurisdiction in the circumstances alleged here. Since Hartford (D) does not argue that British law requires it to act in some fashion prohibited by the law of the United States or claim that its compliance with the laws of both countries is otherwise impossible, there is no conflict with British law. Since there is no irreconcilable

conflict between domestic and British law, the reinsurers (D) may not invoke comity. Affirmed.

DISSENT: (Scalia, J.) The district court had subject-matter jurisdiction over the Sherman Act claims, and it is now well established that the Sherman Act applies extraterritorially, despite the presumption against extraterritoriality. But, even where the presumption against extraterritoriality does not apply, statutes should not be interpreted to regulate foreign persons or conduct if that regulation would conflict with principles of international law. The activity at issue here took place primarily in the United Kingdom, and Hartford (D) and the other reinsurers (D) are British subjects having their principal place of business or residence outside the United States. Great Britain has established a comprehensive regulatory scheme governing the London reinsurance markets and clearly has a heavy interest in regulating the activity. Finally, § 2(b) of the McCarran-Ferguson Act allows state regulatory statutes to override the Sherman Act in the insurance field, subject only to a narrow exception, suggesting that the importance of regulation to the United States is slight.

ANALYSIS

Black's Law Dictionary, p. 242 (5th ed. 1979), defines "comity of nations" as "[t]he recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws." When it enacted the Foreign Trade Antitrust Improvements Act of 1982 (FTAIA), Congress expressed no view on the question of whether a court with Sherman Act jurisdiction should ever decline to exercise such jurisdiction on grounds of international comity, an issue that the Court declined to address in this case. Justice Scalia endorsed the approach of the Restatement (Third) of Foreign Relations Law, advocating that a nation having some basis for jurisdiction should nonetheless refrain from exercising that jurisdiction when the exercise of such jurisdiction is unreasonable.

Quicknotes

ANTITRUST LAW Body of federal law prohibiting business conduct that constitutes a restraint on trade.

COMITY A rule pursuant to which courts in one state give deference to the statutes and judicial decisions of another.

Blackmer v. United States

Citizen (D) v. Government (P)

284 U.S. 421 (1932).

NATURE OF CASE: Appeal from contempt conviction.

FACT SUMMARY: Blackmer (D) was found to be in contempt of court for failing to respond to subpoenas served upon him in France requiring his appearance in the United States.

**RULE OF LAW**

For the exercise of judicial jurisdiction in personam, there must be due process.

FACTS: Blackmer (D) was a U.S. (P) citizen who resided in France. He was served subpoenas to appear in court as a witness in a criminal trial in the United States. When he failed to respond to the subpoenas, contempt proceedings were initiated and Blackmer (D) was found guilty and fined. Blackmer (D) appealed, claiming the federal statute was unconstitutional.

ISSUE: For the exercise of judicial jurisdiction in personam, must there be due process?

HOLDING AND DECISION: (Hughes, C.J.) Yes. For the exercise of judicial jurisdiction in personam, there must be due process. Due process requires appropriate notice of the judicial action and an opportunity to be heard. The statute provides that when the presence of a citizen of the United States who resides abroad is required in court, a subpoena be issued addressed to a consul of the United States. The consul must serve the subpoena on the witness personally with a tender of traveling expenses. Upon proof of such service and of the failure of the witness to appear, a court order may be issued. If the witness fails to comply with the court order, the court may adjudge the witness guilty of contempt. Congress acted pursuant to its authority in enacting the statute and it could prescribe a penalty to enforce it. Affirmed.

ANALYSIS

The Court did not find the statute to be unconstitutional. Blackmer (D) alleged that there was inadequate notice. Since Blackmer (D) retained his U.S. citizenship, he was still subject to U.S. authorities.

Quicknotes

CONTEMPT An act of omission that interferes with a court's proper administration of justice.

DUE PROCESS RIGHTS The constitutional mandate requiring the courts to protect and enforce individuals' rights

and liberties consistent with prevailing principles of fairness and justice and prohibiting the federal and state governments from such activities that deprive its citizens of a life, liberty, or property interest.

IN PERSONAM JURISDICTION The jurisdiction of a court over a person as opposed to his interest in property.

SERVICE OF PROCESS The communication of reasonable notice of a court proceeding to a defendant in order to provide him with an opportunity to be heard.

United States v. Yousef

Federal government (P) v. Convicted terrorist (D)

327 F.3d 56 (2d Cir. 2003).

NATURE OF CASE: Appeal of criminal conviction.**FACT SUMMARY:** Ramzi Yousef (D), Wali Khan Amin Shah (D), and Abdul Hakim Murad (D) appealed from judgments of conviction entered in the United States District Court for the Southern District of New York on charges relating to a conspiracy to bomb twelve U.S. commercial airliners in Southeast Asia.**RULE OF LAW**

The U.S. government (P) did not exceed its authority by trying an alleged terrorist in the United States, when the criminal conduct occurred outside the United States, but involved its airliners.

FACTS: Ramzi Yousef (D) entered Manila under an assumed name in order to execute a plan to attack U.S. airliners. Under the plan, bombs would be placed aboard twelve U.S. aircraft with routes in Southeast Asia by five individuals. The conspirators would board the plane, assemble the bomb while in flight, and then exit the plane during its first layover. The plot was discovered two weeks before the intended execution, when Yousef (D) and Murad (D) accidentally started a fire while burning chemicals in their Manila apartment. The fire department involved the police department, which found the bomb components, a laptop with notes on the plan, and other evidence. Philippine authorities arrested Murad (D) and Shah (D), but Shah (D) escaped and evaded capture until a year later. Yousef (D) fled to Pakistan, but was captured the following month. Through a multi-count indictment, Yousef (D), Murad (D), and Shah (D) were charged with various crimes related to their conspiracy to bomb the planes. A jury found all three guilty on all counts.

ISSUE: Did the U.S. government (P) exceed its authority by trying an alleged terrorist in the United States, when the criminal conduct occurred outside the United States, but involved its airliners?

HOLDING AND DECISION: [Judge not stated in casebook excerpt.] No. The U.S. government (P) did not exceed its authority by trying an alleged terrorist in the United States, when the criminal conduct occurred outside the United States but involved its airliners. Jurisdiction is supported by both domestic and international law. Because the federal court had jurisdiction over the substantive crimes charged, including attempted destruction of aircraft in the special aircraft jurisdiction of the United States, it also had derivative jurisdiction over the conspiracy charges. Congress is presumed to intend extraterritorial application of criminal statutes where the nature of the crime does not

depend on the locality of the criminal acts and where restricting the statute to U.S. territory would severely diminish the statute's effectiveness. With respect to whether customary international law provides a basis for jurisdiction over the case, United States law is not subordinate to customary international law or necessarily subordinate to treaty-based international law. Moreover, customary international law does provide a substantial basis for jurisdiction by the United States through the "passive personality principle," because the case involved a plot to bomb U.S. aircraft that would have been carrying U.S. citizens and crews destined for cities in the United States. Jurisdiction is also appropriate under the "objective territorial principle" because the purpose of the attack was to influence U.S. foreign policy. Finally, Yousef's (D) conduct constitutes conduct proscribed by the Montreal Convention, and his prosecution and conviction is both consistent with and required by the United States' treaty obligations and domestic law.

ANALYSIS

The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft generally regulates jurisdiction over crimes committed on aircraft. International law generally requires that there be a genuine link between the state and the aircraft in order for the state to lawfully assert jurisdiction over crimes committed on board.

Quicknotes

INDICTMENT A formal written accusation made by a prosecutor and issued by a grand jury, charging an individual with a criminal offense.

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

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

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

United States v. Vasquez-Velasco

United States (P) v. Foreign drug trafficker (D)

15 F.3d 833 (1994).

NATURE OF CASE: Appeal of criminal conviction.

FACT SUMMARY: Javier Vasquez-Velasco (D), a member of a drug cartel in Guadalajara, and several other members, beat and killed [John] Walker [an American citizen writing a novel in Mexico] and [Alberto] Radelat [a photographer and U.S. legal resident]. He was convicted under U.S. law. On appeal, Vasquez-Velasco (D) argued that U.S. penal laws do not apply extraterritorially.

**RULE OF LAW**

Extraterritorial application of a penal statute to the murder of a U.S. citizen mistaken for a federal agent is consistent with principles of international law.

FACTS: *United States v. Felix-Gutierrez*, 940 F.2d 1200 (9th Cir. 1991), cert. denied, 508 U.S. 906 (1993), a case in which a defendant was convicted of kidnapping and murdering Enrique Camarena, an American Drug Enforcement Agency (DEA) agent, and Alfredo Zavala, a DEA informant, was the basis for the appeal by the defendant in this case, Javier Vasquez-Velasco (D). Vasquez-Velasco (D), a member of a drug cartel in Guadalajara, and several other members, beat and killed [John] Walker [an American citizen writing a novel in Mexico] and [Alberto] Radelat [a photographer and U.S. legal resident]. At trial, the U.S. government (P) argued that Vasquez-Velasco (D) and his three co-defendants committed the crimes to further their positions in a Guadalajara drug cartel. The murders Velasco (D) was charged with were allegedly retaliatory actions against a DEA crackdown. He was convicted in a jury trial of committing violent crimes in aid of a racketeering enterprise in violation of 18 U.S.C. § 1959. On appeal, Vasquez-Velasco (D) argued that U.S. penal laws do not apply extraterritorially.

ISSUE: Is the extraterritorial application of a penal statute to the murder of a U.S. citizen mistaken for a federal agent consistent with principles of international law?

HOLDING AND DECISION: (Fletcher, J.) Yes. Extraterritorial application of a penal statute to the murder of a U.S. citizen mistaken for a federal agent is consistent with principles of international law. International law generally permits the exercise of extraterritorial jurisdiction under the objective territorial principle, under which jurisdiction is asserted over acts performed outside the United States (P) that produce detrimental effects within the United States (P), and the protective principle, under which jurisdiction is asserted over foreigners for an act committed outside the United States (P) that may impinge on the territorial integrity, security, or political independence

of the United States (P). Extraterritorial application of 18 U.S.C. § 1959 to violent crimes associated with drug trafficking is reasonable under international law principles, since it is a serious and universally condemned offense. Despite the fact that the crimes in this case did not involve the murder of a DEA agent, extraterritorial jurisdiction is still appropriate because, according to the government's theory, the cartel members mistook Walker and Radelat for DEA agents. As in *Felix-Gutierrez*, the crime was directed against the United States (P).

ANALYSIS

The objective territorial and protective principles apply because the defendant in this case murdered the two U.S. citizens on the mistaken belief they were DEA agents, and their murders might intimidate the DEA and local police and drug agencies, who might otherwise cooperate with the DEA. The case therefore turns on the defendant's subjective beliefs; if the government had been unsuccessful in its argument that the murders were committed as retaliation against the DEA, extraterritorial jurisdiction would be harder to apply.

Quicknotes

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

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

RACKETEERING A conspiracy organized for the commission or attempted commission of extortion or coercion.

**Regina v. Bartle, Bow Street Stipendiary Magistrate and
Commissioner of Police, Ex parte Pinochet**

Government (P) v. Alleged torturer (D)

U.K. House of Lords, 2 W.L.R. 827, 38 I.L.M. 581 (1999).

NATURE OF CASE: Appeal from arrest and extradition order.**FACT SUMMARY:** Pinochet (D) claimed that he could not be extradited because he was not guilty of any crime under English law.**RULE OF LAW**

Torture is an international crime.

FACTS: An English magistrate issued an arrest warrant for Pinochet (D), the former head of state of Chile, at the request of a Spanish investigating judge for extradition. The House of Lords found that Pinochet (D) could not claim immunity in regard to torture that had been made a universal crime by the International Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment of 1984. Pinochet (D) claimed torture was not strictly an international crime in the highest sense.**ISSUE:** Is torture an international crime?**HOLDING AND DECISION:** (Lord Browne-Wilkinson) Yes. Torture is an international crime. The Torture Convention was agreed not to create an international crime that had not previously existed but to provide an international system under which the international criminal—the torturer—could find no safe haven. All state parties are required to prohibit torture on their territory and to take jurisdiction over any alleged offender who is found within their territory. Torture is to be treated as an extraditable offense and will be considered to have been committed not only in the place where it occurred but also in the state where either the alleged offender or victim is a national.**ANALYSIS**

The Torture Convention created an exception to the otherwise applicable immunity of present and former heads of state from criminal process. Pinochet (D) ultimately was found to be too sick to stand trial. He was allowed to return to Chile.

Quicknotes**EXTRADITION** The surrender by one state or nation to another of an individual allegedly guilty of committing a crime in that area.**IMMUNITY** Exemption from a legal obligation.**United States v. Yousef**

Federal government (P) v. Convicted terrorist (D)

327 F.3d 56 (2d Cir. 2003).

NATURE OF CASE: Appeal of criminal conviction.**FACT SUMMARY:** Ramzi Yousef (D), Wali Khan Amin Shah (D), and Abdul Hakim Murad (D) appealed from judgments of conviction entered in the United States District Court for the Southern District of New York on charges relating to a conspiracy to bomb twelve U.S. commercial airliners in Southeast Asia. The district court held that the principle of universal jurisdiction was applicable, because Yousef's (D) conduct qualified as a "terrorist" act.**RULE OF LAW**

Universal jurisdiction arises under customary international law only where crimes (1) are universally condemned by the community of nations, and (2) by their nature occur either outside of a state or where there is no state capable of punishing, or competent to punish, the crime.

FACTS: Ramzi Yousef (D) entered Manila under an assumed name in order to execute a plan to attack U.S. airliners. Under the plan, bombs would be placed aboard twelve U.S. aircraft with routes in Southeast Asia by five individuals. The conspirators would board the plane, assemble the bomb while in flight, and then exit the plane during its first layover. The plot was discovered two weeks before the intended execution, when Yousef (D) and Murad (D) accidentally started a fire while burning chemicals in their Manila apartment. The fire department involved the police department, which found the bomb components, a laptop with notes on the plan, and other evidence. Philippine authorities arrested Murad (D) and Shah (D), but Shah (D) escaped and evaded capture until a year later. Yousef (D) fled to Pakistan, but was captured the following month. Through a multi-count indictment, Yousef (D), Murad (D), and Shah (D) were charged with various crimes related to their conspiracy to bomb the planes. A jury found all three guilty on all counts. The district court held that the principle of universal jurisdiction was applicable, because Yousef's (D) conduct qualified as a "terrorist" act.**ISSUE:** Does universal jurisdiction arise under customary international law only where crimes (1) are universally condemned by the community of nations, and (2) by their nature occur either outside of a state or where there is no state capable of punishing, or competent to punish, the crime?**HOLDING AND DECISION:** [Judge not stated in casebook excerpt.] Yes. Universal jurisdiction arises under

customary international law only where crimes (1) are universally condemned by the community of nations, and (2) by their nature occur either outside of a state or where there is no state capable of punishing, or competent to punish, the crime. Universal jurisdiction is historically restricted to piracy, war crimes, and crimes against humanity, and unlike those offenses, "terrorism" does not have a precise definition and has not achieved universal condemnation.

ANALYSIS

One of the biggest impediments to defining "terrorism" is state-sponsored terrorism, or acts of state employed to effect coercion. The terrorism that is commonly understood in the United States is not similarly defined in many parts of the world. Whenever the acts of terrorism are a case's focus—whether one involving universal jurisdiction or another issue—courts will be hesitant to impose a definition.

Quicknotes**INDICTMENT** A formal written accusation made by a prosecutor and issued by a grand jury, charging an individual with a criminal offense.**INTERNATIONAL LAW** The body of law applicable to dealings between nations.**JURISDICTION** The authority of a court to hear and declare judgment in respect to a particular matter.

United States v. Alvarez-Machain

Federal government (P) v. Foreign national (D)

504 U.S. 655 (1992).

NATURE OF CASE: Review of dismissal of federal indictment.**FACT SUMMARY:** Alvarez-Machain (D), abducted from Mexico for trial in the United States (P) by Drug Enforcement Agency (DEA) agents, contended that his abduction was illegal because of an extradition treaty between the United States (P) and Mexico.**RULE OF LAW**

The presence of an extradition treaty between the United States and another nation does not necessarily preclude obtaining a citizen of that nation through abduction.

FACTS: Alvarez-Machain (D) was abducted from his office in Mexico by persons working for DEA agents. He was wanted in the United States (P) for alleged complicity in the torture-murder of a DEA agent. Alvarez-Machain (D) moved to dismiss the indictment, contending that his abduction violated a U.S.-Mexico extradition treaty. The district court agreed and dismissed the indictment. The court of appeals affirmed, and the U.S. Supreme Court granted review.**ISSUE:** Does the presence of an extradition treaty between the United States and another nation necessarily preclude obtaining a citizen of that nation through abduction?**HOLDING AND DECISION:** (Rehnquist, C.J.) No. The presence of an extradition treaty between the United States (P) and another nation does not necessarily preclude obtaining a citizen of that nation through abduction. It has long been the rule that abduction, in and of itself, does not invalidate a prosecution against a foreign national. The only question, therefore, is whether the abduction violates any extradition treaty that may be in effect between the United States (P) and the nation in which the abductee was to be found. Here, the U.S.-Mexican authorities presumably were aware of the United States' (P) long-standing law regarding abductions and did not insist on including a prohibition against abductions. Alvarez-Machain (D) argued that since international law prohibits abductions, the drafters of the treaty had no reason to consider a prohibition thereof necessary. However, this body of law only applies to situations where no extradition treaty exists, so it is irrelevant here. Consequently, since the extradition treaty does not prohibit an abduction such as occurred here, it was not illegal. Reversed.**DISSENT:** (Stevens, J.) The majority opinion fails to distinguish between acts of private citizens, which do not violate any treaty obligations, and conduct expressly authorized by the executive branch, which undoubtedly constitutes a flagrant violation of international law and a breach of the U.S. (P) treaty obligations.**ANALYSIS**

Alvarez-Machain (D) lost this battle but won the war. He was tried in Los Angeles in 1993. At the close of the prosecution's case, the trial judge, Edward Rafeedie, dismissed the case for lack of evidence. The judge used some harsh language in his order, apparently believing the case should never have been brought.

Quicknotes**EXTRADITION** The surrender by one state or nation to another of an individual allegedly guilty of committing a crime in that area.**INDICTMENT** A formal written accusation made by a prosecutor and issued by a grand jury, charging an individual with a criminal offense.**TREATY** An agreement between two or more nations for the benefit of the general public.**Wilson v. Girard**

U.S. Secretary of Defense (P) v. U.S. soldier (D)

354 U.S. 524 (1957).

NATURE OF CASE: Appeal from an injunction against extradition.**FACT SUMMARY:** Girard (D), a Specialist Third Class in the United States Army, wounded a Japanese woman during a military exercise in Japan. Japan indicted Girard (D) for causing death by wounding, but Girard (D) was granted an injunction against his delivery to the Japanese authorities.**RULE OF LAW**

A sovereign nation has exclusive jurisdiction to punish offenses against its laws committed within its borders, unless it expressly or impliedly consents to surrender its jurisdiction.

FACTS: Girard (D), a Specialist Third Class in the United States Army, wounded a Japanese woman during a military exercise in Japan. A security treaty between Japan and the United States authorized the making of administrative agreements between the two governments concerning the conditions that would govern the disposition of the United States Armed Forces in Japan. Such an agreement provided that the United States might waive its jurisdiction over offenses committed in Japan by members of its armed forces. Subsequently, another protocol agreement was signed by the two governments, pursuant to the NATO agreement. It authorized that in criminal cases where the right to jurisdiction is concurrent, the military authorities of the United States would have the primary right to exercise jurisdiction over members of the armed forces for offenses arising out of any act or omission done in the performance of official duty. The United States claimed the right to try Girard (D) on the ground that his act was done in the performance of official duty giving the United States primary jurisdiction. Japan insisted that Girard's (D) action was not within the scope of his official duty and therefore it had the primary right of jurisdiction. The United States ultimately waived whatever jurisdiction it might have. Girard (D) sought a writ of habeas corpus that was denied, but he was granted an injunction against delivery to the Japanese authorities. Wilson (P), Secretary of Defense, appealed.**ISSUE:** Does a sovereign nation have exclusive jurisdiction to punish offenses against its laws committed within its borders, unless it expressly or impliedly consents to surrender its jurisdiction?**HOLDING AND DECISION:** (Per curiam) Yes. A sovereign nation has exclusive jurisdiction to punish offenses against it committed within its borders, unless it

expressly or impliedly consents to surrender its jurisdiction. Japan's cession to the United States of jurisdiction to try American military personnel for conduct constituting an offense against the laws of both countries was conditioned by the protocol agreement, which provided that "the authorities of the state having the primary right shall give sympathetic consideration to a request from the authorities of the other state for a waiver of its right in cases where that other state considers such a waiver to be of particular importance." Furthermore, there has been no prohibition against this under the Constitution or legislation subsequent to the security treaty. In the absence of such statutory or constitutional barriers, the wisdom of the arrangement is exclusively for the determination of the executive and legislative branches. These branches have decided to waive jurisdiction and deliver Girard (D) to the Japanese authorities. Therefore, the judgment of the district court is reversed.

ANALYSIS

The trend toward granting limited immunities in cases relating to official acts and archives appears to be on the increase. This is to be distinguished from the normal diplomatic immunities that are part of customary international law. The agreements between the United States and Japan are good examples of the willingness of one nation to grant a special position to foreign government employees.

Quicknotes**EXTRADITION** The surrender by one state or nation to another of an individual allegedly guilty of committing a crime in that area.**INJUNCTION** A court order requiring a person to do or prohibiting that person from doing a specific act.**TREATY** An agreement between two or more nations for the benefit of the general public.**WAIVER** The intentional or voluntary forfeiture of a recognized right.**WRIT OF 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.