



University of
Zurich^{UZH}

Faculty of Law

International Law

Principles of Common Law

15 November 2022

Lecture 9

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1. **International law**
2. **Sources of International Law**
3. **US Law and International Law**

Readings

Evans – pp 393-96



Modern Sources of International law

- 1. Case law
- 2. Statute
- 3. Transnational law





Modern Sources of UK Common Law

Transnational law

- Public international law and treaties
- Three basic types of EU legislation¹:
 - Regulations
 - Directives
 - Decisions

Conflicts between English law and EU law

EU Treaty free movement principle

¹ http://ec.europa.eu/legislation/index_en.htm



Human Rights law –

European Convention Human Rights (ECHR) and European Court of Human Rights

- ❑ Human Rights Law (Impact on English Legal System)
- ❑ 1948-2000 Judges applied human rights law as it was interpreted by English courts. Parties could appeal to European Court of Human Rights (ECR - Strasbourg)
- ❑ 2000-present – Human Rights Act 1998. Courts must take account of ECR rulings in deciding claims under ECHR. Parties can still appeal to Strasbourg, sec 2 H
- ❑ British government in 2016 proposed to amend Human Rights Act so that British judges are not required to take account of ECHR rulings and instead to apply English common law principles



US Constitution

- **Article II, section 2** of the US Constitution (1787)
- The President “shall have Power, by and with Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur. . . . “

Advice and Consent clause
- Senate can reject or delay approval of treaties
- **Article VI, section 2** provides that
- **“This constitution, and the laws of the United states which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law o the Land, and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding.”**
- **International law (1787) accepted as part of State and Federal law. No need for incorporation**



US Law and International Law

- International law subject to the US Constitution
- It can be repealed by later US law (Congress enacting a statute that departs from international law).
- US statutes are ‘construed’ so as not to violate US obligations under international law. See *Al Bihani v. Obama*, (2010) – international laws of war do not constrain US constitutional power to declare and wage war.
- US courts may interpret and enforce international law, including international agreements
- Federal courts can review State laws on grounds of inconsistency with international law



US Law and International Law

- * US Courts are bound to give effect to international law and international agreements, except that 'non-self-executing' agreements will not be given effect as law in absence of necessary implementing legislation.
- Article 36 of Vienna Convention on Consular Relations was self-executing treaty (no need)
- 'Procedural default rule' – a procedural rule violation which was not raised by defendant's lawyers at the State court level could not be argued at the federal court level.
- US Supreme Court ruled in *Medellin v Texas* that ICJ rulings do not constitute enforceable US federal law and that the President had no authority to alter this position so as to overrule the 'procedural default rule'.
- Texas executed Medellin in knowledge that it represented a violation of the US obligation under article 36 Vienna Convention



US Law and International Law

- International Covenant on Civil and Political rights ratified by Senate in 1992
- US government attached notice that articles 1-27 were 'non-self-executing'
- No implementing legislation passed by Congress.
- US Senate now states in giving 'advice and consent' which provisions are 'self-executing'.
- Where international agreement is given effect in US law, it is the implementing legislation, not the agreement, that is interpreted by the courts.
- Great weight given to US obligations under international law to *amicus curiae* briefs by US government (DOJ or Legal Counsel)
- Some states have adopted 'Save our states' legislation