

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

on foreign affairs and foreign policy political questions,⁶³⁴ whether the courts can adjudicate a dispute in this area has often depended on the context in which it arises. Thus, the determination by the President whether to recognize the government of a foreign state⁶³⁵ or who is the *de jure* or *de facto* ruler of a foreign state⁶³⁶ is conclusive on the courts. In the absence of a definitive executive action, however, the courts will review the record to determine whether the United States has accorded a sufficient degree of recognition to allow the courts to take judicial notice of the existence of the state.⁶³⁷ Moreover, the courts have often determined for themselves what effect, if any, should be accorded the acts of foreign powers, recognized or unrecognized.⁶³⁸

3. Treaties. Similarly, the Court, when dealing with treaties and the treaty power, has treated as political questions whether the foreign party had constitutional authority to assume a particular obligation⁶³⁹ and whether a treaty has lapsed because of the foreign state's loss of independence⁶⁴⁰ or because of changes in the territorial sovereignty of the foreign state.⁶⁴¹ On the other hand, the Court will not only interpret the domestic effects of treaties,⁶⁴² but it will at times interpret the effects bearing on international matters.⁶⁴³ The Court has generally deferred to the President and Congress with

mine municipal boundaries does not infringe republican form of government); *Minor v. Happersett*, 88 U.S. (21 Wall.) 162, 175–176 (1875) (denial of suffrage to women no violation of republican form of government).

⁶³⁴ *Oetjen v. Central Leather Co.*, 246 U.S. 297, 302 (1918); *Chicago & S. Air Lines v. Waterman Steamship Corp.*, 333 U.S. 103, 111 (1948).

⁶³⁵ *United States v. Palmer*, 16 U.S. (3 Wheat.) 610 (1818); *Kennett v. Chambers*, 55 U.S. (14 How.) 38 (1852).

⁶³⁶ *Jones v. United States*, 137 U.S. 202 (1890); *Oetjen v. Central Leather Co.*, 246 U.S. 297 (1918). See *Ex parte Hitz*, 111 U.S. 766 (1884).

⁶³⁷ *United States v. The Three Friends*, 166 U.S. 1 (1897); *In re Baiz*, 135 U.S. 403 (1890). Cf. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964).

⁶³⁸ *United States v. Reynes*, 50 U.S. (9 How.) 127 (1850); *Garcia v. Lee*, 37 U.S. (12 Pet.) 511 (1838); *Keene v. McDonough*, 33 U.S. (8 Pet.) 308 (1834). See also *Williams v. Suffolk Ins. Co.*, 38 U.S. (13 Pet.) 415 (1839); *Underhill v. Hernandez*, 168 U.S. 250 (1897). But see *United States v. Belmont*, 301 U.S. 324 (1937). On the “act of state” doctrine, compare *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964), with *First National City Bank v. Banco Nacional de Cuba*, 406 U.S. 759 (1972). See also *First National City Bank v. Banco Para el Comercio de Cuba*, 462 U.S. 611 (1983); *W.S. Kirkpatrick & Co. v. Environmental Tectronics Corp.*, U.S. 400 (1990).

⁶³⁹ *Doe v. Braden*, 57 U.S. (16 How.) 635 (1853).

⁶⁴⁰ *Terlinden v. Ames*, 184 U.S. 270 (1902); *Clark v. Allen*, 331 U.S. 503 (1947).

⁶⁴¹ *Kennett v. Chambers*, 55 U.S. (14 How.) 38 (1852). On the effect of a violation by a foreign state on the continuing effectiveness of the treaty, see *Ware v. Hylton*, 3 U.S. (3 Dall.) 199 (1796); *Charlton v. Kelly*, 229 U.S. 447 (1913).

⁶⁴² *Ware v. Hylton*, 3 U.S. (3 Dall.) 199 (1796). Cf. *Chinese Exclusion Case* (*Chae Chan Ping v. United States*), 130 U.S. 581 (1889) (conflict of treaty with federal law). On the modern formulation, see *Japan Whaling Ass'n v. American Cetacean Society*, 478 U.S. 221, 229–230 (1986).

⁶⁴³ *Perkins v. Elg*, 307 U.S. 325 (1939); *United States v. Rauscher*, 119 U.S. 407 (1886).