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CUSTOMARY INTERNATIONAL LAW — EXTRADITION — ELEVENTH CIRCUIT HOLDS THAT “RULE OF SPECIALTY” APPLIES ONLY WHEN PROVIDED BY TREATY. — *United States v. Valencia-Trujillo*, 573 F.3d 1171 (11th Cir. 2009).

Determining the scope of judicial authority over questions implicating international relations continues to challenge the federal courts. The Constitution recognizes treaties — negotiated by the executive and concurred in by two-thirds of the Senate<sup>1</sup> — as the “supreme Law of the Land”<sup>2</sup> over which federal judicial authority explicitly extends.<sup>3</sup> The Supreme Court has also long held that “the domestic law of the United States recognizes the law of nations,”<sup>4</sup> otherwise known as customary international law (CIL). When an action is not undertaken pursuant to treaty and when CIL does not speak to the issue, however, the scope of judicial authority to entertain challenges to that action is not clear. Extradition cases illustrate this problem: the surrender of an individual from one sovereign to another can be achieved in a variety of ways, from formal treaty procedures to informal ad hoc transfers.<sup>5</sup> Recently, in *United States v. Valencia-Trujillo*,<sup>6</sup> the Eleventh Circuit held that a defendant whose extradition was not effected by treaty lacks standing to assert a violation of the “rule of specialty,”<sup>7</sup> which provides generally that “an extradited fugitive is subject to prosecution only for those offenses for which he or she was surrendered.”<sup>8</sup> In reaching this result, the court properly refused to recognize a specialty right under CIL and showed due deference to the executive’s exclusive power, in the absence of treaty or CIL, to regulate international affairs, including informal extradition.

On August 22, 2002, a federal grand jury indicted Colombian national Joaquin Mario Valencia-Trujillo, an alleged member of the Cali drug trafficking cartel, on three counts of conspiracy and one count of conducting a continuing criminal enterprise (CCE).<sup>9</sup> After the Colombian authorities arrested Valencia-Trujillo at the request of the U.S.

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<sup>1</sup> U.S. CONST. art. II, § 2, cl. 2.

<sup>2</sup> *Id.* art. VI, cl. 2.

<sup>3</sup> *Id.* art. III, § 2, cl. 1.

<sup>4</sup> *Sosa v. Alvarez-Machain*, 542 U.S. 692, 729 (2004); *see also id.* at 729–30 (collecting cases).

<sup>5</sup> *See* M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE 24–26 (5th ed. 2007) (describing different forms of extradition).

<sup>6</sup> 573 F.3d 1171 (11th Cir. 2009).

<sup>7</sup> *Id.* at 1181.

<sup>8</sup> Roberto Iraola, *The Doctrine of Specialty and Federal Criminal Prosecutions*, 43 VAL. U. L. REV. 89, 89 (2008).

<sup>9</sup> *Valencia-Trujillo*, 573 F.3d at 1173–74; *United States v. Valencia-Trujillo*, No. 8:02-CR-329-T-17EAJ, at 2 (M.D. Fla. June 23, 2005) [hereinafter Report] (report and recommendation of magistrate judge).

government, the American embassy sent a diplomatic note requesting that Colombia extradite him for trial, providing the Colombian government with the indictment, the American arrest warrant, and an affidavit describing evidence of Valencia-Trujillo's criminal activity dating back to 1988.<sup>10</sup> The Colombian Ministry of the Interior and Justice approved Valencia-Trujillo's extradition,<sup>11</sup> but noted by executive resolution that "[t]he requesting country . . . may try the extradited person only for those charges for which he was requested, and for those acts which took place after December 17, 1997,"<sup>12</sup> the date the Colombian Constitution was amended to permit extradition.<sup>13</sup> That amendment provided that "[e]xtradition can be . . . granted or offered in accordance with the public treaties or in their absence, with the law . . . . Extradition will not apply when the facts took place previous to the promulgation of this norm."<sup>14</sup>

Before trial, Valencia-Trujillo moved to enforce the rule of specialty.<sup>15</sup> Specifically, he sought to redact the parts of the conspiracy counts alleging a starting date in 1988 and the predicate acts of the CCE count that occurred prior to December 17, 1997.<sup>16</sup> A magistrate judge recommended that the defendant's motion be denied as to the conspiracy counts but granted as to the CCE predicates, concluding that, as elements of the offense, the predicates were subject to the rule of specialty.<sup>17</sup> On September 12, 2005, the district court adopted the magistrate's findings.<sup>18</sup> Valencia-Trujillo was subsequently convicted on all four counts and sentenced to 480 months' imprisonment.<sup>19</sup>

On appeal, Valencia-Trujillo argued that the district court's ruling violated the rule of specialty because it allowed the mention of a conspiracy dating prior to December 17, 1997 and permitted the jury to consider predicate acts for the CCE count that had not been included

<sup>10</sup> *Valencia-Trujillo*, 573 F.3d at 1174–75.

<sup>11</sup> *Id.* at 1175.

<sup>12</sup> *Id.* at 1176 (quoting Executive Resolution No. 37 of the Colombian government).

<sup>13</sup> *Id.* at 1174.

<sup>14</sup> *Id.* (omissions in original) (quoting CONST. COLOM. tit. II, art. 35 (1997), available at <http://pdba.georgetown.edu/Constitutions/Columbia/col91.html#mozTocId49987>). The court correctly quoted the Colombian Constitution, but misidentified the provision at issue as CONST. COLOM. tit. I, art. 35 (1997).

<sup>15</sup> *Valencia-Trujillo*, 573 F.3d at 1177. Some circuits require the surrendering state to raise a specialty objection before they will grant the defendant standing to assert a violation. See *BASSIOUNI*, *supra* note 5, at 587–600 (discussing circuit split); *Iraola*, *supra* note 8, at 90–92. The Eleventh Circuit does not require an official protest, and the parties in *Valencia-Trujillo* agreed that "if Valencia-Trujillo [had been] extradited under [a] treaty, he would have a private right to enforce the rule of specialty." *Valencia-Trujillo*, 573 F.3d at 1178.

<sup>16</sup> *United States v. Valencia-Trujillo*, No. 8:02-CR-329-T-17EAJ, at 5–6 (M.D. Fla. Sept. 12, 2005) [hereinafter *Order*] (order adopting report and recommendation of magistrate judge).

<sup>17</sup> Report, *supra* note 9, at 25–26.

<sup>18</sup> Order, *supra* note 16, at 8.

<sup>19</sup> *Valencia-Trujillo*, 573 F.3d at 1177.

in the indictment sent to Colombia with the extradition request.<sup>20</sup> The Eleventh Circuit rejected these challenges, with Judge Carnes writing for a unanimous panel.<sup>21</sup> Instead of focusing on the substance of the specialty claims, however, the court held that Valencia-Trujillo did not have standing to raise a specialty claim because he was not extradited pursuant to an extradition treaty and specialty rights exist only insofar as they have been provided by treaty.<sup>22</sup>

In addressing Valencia-Trujillo's standing to raise a specialty claim, the court first conducted a detailed analysis of extradition procedures between the United States and Colombia and concluded that the defendant had not been extradited pursuant to a treaty.<sup>23</sup> The court noted that the 1979 United States-Colombia extradition treaty<sup>24</sup> had been invalidated by the Colombian Supreme Court in 1986<sup>25</sup> and that extraditions had only been restored by the 1997 Colombian constitutional amendment, which allowed for extradition under either "public treat[y]" or "the law."<sup>26</sup> In determining that Valencia-Trujillo had been extradited under "the law" rather than under the 1979 treaty, the court observed that the original extradition request invoked "the Colombian Constitutional amendment, the Criminal Procedure Code and applicable international law principles," but made no mention of the treaty.<sup>27</sup> The court then drew on the historical and legal development of the rule of specialty to reach the conclusion that defendants could assert the rule only when they had been extradited pursuant to a treaty that provided for it. The court observed that the Supreme Court originally conceived of the rule in the context of extraditions governed by treaty.<sup>28</sup> In *United States v. Rauscher*,<sup>29</sup> the Court held that an American

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<sup>20</sup> *Id.* Valencia-Trujillo also raised four other issues on appeal, which the court rejected in turn: First, he argued that his CCE conviction violated the Grand Jury Clause of the Fifth Amendment because it was based on predicates not included in the indictment. *Id.* at 1181. Second, he claimed that the district court erred in denying him an evidentiary hearing to show that the FBI agent's affidavit in support of the original arrest warrant "contained false statements . . . made knowingly and intentionally or with reckless disregard for the truth." *Id.* at 1182. Third, he contended that the district court erroneously overruled an objection to the government's peremptory strike of a Colombian-American juror. *Id.* at 1183. Finally, he argued for a judgment of acquittal or new trial based on insufficiency of the evidence. *Id.* at 1185.

<sup>21</sup> Judge Carnes was joined by Judge Tjoflat and District Judge Hood, sitting by designation.

<sup>22</sup> *Valencia-Trujillo*, 573 F.3d at 1181.

<sup>23</sup> *Id.* at 1178.

<sup>24</sup> Extradition Treaty, U.S.-Colom., Sept. 14, 1979, S. TREATY DOC. No. 97-8 (1981).

<sup>25</sup> *Valencia-Trujillo*, 573 F.3d at 1174 n.1.

<sup>26</sup> *Id.* at 1174.

<sup>27</sup> *Id.* at 1178. Colombia appeared to agree, since the executive resolution authorizing Valencia-Trujillo's extradition, roughly translated, stated "that because of not existing any Agreement applicable to the case it is admissible to act under provisions of the Colombian Penal Code." *Id.* at 1178 n.4 (quoting Executive Resolution No. 24 of the Colombian government).

<sup>28</sup> *Id.* at 1179 (citing *United States v. Rauscher*, 119 U.S. 407 (1886)).

<sup>29</sup> 119 U.S. 407.

sailor extradited from England for murder could not subsequently be charged with inflicting cruel and unusual punishment, a crime that was not among the extraditable offenses enumerated in the U.S.-U.K. extradition treaty.<sup>30</sup> The *Valencia-Trujillo* court also examined the more recent Eleventh Circuit precedent of *United States v. Puentes*,<sup>31</sup> which held that a defendant only had standing to raise a specialty claim to the extent that the surrendering country would have a treaty right to do so.<sup>32</sup> Citing *Puentes* at length, the court reasoned that an extradition treaty is fundamentally a contract between sovereign nations and that “[t]he doctrine of specialty is but one of the provisions of this contract.”<sup>33</sup> Taking note of the Supreme Court’s recent admonition in *Medellín v. Texas*<sup>34</sup> that even treaties frequently do not confer rights upon individuals, the court held that “[u]nless extradition conditions . . . are grounded in self-executing provisions of a treaty,” the defendant has no standing to assert them in American courts.<sup>35</sup> Because *Valencia-Trujillo*’s extradition was not conducted under a treaty between the United States and Colombia, the court held that he did not have standing to raise a specialty claim.<sup>36</sup>

The Eleventh Circuit’s ruling in *Valencia-Trujillo* represents a welcome departure from the longstanding rule in the Second Circuit, established in *Fiocconi v. Attorney General*,<sup>37</sup> that there is “no reason . . . why the [rule of specialty] should not also apply when extradition has been obtained as an act of comity by the surrendering nation.”<sup>38</sup> The logic of *Fiocconi* was subsequently endorsed by the Fifth Circuit in *United States v. Kaufman*,<sup>39</sup> which stated even more bluntly that “[t]he rule of specialty is a general rule of international law which applies

<sup>30</sup> *Id.* at 409, 433.

<sup>31</sup> 50 F.3d 1567 (11th Cir. 1995).

<sup>32</sup> *Id.* at 1573.

<sup>33</sup> *Valencia-Trujillo*, 573 F.3d at 1180 (quoting *Puentes*, 50 F.3d at 1574). Because the defendant in *Puentes* was extradited pursuant to an extradition treaty, the Eleventh Circuit in that case did not reach the question of whether a defendant could raise a specialty claim in a case *not* governed by a treaty.

<sup>34</sup> 128 S. Ct. 1346 (2008).

<sup>35</sup> *Valencia-Trujillo*, 573 F.3d at 1181 (citing *Medellín*, 128 S. Ct. at 1357).

<sup>36</sup> *Id.*

<sup>37</sup> 462 F.2d 475 (2d Cir. 1972) (Friendly, C.J.). In *Fiocconi*, two French citizens were extradited to the United States by the Italian government for heroin trafficking as a matter of comity, since the U.S.-Italy extradition treaty did not provide for extradition for narcotics crimes. *See id.* at 476–77.

<sup>38</sup> *Id.* at 480. The court in *Fiocconi* held that the rule of specialty was enforceable as CIL in the absence of a treaty, but ultimately denied the defendant’s claim, holding that only the Italian government, not the individual defendant, had standing to assert a specialty violation. *Id.* at 479–82, 479 n.7. *See generally* BASSIOUNI, *supra* note 5, at 543 (“The position of the [United States] since *Rauscher* is best expressed in *Fiocconi* . . .”).

<sup>39</sup> 858 F.2d 994 (5th Cir. 1988).

with equal force whether extradition occurs by treaty or comity.”<sup>40</sup> The Eleventh Circuit declined to adopt this reasoning, relying on the discretion of the executive in conducting foreign affairs, the Supreme Court’s original conception of specialty, and the limitations of CIL.

As a preliminary matter, it might seem that the court should have enforced the specialty limitation articulated in the executive resolution of the Colombian government approving Valencia-Trujillo’s extradition. The court’s refusal to do so, however, showed proper deference to the executive power in foreign relations. The Supreme Court has long recognized that judicial power to enforce treaties is limited by the provisions the parties have contracted to adopt. In *The Amiable Isabella*,<sup>41</sup> the Court held that it was “bound to give effect to the stipulations of the treaty in the manner and to the extent which the parties have declared, and not otherwise. . . . The same powers which have contracted, are alone competent to change or dispense with any formality.”<sup>42</sup> In cases in which a defendant is extradited without reliance on a treaty, as in *Fiocconi* and *Valencia-Trujillo*, the sovereign parties have signaled their intent to “dispense with [the] formalit[ies].” In such circumstances, “separation of powers principles . . . counsel courts . . . not to infer any [right] not expressly granted.”<sup>43</sup> Such caution was well advised in this case because the specialty limitation of the 1997 Colombian constitutional amendment, relied on by Valencia-Trujillo, was adopted in response to extensive political pressure from drug cartels and resulted in strong U.S. opposition to the nonretroactivity provision and lobbying efforts to remove it.<sup>44</sup> These circumstances may well have informed the United States’s refusal to follow Colombia’s specialty notice. Colombia may protest the United States’s action through diplomatic channels, but Valencia-Trujillo cannot insist that a court treat Colombia’s constitution or a unilateral pronouncement by one of its ministries as equivalent to a treaty. Such a ruling would ignore both the process mandated by the U.S. Constitution for the creation of such bilateral compacts and the deference owed to an executive “policy determination of a kind clearly for nonjudicial discretion.”<sup>45</sup>

<sup>40</sup> *Id.* at 1007 n.4.

<sup>41</sup> 19 U.S. (6 Wheat.) 1 (1821).

<sup>42</sup> *Id.* at 72–73.

<sup>43</sup> *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 801 (D.C. Cir. 1984) (Bork, J., concurring). The United States has recognized the significance of formal treaty procedures in protecting extradited citizens, providing by statute that the United States will only surrender fugitives pursuant to extradition treaties. See 18 U.S.C. § 3181(a) (2006).

<sup>44</sup> Joshua H. Warmund, Comment, *Removing Drug Lords and Street Pushers: The Extradition of Nationals in Colombia and the Dominican Republic*, 22 *FORDHAM INT’L L.J.* 2373, 2420–21 (1999).

<sup>45</sup> *Baker v. Carr*, 369 U.S. 186, 217 (1962) (defining “political question[s]” in which the courts should not interfere). *Fiocconi* similarly recognized that, absent a claim under treaty or CIL, adherence to the rule of specialty would be a “matter solely for the executive departments, which

The Eleventh Circuit also wisely declined to enforce a specialty right under CIL. First, the court properly recognized that Supreme Court precedent has not established that the rule of specialty is CIL. The *Rauscher* Court adopted the doctrine of specialty purely as a means to enforce the extradition treaty between the United Kingdom and the United States. Although that treaty did not make explicit provision for an enforceable rule of specialty, the *Rauscher* Court inferred one from “the manifest scope and object of the treaty,”<sup>46</sup> concluding that the enumeration of specific charges warranting extradition and the procedures for some showing of proof of those crimes indicated that “the fair purpose of the treaty is, that the person shall be delivered up to be tried for [those] offence[s] and for no other[s].”<sup>47</sup> In so finding, the Court made reference to “publicists and writers on international law”<sup>48</sup> who included the rule of specialty in “the recognized public law which prevail[s] in the absence of treaties.”<sup>49</sup> *Fiocconi* and *Kaufman* read this to mean that *Rauscher* recognized a right of specialty under CIL.<sup>50</sup>

*Rauscher*'s use of international norms as an interpretive tool in adopting an implied rule of specialty was not an application of binding CIL, however. The *Rauscher* Court limited its use of customary norms to aiding in “true construction of the treaty,”<sup>51</sup> perhaps indicating that although the rule of specialty was “recognized” as an international norm, it was insufficiently established to have binding effect. Indeed, the Supreme Court explicitly held that the doctrinal protection of *Rauscher* was limited to extraditions by treaty in its contemporaneous ruling in *Ker v. Illinois*.<sup>52</sup> In that case, the defendant Ker had been abducted from Peru notwithstanding a U.S.-Peru extradition treaty.<sup>53</sup> The Supreme Court concluded that because Ker's transfer to the United States was not conducted under the auspices of the treaty, he could not claim the protections codified in the treaty, in explicit contrast with *Rauscher*:

[*Rauscher*] held, that, when a party was duly surrendered, by proper proceedings, . . . he came to this country clothed with the protection which the nature of such proceedings and the true construction of the treaty gave

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can better weigh the relative importance of the conviction of two alleged large scale narcotics violators against possible difficulties in securing future extradition . . . and other foreign affairs considerations.” *Fiocconi v. Att’y Gen.*, 462 F.2d 475, 478 (2d Cir. 1972).

<sup>46</sup> *United States v. Rauscher*, 119 U.S. 407, 422 (1886).

<sup>47</sup> *Id.* at 423.

<sup>48</sup> *Id.* at 419.

<sup>49</sup> *Id.* at 420.

<sup>50</sup> See BASSIOUNI, *supra* note 5, at 584.

<sup>51</sup> *Rauscher*, 119 U.S. at 419.

<sup>52</sup> 119 U.S. 436 (1886).

<sup>53</sup> *Id.* at 438.

him. One of the rights . . . was, that he should be tried for no other offence than the one for which he was delivered under the extradition proceedings. . . . But it is quite a different case when the plaintiff in error comes to this country in the manner in which he was brought here, clothed with no rights which a proceeding under the treaty could have given him . . . .<sup>54</sup>

In this respect, the Court's own historical understanding of the limits of the rule of specialty recognized in *Rauscher* supports the Eleventh Circuit's conclusion that "[b]ecause Colombia's extradition of Valencia-Trujillo to the United States was not based on an extradition treaty," Valencia-Trujillo lacked standing to assert a violation of specialty.<sup>55</sup>

Second, extradition and specialty do not comport with modern definitions of CIL. For the rule of specialty to qualify as CIL directly enforceable in U.S. courts in the absence of a treaty, as the Second Circuit held in *Fiocconi*,<sup>56</sup> it must be shown to result from (1) "a general and consistent practice of states" that is (2) "followed by them from a sense of legal obligation."<sup>57</sup> The diversity of extradition procedures makes it questionable that the rule of specialty satisfies the "state practice" requirement,<sup>58</sup> and the rule certainly does not arise "from a sense of legal obligation."<sup>59</sup> International law does not even recognize a customary legal duty or right to extradition; such an obligation arises only

<sup>54</sup> *Id.* at 443.

<sup>55</sup> *Valencia-Trujillo*, 573 F.3d at 1181.

<sup>56</sup> *Fiocconi v. Att'y Gen.*, 462 F.2d 475, 479 n.7 (2d Cir. 1972) (citing *The Paquete Habana*, 175 U.S. 677, 700 (1900)).

<sup>57</sup> RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 102(2) (1986) [hereinafter RESTATEMENT]; see also *Flores v. S. Peru Copper Corp.*, 414 F.3d 233, 248 (2d Cir. 2003) ("[A] principle is only incorporated into customary international law if States accede to it out of a sense of legal obligation." (citing *Chubb & Son, Inc. v. Asiana Airlines*, 214 F.3d 301, 307–08 (2d Cir. 2000)); Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 HARV. L. REV. 815, 818, 838–39 (1997) (discussing the grounding of the Restatement's two-part test in the concept of state consent). The Restatement acknowledges that "[n]o definition of customary law has received universal agreement." RESTATEMENT, *supra*, § 102 reporters' note 2. Insofar as the definition used above has obtained some currency with judges, however, it provides an adequate practical test for whether Valencia-Trujillo's specialty claim should be enforced by courts.

<sup>58</sup> See BASSIOUNI, *supra* note 5, at 538–41 (comparing rule of specialty provisions in various U.S. extradition treaties). The standard for satisfying the state practice requirement is a subject of some debate. The extensive variance in defining violations of the rule of specialty is unlikely to satisfy formalists who insist that "[s]tate practice must [be] both extensive and virtually uniform." Matiangai Sirleaf, *Regional Approach to Transitional Justice? Examining the Special Court for Sierra Leone and the Truth and Reconciliation Commission for Liberia*, 21 FLA. J. INT'L L. 209, 236 (2009). By contrast, nonformalists adopt a view of state practice that relies on general adoption of particular norms rather than on a definite repeated pattern. See Christopher J. Borgen, *The Language of Law and the Practice of Politics: Great Powers and the Rhetoric of Self-Determination in the Cases of Kosovo and South Ossetia*, 10 CHI. J. INT'L L. 1, 30 (2009).

<sup>59</sup> Even if the rule of specialty met these requirements for CIL, some scholars would argue that, absent more, the rule should still serve only a limited role in U.S. courts. See generally Bradley & Goldsmith, *supra* note 57.

when provided for by agreement between nations.<sup>60</sup> When states extradite in the absence of a treaty, they typically do so as a matter of “reciprocity and comity, which are part of international principles of friendly cooperation among nations.”<sup>61</sup> Interest-based motivations such as these differ significantly from “legal obligation[s],” and the United States has refused to recognize them as predicates for CIL.<sup>62</sup>

Because extradition itself is a matter of binding international law only insofar as nations have chosen to codify it by treaty, the doctrine of specialty should similarly carry legal force only when included in that codification. Paralleling the comity interests at play in extradition generally, the doctrine of specialty “is designed to ensure against a requesting state’s breach of [the extradition compact with the] requested state.”<sup>63</sup> While a nation may comply with a specialty provision in a treaty due to a larger legal obligation to abide by that treaty,<sup>64</sup> in the absence of such a contract, states follow the principle of specialty only out of concern for the reputational damage a breach of trust might entail,<sup>65</sup> not out of a “sense of legal obligation.” Since no “sense of legal obligation” commands either extradition or the rule of specialty, the Eleventh Circuit was correct to limit the rule’s enforcement to cases where states have chosen to codify the legal obligation by treaty.

As the Eleventh Circuit noted in conclusion, international law rarely creates private rights, even by treaty.<sup>66</sup> That stricture applies with even greater force in the arena of extradition, in which legal obligations exist only insofar as states choose to create them through treaties. In *Valencia-Trujillo*, the Eleventh Circuit adopted that formal approach to the rule of specialty, departing from *Fiocconi*’s view of specialty as somehow applicable even in the absence of formal agreement between the sovereigns. In so deciding, the court framed specialty in a manner consistent with the doctrine’s original conception by the Supreme Court in *Rauscher*, with deference properly accorded to the executive in the informal conduct of international affairs, and with the principles limiting the application of CIL.

<sup>60</sup> See *Factor v. Laubenheimer*, 290 U.S. 276, 286–87 (1933).

<sup>61</sup> BASSIOUNI, *supra* note 5, at 25.

<sup>62</sup> See *Flores*, 414 F.3d at 248 (“Practices adopted for moral or political reasons, but not out of a sense of legal obligation, do not give rise to rules of customary international law.”); Hannah L. Buxbaum, *Territory, Territoriality, and the Resolution of Jurisdictional Conflict*, 57 AM. J. COMP. L. 631, 648–49 (2009) (discussing *Hilton v. Guyot*, 159 U.S. 113 (1895)).

<sup>63</sup> BASSIOUNI, *supra* note 5, at 541.

<sup>64</sup> See, e.g., U.S. CONST. art. VI, cl. 2.

<sup>65</sup> See generally Rachel Brewster, *Unpacking the State’s Reputation*, 50 HARV. INT’L L.J. 231 (2009).

<sup>66</sup> *Valencia-Trujillo*, 573 F.3d at 1180–81 (quoting *Medellín v. Texas*, 128 S. Ct. 1346, 1357 & n.3 (2008)).