

Sec. 8—Powers of Congress

Cl. 10—Maritime Crimes

public law. . . . The faithful observance of this law is essential to national character. . . .”¹⁴⁶⁹ These words of the Chancellor Kent expressed the view of the binding character of international law that was generally accepted at the time the Constitution was adopted. During the Revolutionary War, Congress took cognizance of all matters arising under the law of nations and professed obedience to that law.¹⁴⁷⁰ Under the Articles of Confederation, it was given exclusive power to appoint courts for the trial of piracies and felonies committed on the high seas, but no provision was made for dealing with offenses against the law of nations.¹⁴⁷¹ The draft of the Constitution submitted to the Convention of 1787 by its Committee of Detail empowered Congress “to declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offences against the law of nations.”¹⁴⁷² In the debate on the floor of the Convention, the discussion turned on the question as to whether the terms, “felonies” and the “law of nations,” were sufficiently precise to be generally understood. The view that these terms were often so vague and indefinite as to require definition eventually prevailed and Congress was authorized to define as well as punish piracies, felonies, and offenses against the law of nations.¹⁴⁷³

Definition of Offenses

The fact that the Constitutional Convention considered it necessary to give Congress authority to define offenses against the law of nations does not mean that in every case Congress must undertake to codify that law or mark its precise boundaries before prescribing punishments for infractions thereof. An act punishing “the crime of piracy, as defined by the law of nations punishing the” was held to be an appropriate exercise of the constitutional authority to “define and punish” the offense, since it adopted by reference the sufficiently precise definition of International Law.¹⁴⁷⁴ Similarly, in *Ex parte Quirin*,¹⁴⁷⁵ the Court found that by the reference in the Fifteenth Article of War to “offenders or offenses that . . . by the law of war may be triable by such military commissions . . .,” Con-

¹⁴⁶⁹ 1 J. KENT, COMMENTARIES ON AMERICAN LAW 1 (1826).

¹⁴⁷⁰ 19 JOURNALS OF THE CONTINENTAL CONGRESS 315, 361 (1912); 20 id. at 762; 21 id. at 1136–37, 1158.

¹⁴⁷¹ Article IX.

¹⁴⁷² 2 M. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 168, 182 (Rev. ed. 1937).

¹⁴⁷³ Id. at 316.

¹⁴⁷⁴ *United States v. Smith*, 18 U.S. (5 Wheat.) 153, 160, 162 (1820). See also *The Marianna Flora*, 24 U.S. (11 Wheat.) 1, 40–41 (1826); *United States v. Brig Malek Abhel*, 43 U.S. (2 How.) 210, 232 (1844).

¹⁴⁷⁵ 317 U.S. 1 (1942).