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Katrina Lynn Dannheim

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GIVING THE INTERNATIONAL COURT OF JUSTICE THE COLD SHOULDER: THE IMPACT OF *SANCHEZ-LLAMAS V. OREGON* ON THE UNITED STATES' INTERNATIONAL RELATIONS

*Katrina Lynn Dannheim**

I. INTRODUCTION

"'Abroad,' that large home of ruined reputations."[1] Although the United States enjoys an enviable position of international superpower, there still exists the need to maintain a "good neighbor" reputation. Importantly, the United States' international relationships may depend on it. A recent global poll shows that the worldwide opinion of the United States is in rapid decline.[2] With 25 countries participating, nearly half of the more than 26,000 poll respondents felt that the United States has a negative worldwide impact.[3]

But what has led to this widespread downbeat view of the United States? Much of the sentiment stems from the long-term U.S. activities in the Middle East, although this is not the sole cause.[4] Another source of anti-American sentiment results from the United States' views toward international tribunals.[5] Some feel the United States acts hypocritically by not showing deference to the International Court of Justice [hereinafter "ICJ"], a tribunal that the United States at one time supported.[6] This attitude of hypocrisy was displayed yet again in the United States Supreme Court's recent decision in *Sanchez-Llamas v. Oregon*.[7] There, the Court failed to give the ICJ's prior rulings regarding the Vienna Convention on Consular Relations [hereinafter "VCCR"] even the smallest amount of "respectful consideration."[8]

By undertaking a cost-benefit analysis, this Note addresses the potential negative impact that *Sanchez-Llamas* and similarly decided cases may have on the United States' international relations. *Sanchez-Llamas*' factual summary is laid out in Part II. The background and history of the law

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1. THE OXFORD DICTIONARY OF QUOTATIONS 269 (Angela Partington ed., Oxford Univ. Press 4th ed.1992).

2. Kevin Sullivan, *Views on U.S. Drop Sharply in Worldwide Opinion Poll*, WASH. POST, Jan. 23, 2007, at A14.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. 126 S.Ct. 2669 (2006).

8. *Id.* at 2683.

surrounding the VCCR and the United States' treatment of Article 36 violations is examined in Part III. Part IV contains a synopsis of the Court's opinion in *Sanchez-Llamas*, as well as a summary of Justice Ginsburg's concurrence and Justice Breyer's dissent. Part V provides a cost-benefit analysis of the potential impact that *Sanchez-Llamas* and the United States' overall attitude toward VCCR violations may have on the United States' international relationships. Finally, Part VI identifies potential solutions to this problem.

II. Facts and Procedural History

The facts relevant to the instant case arise from two individual criminal cases that were consolidated in the United States Supreme Court: *State v. Sanchez-Llamas*[9] and *Bustillo v. Johnson.*[10] For clarity, each set of facts will be discussed separately in Part II and will be consolidated in Part III for an examination of the Court's analysis.

A. *Facts of* Sanchez-Llamas v. Oregon

In December 1999, Moises Sanchez-Llamas [hereinafter "Sanchez-Llamas"], a Mexican national, was arrested in Oregon following his involvement in a shoot-out with police.[11] At the time of his arrest, Sanchez-Llamas was given *Miranda*[12] warnings in both English and Spanish, but was never advised of his right under the VCCR to have the Mexican consulate informed of his arrest.; nor did local authorities ever notify the Mexican consulate of Sanchez-Llamas' detention.[13] During his post-arrest interrogation, Sanchez-Llamas made several incriminating statements about the events surrounding his arrest.[14] Sanchez-Llamas subsequently was charged in the Circuit Court of Jackson County, Oregon with attempted aggravated murder, attempted murder, and several other offenses.[15]

Before his trial, Sanchez-Llamas sought suppression of his incriminating statements on the basis that his statements were involuntary and that authorities violated his VCCR rights.[16] The trial court denied his motion for suppression, determining that suppression was not the appropriate remedy for the Article 36 violation.[17] Thereafter, Sanchez-Llamas was convicted and sentenced to 246 months in prison.[18] On appeal, the Oregon

9. 338 Or. 267 (Or. 2005).
10. No. 2321-98-4, 2000 WL 365930 (Va. Ct. App. Apr. 11, 2000).
11. *Sanchez-Llamas*, 338 Or. at 269.
12. Miranda v. Arizona, 384 U.S. 436 (1966) (The Court held that before a defendant could be taken into custody and interrogated that he had the right to be informed of his right to remain silent, right to counsel, and other rights. Failure to inform a defendant of such rights, the Court concluded, properly may lead to suppression of any confession.)
13. *Sanchez-Llamas*, 338 Or. at 269.
14. *Id.* at 270.
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*

Court of Appeals affirmed without issuing an opinion.[19] The Oregon Supreme Court also affirmed.[20]

In its opinion, the Oregon Supreme Court held that "Article 36 of the VCCR does not create rights that individual foreign nationals may assert in a criminal proceeding."[21] The Court recognized that a treaty might provide individual rights, either through its express language or by implication, but qualified this recognition by stating that "an individual right of judicial enforcement will not be inferred from the mere fact that a treaty sets out substantive rules of conduct that, if honored, would benefit individuals."[22] Since the Oregon Supreme Court determined Article 36 did not create individually enforceable rights, it did not address the issue of whether suppression was an appropriate remedy for Article 36 violations.[23]

Following the Oregon Supreme Court's affirmation of his conviction, Sanchez-Llamas filed a petition for writ of certiorari in the United States Supreme Court, which the Court granted on November 7, 2005.[24]

B. Facts of Bustillo v. Johnson

On December 10, 1997, James Merry was fatally assaulted outside a restaurant in Springfield, Virginia.[25] The following day, Mario Bustillo [hereinafter "Bustillo"], a Honduran national, was arrested in connection with the assault after several bystanders identified him as the assailant.[26] Bustillo was subsequently charged with the murder of James Merry, but was never informed of his rights under Article 36 to have the Honduran consulate informed of his arrest.[27]

Following a jury trial, Bustillo was convicted of murder and sentenced to 30 years in prison.[28] He filed a petition for appeal to the Court of Appeals of Virginia, which denied the petition.[29] The Supreme Court of Virginia also denied his appeal.[30] Further, the United States Supreme Court denied Bustillo's original petition for certiorari on June 4, 2001.[31]

Bustillo then filed a petition for a writ of habeas corpus in Virginia state court, arguing for the first time that his Article 36 rights had been violated.[32] The state court dismissed Bustillo's petition on procedural grounds because he had not properly raised the VCCR claim at trial.[33] He

19. Oregon v. Sanchez-Llamas, 191 Or.App. 399 (Or. Ct. App. 2004).
20. *Sanchez-Llamas*, 338 Or. at 277.
21. *Id.* at 269.
22. *Id.* at 274.
23. *Id.* at 276-77.
24. Sanchez-Llamas v. Oregon, 126 S.Ct. 620 (2005).
25. Sanchez-Llamas v. Oregon, 126 S.Ct. 2669, 2676 (2006).
26. *Id.*
27. *Id.*
28. *Id.*
29. Bustillo v. Johnson, No. 201879, 2003 WL 22518501 at *1 (Va. Cir. Ct. 2003).
30. *Id.*
31. *Id.*
32. *Sanchez-Llamas*, 126 S.Ct. at 2676.
33. *Id.* at 2677.

then filed a motion to reconsider the dismissal of his petition for habeas corpus in the Circuit Court of Virginia, Fairfax County.[34] When the circuit court denied his motion to reconsider, Bustillo appealed the dismissal of his petition to the Supreme Court of Virginia, where the Court affirmed the dismissal.[35] Bustillo then filed a petition for writ of certiorari in the United States Supreme Court.[36] There, *Bustillo v. Johnson* was consolidated with *Sanchez-Llamas v. Oregon* and certiorari was granted on November 7, 2005.[37]

III. BACKGROUND AND HISTORY OF THE LAW

The Constitution of the United States of America provides guidelines under which the United States government should enter into treaties with foreign nations. First, Article II, Section 2 states, "[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties . . ."[38] Further, Article III, Section 2 provides "[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under . . . Treaties made . . ."[39] Finally, Article VI declares "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the Land."[40] Since its formation, the United States has entered into treaties with foreign nations in accordance with this framework.

In entering into and governing treaties, countries often struggle to find the proper balance between international law and domestic law. Generally speaking, two major schools of thought have emerged—"monism" and "dualism."[41] Under the monism theory, domestic law and international law are thought to be part of the same judicial system.[42] In instances of conflict, international law prevails over domestic law.[43] Dualism, on the other hand, views international and domestic law as two separate legal systems.[44] A nation's domestic law is internally supreme, and international law is involved only to the extent actually implemented into that nation's body of law.[45] Some academics recognize the benefits of a monist approach, but the prevailing U.S. attitude since the middle of the 20th century has been dualist.[46]

34. *Bustillo*, 2003 WL 22518501 at *1.
35. *Sanchez-Llamas*, 126 S.Ct. at 2677.
36. Bustillo v. Johnson, 126 S.Ct. 621 (2005).
37. *Id.* at 621.
38. U.S.CONST. art. II, § 2, cl. 2.
39. U.S. CONST. art. III, § 2, cl. 1.
40. U.S. CONST. art. VI, cl. 2.
41. Curtis A. Bradley, *Breard, Our Dualist Constitution, and the Internationalist Conception*, 51 STAN. L. REV. 529, 530 (1999).
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.*
46. Bradley, *supra* note 41, at 530.

A. *History of the Vienna Convention on Consular Relations*

Using his constitutionally granted authority, President Richard Nixon led the United States to ratify the Vienna Convention on Consular Relations in 1969.[47] The Convention was created to "contribute to the development of friendly relations among the nations, irrespective of their differing constitutional and social systems."[48] Specifically, Article 36 of the VCCR created rules to govern situations where a national of a signatory state had been detained by authorities in another signatory state.[49] The portions of Article 36 relevant to this Note provide that when a signatory country detains a national of another signatory country that the national shall, without delay, be informed of his right to have the consulate of his home country notified of his detention.[50] Further, Article 36 requires that its protections be enforced according to domestic law, so long as domestic law gives full effect to the treaty provisions.[51]

In addition to ratifying the VCCR, the United States also adopted the Optional Protocol Concerning the Compulsory Settlement of Disputes, which dictated that "[d]isputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice. . ."[52] Although the United States is still a party to the VCCR, it withdrew from the VCCR Optional Protocol in 2005.[53]

Every treaty falls into one of two categories pertaining to the method with which the treaty becomes judicially enforceable—self-executing or non-self-executing.[54] A self-executing treaty "operates of itself without the aid of any legislation, state or national; and it will be applied and given authoritative effect by the courts."[55] To the contrary, a non-self-executing treaty is one which is enforceable domestically only after Congress has enacted a federal statute giving the treaty effect.[56] In determining whether a treaty is self-executing, courts generally look to the intent of the signatories. The VCCR is a self-executing treaty, operating without any additional legislation.[57]

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47. Vienna Convention on Consular Relations, Dec. 14, 1969, 21 U.S.T. 77, T.I.A.S. No. 6820. [hereinafter VCCR].

48. VCCR, *supra* note 47.

49. VCCR, *supra* note 47, art. 36.

50. VCCR, *supra* note 47, art. 36.

51. VCCR, *supra* note 47, art. 36.

52. Optional Protocol Concerning the Compulsory Settlement of Disputes, art. 1, Jan. 29, 1970, 21 U.S.T. 77, T.I.A.S. No. 6820 [hereinafter VCCR Optional Protocol].

53. Sanchez-Llamas v. Oregon, 126 S.Ct. 2669, 2692 (2006) (citing Letter from Condoleezza Rice, Secretary of State, to Kofi A. Annan, Secretary-General of the United Nations (Mar. 7, 2005)).

54. Bradley, *supra* note 42, at 539.

55. Askura v. City of Seattle, 265 U.S. 332, 341 (1924)

56. Bradley, *supra* note 41, at 539-40.

57. *Sanchez-Llamas*, 126 S.Ct. at 2694 (Breyer, J., dissenting) (citing S. Exec. Rep. No. 91-9, at 5)(1969)).

B. *The United States and the International Court of Justice*

Following World War II and the formation of the United Nations, the International Court of Justice (hereinafter "ICJ") was created to serve as the arbiter of disputes among member nations.[58] The United States, along with China, the USSR and the United Kingdom, was a major player in the formation of the ICJ.[59] In 1964, President Harry Truman signed a declaration on behalf of the United States recognizing the compulsory jurisdiction of the ICJ.[60] In so doing, the United States joined other member nations who adhered to the compulsory jurisdiction of the ICJ.[61]

The United States' adherence to the ICJ's compulsory jurisdiction, however, lasted only until the United States anticipated an adverse ICJ ruling against it involving a conflict in Nicaragua. In 1984, Nicaragua brought an action against the United States in the ICJ alleging that the United States was "using military force against Nicaragua and intervening in Nicaragua's internal affairs."[62] When the ICJ determined that it had jurisdiction to hear the dispute, the United States not only declined to participate in further proceedings on the matter, but also terminated its 1964 declaration of compulsory jurisdiction.[63] Moreover, in 1986, when the ICJ handed down its decision on the merits holding the United States in violation of the treaties in question, the United States did not take any action to modify its activities.[64] The United States' behavior in this situation marked the beginning of a U.S. pattern of failing to give even "respectful consideration" to the ICJ and its rulings.

Despite its heavy involvement in the creation of the ICJ, the United States has a history of indifference to ICJ rulings. The case of *Breard v. Greene* is a prime example. In *Breard*, the U.S. Supreme Court declined to follow an ICJ ruling mandating a stay of the execution of a Paraguayan national pending the outcome of his claim of Article 36 violation.[65] In that case, Angel Francisco Breard was convicted of attempted rape and capital murder in Virginia and sentenced to death.[66] Following affirmation of his conviction by the Virginia Supreme Court and denial of certiorari by the United States Supreme Court, Breard filed a motion for habeas relief in federal court.[67] There, he argued, for the first time, that his conviction should be overturned based on the violation of his rights under Article 36

58. John H. Barton & Barry E. Carter, *International Law and Institutions for a New Age*, 81 GEO. L.J. 535, 536 (1993).

59. Int'l Court of Justice [ICJ], *Handbook*, at 18, *available at* http://www.I.C.J.-cij/I.C.J.www/igeneralinformation/ibleubook.pdf

60. BARRY E. CARTER, PHILLIP R. TRIMBLE & CURTIS A. BRADLEY, INTERNATIONAL LAW 292 (4th ed. 2003).

61. *Id.* at 291-92.

62. *Id.* at 296 (quoting Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America), I.C.J. Rep. 392 (1984)).

63. *Id.* at 303-04.

64. *Id.* at 308.

65. Breard v. Greene, 523 U.S. 371 (1998).

66. *Id.* at 373.

67. *Id.*

of the VCCR.[68] The district court and the Fourth Circuit Court of Appeals both concluded that Breard waived his Article 36 claim because he had not raised it in state court, and that he could not meet the requirements of cause and prejudice to overcome the procedural default.[69]

Shortly after Breard filed his habeas claim in federal court, Paraguayan officials instituted a claim against Virginian officials, also alleging violations of their citizens' Article 36 rights.[70] The district court and the Fourth Circuit Court of Appeals both declined to exercise subject matter jurisdiction over this action.[71] The United States Supreme Court consolidated the actions.[72]

In addition to the United States court proceedings, Paraguay started proceedings in the International Court of Justice.[73] There, Paraguay once again raised the Article 36 violations.[74] The ICJ recognized jurisdiction and ordered that Breard's execution be stayed until completion of the proceedings in the ICJ.[75] Seeking to enforce the ICJ's order to stay execution, Breard and Paraguay filed motions in the United States Supreme Court.[76] The Supreme Court ultimately denied all petitions for certiorari and all motions filed by Breard and Paraguay.[77] Later, in violation of the ICJ's order, Breard was executed as scheduled.[78]

The Supreme Court based its refusal to follow the ICJ ruling on two main premises.[79] First, the Court determined that it was required only to give "respectful consideration" to the ICJ's interpretation of the treaty because domestic procedural laws govern treaty implementation.[80] Further, the Court noted that Vienna Convention violations deserve the same treatment as US constitutional violations—they are defaulted if not raised at trial.[81]

In 2001, the United States again failed to give "respectful consideration" to an ICJ ruling in *The LaGrand Case*.[82] In *LaGrand*, Germany filed an action against the United States in the ICJ alleging violations of Walter LaGrand's Article 36 rights.[83] The ICJ ordered the United States to cease

68. *Id.*

69. Breard v. Netherland, 949 F.Supp. 1255, 1266 (E.D.Va. 1996); Breard v. Pruett, 134 F.3d 615, 620 (4th Cir. 1998).

70. *Breard*, 523 U.S. at 374.

71. Republic of Paraguay v. Allen, 949 F.Supp. 1269, 1272-73 (E.D. Va. 1996); Republic of Paraguay v. Allen, 134 F.3d 622 (4th Cir. 1998).

72. *Breard*, 523 U.S. at 374.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* at 378-79.

78. Bradley, *supra* note 41, at 538.

79. *Breard*, 523 U.S. at 375.

80. *Id.*

81. *Id.* at 376.

82. BARRY E. CARTER, PHILLIP R. TRIMBLE & CURTIS A. BRADLEY, INTERNATIONAL LAW 310 (4th ed. 2003).

83. *Id.*

execution proceedings of LaGrand pending finalization of the ICJ proceeding.[84] Like in *Breard*, however, the defendant was executed notwithstanding the ICJ's order.[85]

Following LaGrand's execution, the action in the ICJ continued, with the ICJ ultimately concluding that the United States had breached its obligations under the VCCR to provide notification of the right to consular assistance.[86] The ICJ held that Article 36 created individual rights and that a state's procedural default rules should not be allowed to prevent "full effect" of Article 36.[87]

The United States' pattern of defiance continued in 2004, in the ICJ action of *Case Concerning Avena and Other Mexican Nationals*.[88] In *Avena*, Mexico alleged that the United States had violated the VCCR rights of over 50 Mexican nationals scheduled to be executed.[89] The ICJ ruled in favor of Mexico, but the United States failed to take the remedial measures ordered by the ICJ.[90]

In sum, since its creation, the role of the ICJ has been less influential than originally envisioned due to some signatory states refusing to adhere to its rulings.[91] To that end, the court's decisions have not been well respected because there currently are no enforcement mechanisms for those countries refusing to follow ICJ rulings.[92]

IV. INSTANT CASE

A. *Chief Justice Roberts' Majority Opinion*

Chief Justice Roberts delivered the Court's opinion in *Sanchez-Llamas*, joined by Justices Scalia, Kennedy, Thomas, and Alito. Justice Roberts addressed three main issues. First was whether Article 36 of the VCCR created judicially enforceable rights for individuals in a criminal trial or post conviction proceeding.[93] Second was whether, in the instance of an Article 36 violation, suppression of evidence would be the appropriate remedy.[94] Third, was whether a state would be permitted to apply its

84. *Id.*

85. *Id.*

86. *Id.* at 310-11.

87. Mark J. Kadish, *Article 36 of the Vienna Convention on Consular Relations: The International Court of Justice in* Mexico v. United States (Avena) *Speaks Emphatically to the Supreme Court of the United States About the Fundamental Nature of the Right to Consul*, 36 GEO. J. INT'L L. 1, 22-23 (2004).

88. Case Concerning Avena and other Mexican Nationals (Mexico. v. United States), 2004 I.C.J. No. 128 (Judgment of Mar. 31)

89. *Id.*

90. *Id.*

91. BARRY E. CARTER, PHILLIP R. TRIMBLE & CURTIS A. BRADLEY, INTERNATIONAL LAW 540-41 (4th ed. 2003).

92. *Id.* at 541.

93. *Sanchez-Llamas v. Oregon*, 126 S.Ct. 2669, 2677 (2006).

94. *Id.* at 2674.

procedural default rules to claims of Article 36 violations.[95] The five-justice majority concluded that "even assuming the Convention creates judicially enforceable rights, that suppression is not an appropriate remedy for a violation of Article 36, and that a State may apply its regular rules of procedural default to Article 36 claims."[96]

1. Does Article 36 create individually enforceable rights?

Sanchez-Llamas and Bustillo both asserted they had individual rights that were judicially enforceable under the VCCR.[97] Respondents and the United States, as *amicus curiae*, both argued that the Convention does not automatically grant individually enforceable rights because "there is a presumption that a treaty will be enforced through political and diplomatic channels, rather than through the courts."[98] Determining that the petitioners were not entitled to relief regardless of the answer, the *Sanchez-Llamas* Court expressly declined to decide whether the VCCR creates individual rights for defendants in a criminal proceeding.[99] In order to answer the remaining two questions, Justice Roberts proceeded on the assumption that the VCCR *does* create individual rights enforceable by criminal defendants.[100]

2. Is suppression the proper remedy for Article 36 violations?

Proceeding under the assumption that Article 36 granted individual rights to the petitioners, Justice Roberts then addressed Sanchez-Llamas' suppression argument.[101] In particular, Sanchez-Llamas urged that suppression was the proper remedy for the Oregon authorities' violation of his Article 36 rights.[102]

As a preliminary matter, Justice Roberts noted that the plain language of the VCCR does not provide an express remedy for Article 36 violations, but instead "expressly leaves the implementation of Article 36 to domestic law,"[103] In fact, the majority noted, "[i]t would be startling if the Convention were read to require suppression," since suppression is almost completely unrecognized by the other signatories to the treaty.[104] Since the VCCR itself does not require suppression, Justice Roberts then looked at whether domestic law requires suppression.[105] Sanchez-Llamas argued the Court should rule that suppression is the appropriate remedy for Article 36

95. *Id.*
96. *Id.*
97. *Id.* at 2677.
98. *Id.* (quoting Brief for United States 11).
99. *Sanchez-Llamas*,126 S.Ct. at 2677.
100. *Id.* at 2677-78.
101. *Id.* at 2678.
102. *Id.*
103. *Id.* The majority noted the "startling" result should the Vienna Convention require suppression, calling suppression "an entirely American legal creation." If the VCCR required suppression as a remedy, other countries that do not even recognize suppression under their own domestic law would be required to provide it defendants in instances of Article 36 violations.
104. *Id.* (citations omitted).
105. *Id.* at 2679.

violations, based on its authority to develop judicial remedies to enforce federal law in state-court proceedings.[106] The Court rejected this argument, distinguishing the cases cited by Sanchez-Llamas on the grounds that they pertained only to federal courts and concluding that it lacked supervisory authority to fashion remedies in state court criminal proceedings.[107] As such, the Court declined to create a remedy for Article 36 violations, absent express authority granted by the VCCR to do so.[108]

Since the VCCR neither contained an express remedy nor granted the Court authority to impose a remedy on state courts, Justice Roberts next looked to see whether the VCCR contained an implied judicial remedy. Specifically, Sanchez-Llamas argued that the Article 36 requirement that domestic law "must enable *full effect* to be given to the purposes for [Article 36]" implies a remedy—whether it be suppression or some other remedy."[109] The Court rejected this argument, primarily on the basis that there was insufficient evidence that other signatories have found the "full effect" language to imply a remedy.[110]

Even if an implied remedy existed, Justice Roberts maintained that suppression would not be the appropriate remedy.[111] The Court noted that, under domestic law, the exclusionary rule is used only in very limited circumstances, primarily to deter constitutional violations with Fourth and/or Fifth Amendment implications.[112] The Court further rationalized that use of the exclusionary rule in the instant case was not proper because violations of Article 36 have no Fourth or Fifth Amendment issues.[113] More pointedly, the Court reasoned that Article 36 does not involve searches or interrogations and does not guarantee defendants assistance from the consul, but merely grants them a right to have the consul informed.[114]

Rejecting Sanchez-Llamas' argument that the Article 36 violation deprived him of complete knowledge of his legal options, Justice Roberts

106. *Id.* (quoting Reply Brief for Petitioner in No. 04-10566, p. 11).

107. *Id.* The Court noted that its authority in the cases cited by Sanchez-Llamas was based on its authority over federal courts, not over state courts.

108. *Id.* The Court concluded that it would be a violation of separation of powers to develop a judicial remedy without the express authority of the VCCR to do so.

109. *Id.* (quoting Art. 36(2), 21 U.S.T., at 101) (emphasis added by opinion). The Court casts doubt on the argument that there is an implied remedy by noting "there is little indication that other parties to the Convention have interpreted Article 36 to require a judicial remedy in the context of criminal prosecutions." *Id.* (citing Department of State Answers to Questions Posed by the First Circuit in United States v. Nai Fook Li, No. 97-2034 etc., p. A-9, 1999 WL 33891052 (Oct. 15, 1999)).

110. *Id.* (citations omitted).

111. *Id.*

112. *Id.* at 2681.

113. *Id.*

114. *Id.* Additionally, the Court concluded that the reasons behind suppression of Fourth and Fifth Amendment violations are not present in an Article 36 violation. Often, confessions gained in violation of the Fourth or Fifth Amendments are not reliable. Additionally, violations of Fourth or Fifth Amendments often give law enforcement an advantage over the defendant. Here, however, the Court determined that the confession gained from Sanchez-Llamas in this case was probably reliable, despite his being unaware of his Article 36 rights. Further, law enforcement probably does not gain any practical advantage over the defendant from an Article 36 violation.

opined that domestic law adequately protected Sanchez-Llamas.[115] Specifically, the Court determined that Article 36 did not substantially add to Sanchez-Llamas' legal options because he never lost his due process rights to an attorney and protection against self-incrimination.[116]

Concluding its suppression analysis, the majority noted that suppression would not have been the only possible remedy for the Article 36 violations.[117] Sanchez-Llamas could have argued that his statements made to authorities were involuntary and advanced the Article 36 violation as evidence of this argument.[118] Further, had he raised the violation at trial, the trial court would have aided him in receiving consular help.[119]

3. Can states apply their own procedural default rules to Article 36 claims?

After deciding Sanchez-Llamas' portion of the case, the Court turned to Bustillo's argument that claims of an Article 36 violation trump a state's procedural default rules.[120] The Court, relying primarily on its holding in *Breard v. Greene*,[121] rejected Bustillo's argument and concluded that a state may apply its own procedural default rules to claims of Article 36 violations.[122]

Recalling its decision in *Breard*, the Court reiterated its two bases for determining that Article 36 does not trump state procedural default rules.[123] First, "absent a clear and express statement to the contrary, the procedural rules of the forum State govern the implementation of the treaty in that State."[124] Second, state procedural default rules apply to even constitutional claims and should likewise apply to claims of treaty violations.[125]

The Court then explained its rejection of Bustillo's call to the Court to reconsider its holding in *Breard* in light of the newer ICJ holdings in *LaGrand* and *Avena* that state procedural default rules do not apply to Article 36 claims.[126] Relying on its own constitutional authority, the structure and purpose of the ICJ, and the United State's recent withdrawal from the Optional Protocol concerning Vienna Convention disputes, the Court determined that it is not bound to follow ICJ rulings.[127] The majority acknowledged, however, that the ICJ's decisions, although not binding, are

115. *Id.* at 2681-82.
116. *Id.* at 2682 (citing Wong Wing v. United States, 163 U.S. 228, 238 (1896)).
117. *Id.*
118. *Id.*
119. *Id.*
120. *Id.*
121. 523 U.S. 371 (1998) (*per curiam*).
122. *Sanchez-Llamas*, 126 S.Ct. at 2682.
123. *Id.* at 2682-83.
124. *Id.* (quoting Breard v. Greene, 523 U.S. 371, 375 (1988) (*per curiam*)).
125. *Id.* at 2683 (citing Breard v. Greene, 523 U.S. 371, 375 (1988) (*per curiam*)).
126. *Id.*
127. *Id.* at 2683-86.

entitled to "respectful consideration."[128] The Court nonetheless declined to revisit *Breard*.[129]

Bustillo also attempted to argue that procedural default rules take away any "legal significance" of Article 36 violations.[130] Even so, the Court rejected this argument as well, noting that procedural default rules *often* take away legal significance from otherwise valid claims.[131]

Although it declined to adhere to the ICJ's holdings in *Avena* and *LaGrand*, the Court discussed how the ICJ's interpretation runs contrary to an adversarial system of justice.[132] Noting that the adversarial system is centered on a party's burden to do what is best for him, the Court determined that a rule that Article 36 claims can trump state procedural rules would be too broad.[133] Not only would the rule in question be trumped, but also would other procedural default rules such as statutes of limitations and other limits on filings.[134]

The Court compared Article 36 claims with claims of violations of *Miranda*[135] rights.[136] Notably, the Court pointed out that even claims of *Miranda* violations are waived if not raised at trial.[137] Likewise, the same standard should apply to Article 36 claims.[138]

B. *Justice Ginsburg's Concurrence*

Justice Ginsburg concurred in the judgment, but joined Part II of the dissent. Acknowledging that "Article 36 of the Vienna Convention grants rights that may be invoked by an individual in a judicial proceeding," Justice Ginsburg nonetheless determined that *Sanchez-Llamas* did not warrant suppression or overriding of a state's procedural default rules.[139] Justice Ginsburg declined to join the dissent in full because it was her opinion that Justice Breyer's dissent went beyond the scope of the cases before the Court.[140]

Regarding the suppression issue, Justice Ginsburg first dispelled the dissent's picture of foreign nationals who do not understand their *Miranda* rights being questioned by authorities.[141] She noted that Sanchez-Llamas had lived in the United States for 11 years and understood his *Miranda* rights, which he received in both English and Spanish.[142] She remarked

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128. *Id.* at 2683 (quoting Breard v. Greene, 523 U.S. 371, 375 (1988) (*per curiam*)).
129. *Id.*
130. *Id.* at 2685.
131. *Id.* at 2685-86.
132. *Id.*
133. *Id.*
134. *Id.*
135. *Miranda*, *supra* note 11.
136. *Sanchez-Llamas*, 126 S.Ct. at 2687.
137. *Id.*
138. *Id.*
139. *Id.* at 2688 (Ginsburg, J., concurring).
140. *Id.*
141. *Id.*
142. *Sanchez-Llamas*, 126 S.Ct. at 2687.

that in Justice Breyer's picture, the defendant would not even need VCCR protection because he would have a cause of action based on his *Miranda* rights.[143]

Moreover, she noted, Article 36 does not require authorities to contact the consul immediately, nor does it require questioning to be suspended until the consul has responded.[144] Justice Ginsburg reasoned that, since Article 36 does not provide these protections, suppression is improper.[145] She pointed out that neither the VCCR itself nor any of its signatories have allowed for suppression, and that the dissent failed to cite a single case where suppression was granted solely for an Article 36 violation.[146]

Regarding the procedural default rule issue, Ginsburg began by pointing out two inconsistencies in Bustillo's reasoning. First, she joined the majority's contention that it would be unfair to subject *Miranda* violations but not Article 36 violations to procedural default rules.[147] Second, she recognized that a federal statute could supersede the VCCR.[148]

A critical point in Justice Ginsburg's analysis stemmed from the fact that Bustillo's attorney knew throughout his trial of Bustillo's rights under Article 36.[149] She reasoned that since the State's actions did nothing to bar Bustillo from raising his Article 36 claim at trial, the first condition for overriding a procedural default rule was not met.[150]

In closing, Ginsburg explained that "if there are some times when a Convention violation, standing alone, might warrant suppression, or the displacement of a State's ordinarily applicable procedural default rules, neither Sanchez-Llamas' case nor Bustillo's belongs in that category."[151]

C. Justice Breyer's Dissent

Justice Breyer dissented, joined by Justices Stevens and Souter and by Justice Ginsburg in part. Focusing on the same three questions raised by the majority, the dissent began with a discussion of the history and purpose behind the VCCR, noting the United States' recent withdrawal from the Optional Protocol.[152] Justice Breyer also discussed two ICJ cases that were decided in the years since *Breard—LaGrand* and *Avena*. Justice Breyer interpretations of the ICJ key holdings since *Breard* are as follows:

> (1) that the Convention obligates a member nation to inform an arrested foreign national without delay that he may contact his consulate; (2) that the Convention requires the

143. *Id.*
144. *Id.* at 2689 (citing Case Concerning Avena and other Mexican Nationals (Mexico. v. United States), 2004 I.C.J. 128 (Mar. 31)).
145. *Id.*
146. *Id.*
147. *Id.*
148. *Sanchez-Llamas*, 126 S.Ct. at 2689.
149. *Id.* at 2690.
150. *Id.*
151. *Id.*
152. Id. at 2691-92 (Breyer, J., dissenting)

> United States to provide some process for its courts to 'review and reconside[r]' criminal convictions where there has been a prejudicial violation of this obligation; and (3) that this 'review and reconsideration' cannot be foreclosed on the ground that the foreign national did not raise the violation at trial *where the authorities' failure to inform the foreign national of his rights prevented him from timely raising his claim.*[153]

In Justice Breyer's opinion, the majority's holding in *Sanchez-Llamas* is in direct conflict with these recent holdings of the ICJ and fails to give the ICJ the "respectful consideration" to which it is entitled.[154]

1. Does the VCCR create individually enforceable rights?

Beginning his analysis, Justice Breyer addressed the question that the majority declined to answer—whether the VCCR creates individually enforceable rights. Noting that this question has plagued courts for some time, Justice Breyer answered, "a criminal defendant *may*, at trial or in a postconviction proceeding, raise the claim that state authorities violated the Convention."[155]

In determining that the VCCR creates individual rights, Justice Breyer relied first on the *Head Money Cases*.[156] The *Head Money Cases*, in deciding whether a treaty was to be given effect of a law passed by Congress, looked to the nature of the treaty.[157] There are two primary questions to be answered in determining whether a treaty is to be given the effect of Congressional law: "Does the Convention 'prescribe a rule by which the rights of the private citizen . . . may be determined'? Are the obligations set forth in Article 36(1)(b) 'of a nature to be enforced in a court of justice'?"[158]

Justice Breyer concluded that the nature of the VCCR indicated that it was the type to be enforced in judicial proceedings by individuals.[159] Article 36 involves rights of arrested or detained foreign nationals, such as the right to have the consul informed of his arrest and the right to have communication to the consul promptly forwarded on his behalf.[160] The dissent reasoned that these are procedural rights not unlike those that courts commonly enforce.[161] Furthermore, Article 36 addresses the "rights" of individual foreign nationals as opposed to other sections that speak of "rights" of member nations or consul officials.[162]

153. *Id.* at 2693 (Breyer, J., dissenting) (emphasis in original)
154. *Sanchez-Llamas*, 126 S.Ct. at 2695-96.
155. *Id.* at 2691 (emphasis added).
156. *Id.* at 2695 (citing *Head Money Cases*, 112 U.S. 580 (1884)).
157. *Id.*
158. *Id.*
159. *Id.*
160. *Sanchez-Llamas*, 126 S.Ct. at 2695.
161. *Id.*
162. *Id.*

In showing that the language of Article 36 intended to create an individual right, Justice Breyer drew a parallel between Article 36 and a hypothetical pre-*Miranda* federal statute.[163] He pointedly stated that a federal statute reading "shall inform a detained person without delay of his right to counsel" would surely be read to create a law that a defendant could raise at trial.[164] Likewise, he concluded that Article 36 should also be read to create individually enforceable rights.[165] As added support, Justice Breyer cited prior Supreme Court cases where individuals were permitted to invoke treaty provisions.[166]

Further supporting the argument that the VCCR creates individual rights, Justice Breyer examined the ICJ's prior holdings in *Avena* and *LaGrand*, which both held that an individual might invoke rights under the VCCR.[167] He argued that although the majority acknowledged that the ICJ is entitled to "respectful consideration," the majority declined to provide this required level of deference.[168]

After distinguishing the cases relied upon by the majority for the proposition that there is a presumption against a treaty creating individual rights, Justice Breyer noted his unawareness of another nation that has found that the VCCR does not create individual rights.[169] Further, he agreed that Executive Branch's interpretation of treaty is entitled to great weight, but acknowledged that it is not conclusive.[170] Justice Breyer concluded Part II by reaffirming that the language, nature of the rights, and the ICJ's interpretation all point to individual rights.[171]

2. Do a state's procedural default rules apply to Article 36 violations?

Turning to the issue of whether a state's procedural default rules should apply to claims of Article 36 violations, the dissent answered, "*sometimes* state procedural default rules must yield to the Convention's insistence that domestic laws 'enable full effect to be given to the purposes for which" Article 36's "rights . . . are intended.'"[172] Justice Breyer's reading of the "full effect" language of Article 36 is that:

> A State's ordinary procedural default rules apply *unless* (1) the defendant's failure to raise a Convention matter (e.g., that police failed to inform him of his Article 36 rights) can

163. *Id.*

164. *Id.* (citing Medellin v. Dretke, 544 U.S. 660, 687 (2005) (O'Connor, J., dissenting).

165. *Id.*

166. *Sanchez-Llamas*, 126 S.Ct. at 2695. . (citing United States v. Rauscher, 119 U.S. 407, 410-411 (1886); Kolovrat v. Oregon, 366 U.S. 187, 191 (1961); Asakura v. Seattle, 265 U.S. 332, 340 (1924)).

167. *Id.*

168. *Id.* at 2697.

169. *Id.*

170. *Id.* at 2698 (citing Sumitomo Shoji America, Inc. v. Avagliano, 457 U.S. 176, 184-85 (1982)).

171. *Id.*

172. *Sanchez-Llamas*, 126 S.Ct. at 2691 (quoting Art. 36(2), 21 U.S.T., at 101) (emphasis in original).

> itself be traced to the failure of the police (or other governmental authorities) to inform the defendant of those Convention rights, *and* (2) state law does not provide any other effective way for the defendant to raise that issue (say, through a claim of ineffective assistance of counsel).[173]

To support this interpretation of Article 36, Justice Breyer focused primarily on prior decisions of the ICJ,[174] although he devoted some discussion to the express language of Article 36[175] and its drafting history.[176]

First, Justice Breyer interpreted the prior decisions of the ICJ to hold that "the Convention simply [requires] an effective remedy."[177] He noted that the ICJ did not require that countries provide any specific remedy.[178] Furthermore, he acknowledged that state procedural default rules are only forbidden if there is no effective remedy for an Article 36 violation.[179]

Next, the dissent acknowledged the majority's point that it is not bound by the ICJ's holdings.[180] He focused considerably, however, on the requirement that U.S. courts give "respectful consideration" to ICJ holdings.[181] Justice Breyer decided that the majority did not give the needed deference to the ICJ.[182] Justice Breyer reasoned that more deference is entitled to the ICJ because the ICJ has extensive experience with treaties.[183] He pointed further to the Supreme Court's and other lower courts' prior cases where the ICJ was given considerable deference.[184]

When countering the majority's foundation for its opinion, Justice Breyer asserted that the majority misinterpreted the prior holdings of the ICJ by reading them "as creating an extreme rule of law," rather than "in light of the Convention's underlying language and purposes."[185] Reading the ICJ's opinions in this manner, the dissent argued, was actually contrary to the respectful consideration desired.[186]

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173. *Id.* at 2698.

174. *Id.* at 2698-99.

175. Justice Breyer reasoned that his conclusion is supported by Article 36's two requirements that (1) its rights be "exercised in conformity with" the laws and regulations of the detaining country and (2) that the host country's laws and regulations give "full effect " to Article 36's purposes.

176. The original draft of Article 36 contained "not nullify" in place of "full effect." When "full effect" was suggested to replace "not nullify," opponents of the change argued that "full effect" would "modify the criminal law and regulations or the criminal procedure of the receiving state." (quoting 1 United Nations Conference on Consular Relations, Official Records, Summary records of plenary meetings and of the meetings of the First and Second Committees, U.N. Doc. A/CONF.25/16, ¶ 26, p. 38 (1963) (statement of Romania). Justice Breyer reasoned that by adopting the "full effect" language that the drafters intended Article 36 to modify the host country's criminal procedure.

177. *Sanchez-Llamas*, 126 S.Ct. at 2700.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* at 2702.

183. *Sanchez-Llamas*, 126 S.Ct. at 2700-01.

184. *Id.*

185. *Id.* at 2702-03.

186. *Id.* at 2703.

He next examined the majority's reliance on *Breard v. Greene*, determining that *Breard* should not control in the instant case.[187] Justice Breyer distinguished *Breard* on the basis that it concerned federal, rather than state law.[188] He provided as further support that *Breard* is not controlling that (1) the ICJ holdings in question were decided after *Breard* and (2) *Breard* was a per curiam decision that was decided in a very time-sensitive situation.[189] He argued that *Breard* should be modified because its presumption against the VCCR ever trumping state procedural default rules in the absence of an express statement is based on case law that does not reach the same conclusion.[190]

Justice Breyer concluded by addressing the argument that Article 36 should not be entitled to better treatment than the United States Constitution by stating "nations are of course free to agree to grant one another's citizens protections that differ from the protections enjoyed by citizens at home."[191] Based on the foregoing analysis, the dissent recommended a remand to the state court for the state to determine whether an appropriate remedy would be available.[192]

3. Is suppression an appropriate remedy?

Like the question of whether Article 36 should ever trump a state's procedural default rules, Justice Breyer also concluded that the answer to whether suppression is an appropriate remedy for Article 36 violations is "sometimes."[193] He admitted that the VCCR does not provide for automatic exclusion but argued that if suppression is the only appropriate remedy that it should be allowed.[194]

The dissent rejected the majority's assertion that a defendant's rights are adequately protected under domestic law by introducing the image of a foreign national who does not speak English.[195] Justice Breyer asserted that it might be prejudicial to that defendant who may not be familiar with the American criminal justice system.[196] By not giving him his Article 36 rights, the defendant may be prejudiced.[197] He rejected Justice Ginsburg's argument that the defendant always has another cause of action by showing that the confession was involuntary.[198]

Next, the dissent rejected the majority's idea that suppression is "entirely American."[199] Addressing the majority's argument that it would be a

187. *Id.*
188. *Id.* at 2704.
189. *Sanchez-Llamas*, 126 S.Ct. at 2704.
190. *Id.* at 2705.
191. *Id.*
192. *Id.*
193. *Id.* at 2706.
194. *Id.*
195. *Sanchez-Llamas*, 126 S.Ct. at 2706.
196. *Id.*
197. *Id.*
198. *Id.*
199. *Id.*

startling result to allow suppression as a remedy, Justice Breyer argued that it is not startling because the VCCR left it up to countries to decide the proper remedy.[200] Justice Breyer listed cases in countries where suppression has been utilized as a remedy.[201]

V. Analysis

The United States' disregard of the ICJ's rulings, most recently *Sanchez-Llamas*, is quite clear. As Justice Breyer discussed in his *Sanchez-Llamas* dissent, the United States Supreme Court's decision in that case is in direct conflict with the recent prior ICJ rulings in *Avena* and *LaGrand*.[202] As discussed above, the ICJ specifically decided in those two cases that the VCCR creates individually enforceable rights, and that a state's procedural default rules might not bar review of a defendant's case. Despite these clear rulings, the *Sanchez-Llamas* Court nonetheless applied its procedural default rules to bar Bustillo's Article 36 claim and refused to provide a remedy for the VCCR violations suffered by Sanchez-Llamas and Bustillo.

One scholar has commented that "[t]he attitude of the United States towards international adjudication seems to have reached another low point."[203] It is undisputed that the United States is not bound by the rulings of the International Court of Justice. It also is clear from the history of its treatment of ICJ decisions that the United States is unwilling to defer to those rulings.

Regardless of whether one favors a monistic or dualistic approach to international law, potential negative impacts of the *Sanchez-Llamas* decision can be seen. Indeed, choosing not to give the ICJ "respectful consideration" has identifiable costs. By refusing to comply with the ICJ's rulings throughout history, the United States apparently has undertaken a cost-benefit analysis, with its recent behavior indicating that it views its judicial independence—the only identifiable benefit—as outweighing any social and economic costs. Admittedly, it may be difficult to quantify the costs associated with choosing not to give deference to ICJ rulings, but it is nonetheless important to recognize them. This Note focuses on the two most obvious negative impacts—reputation and reciprocity.

A. *Reputation*

Although the *Sanchez-Llamas* majority acknowledged that the ICJ was entitled to "respectful consideration," it failed to provide even the smallest level of deference to that tribunal. By not showing any deference

200. *Id.* at 2707.

201. *Sanchez-Llamas*, 126 S.Ct. at 2707.

202. *See supra*, part IV.

203. Andreas L. Paulus, *From Neglect to Defiance? The United States and International Adjudication*, 15 Eur. J. Int'l L. 783, 784 (2004).

to the ICJ, the United States is sending a message that it thinks it is superior to the other signatories who have taken measures to follow the ICJ's rulings.

Globally, foreign nations' opinions of the United States have declined in the past two years.[204] In fact, two years ago 40% of respondents said that U.S. had a positive global influence.[205] That number is currently down to 29%.[206] This is due largely to the United States' current situation in Iraq.[207] Steve Krull, director of the Program on International Policy Attitudes, attributes this decline "to a growing perception of 'hypocrisy' on the part of the United States in such areas as cooperation with the United Nations and other international bodies."[208] However, Krull also noted that the negative feelings are not based solely on Iraq—"The reaction tends to be: 'You were a champion of a certain set of rules. Now you are breaking your own rules, so you are being hypocritical.'"[209]

The United States' hypocritical behavior is evidenced in part by its prior interactions with Nicaragua, Iran and Syria.[210] There, "the United States demanded access to its citizens pursuant to the very provisions of the Vienna Conventions it chooses to ignore when the situation is reversed."[211] This "do as I say, not as I do" attitude only worsens the global perception of the United States.

As discussed earlier, the United States was a leader in the creation of the International Court of Justice. Now, by disregarding its rulings, the United States is acting hypocritically. The *Sanchez-Llamas* Court should have taken the case as an opportunity to revisit *Breard* and render a ruling in accordance with the ICJ. However, the Court succeeded only in affirming the world's negative view of the United States.

B. *Reciprocity*

In international law, reciprocity must also be considered.[212] When one party breaches its obligations under a treaty, the harmed party is "entitled to take countermeasures, called 'retorsion' in international law, by suspending the same right or duty against the breaching party."[213] As such,

204. Kevin Sullivan, *Views on U.S. Drop Sharply in Worldwide Opinion Poll*, WASHINGTON POST, January 23, 2007 at A14.

205. *Views of US's Global Role 'Worse'*, BBC NEWS, Jan. 23, 2007, http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/americas/6286755.stm.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. Emily Deck Harrill, *Exorcising the Ghost: Finding a Right and a Remedy in Article 36 of the Vienna Convention on Consular Relations*, 55 S.C. L. REV 569, 584 (2004) (citing United States v. Superville, 40 F.Supp.2d 672, 676 n. 3 (1999); William J. Aceves, *The Vienna Convention on Consular Relations: A Study of Rights, Wrongs and Remedies*, 31 VAND. J. TRANSNAT'L L. 257, 268 (1998)).

211. Harrill, *supra* note 205.

212. Asa W. Markel, *International Law and Consular Immunity*, 43 Arizona Attorney, 22, January 2007.

213. Markel, *supra* note 207 (citing JAMES L. BRIERLY, THE LAW OF NATIONS 398-99 (Sir Humphrey Waldock ed., Oxford 6th ed. 1963)).

when a visitor to the United States is deprived his rights under the VCCR and not given any remedy, the damaged country is equally able to treat American citizens in the same manner.[214]

The right to consulate assistance is extremely important to American citizens traveling abroad. In fact, American Citizens Abroad, a non-profit organization, has explained that a large number of US citizens travel abroad each year, many of whom find themselves involved in a foreign nation's criminal justice system.[215] Access to consular assistance is extremely important to help these American travelers navigate an unfamiliar system.[216] Indeed, the United States Department of State even recognizes the extreme need for American citizens to have access to consul while traveling abroad, explaining that "'[n]o one needs [this] cultural bridge more than the individual U.S. citizen who has been arrested in a foreign country or imprisoned in a foreign jail.'"[217]

One judge has noted, "United States citizens are scattered about the world-as missionaries, Peace Corps volunteers, doctors, teachers and students, as travelers for business and for pleasure. Their freedom and safety are seriously endangered if state officials fail to honor the Vienna Convention and other nations follow their example."[218] Additionally, "U.S. courts should follow the primary reasoning behind [ICJ rulings], namely that Article 36 provides an important cultural bridge for a detained foreign national, helping him to overcome numerous cultural, linguistic, social and logistical barriers."[219]

In addition to creating the potential for American international travelers to be denied their VCCR rights, the United States' lack of deference to the ICJ may well disrupt other areas of international relations.[220] For instance, if violations of Article 36 become commonplace, signatory countries may well begin to violate other VCCR provisions.[221] This breakdown in diplomatic and consular relations may adversely impact economic and political relations among signatory countries.[222]

The United States' behavior, as evidenced by its recent ruling in *Sanchez-Llamas v. Oregon*, has the potential to diminish the rights of American travelers abroad and to negatively affect economic and political relations. By failing to give full effect to the rights granted under Article

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214. *Id.*

215. Houston A. Stokes, *Broadening Executive Power in the Wake of* Avena: *An American Interpretation of Pacta Sunt Servanda*, Note, 63 WASH. & LEE L. REV. 1219, 1235-36 (quoting Brief for American Citizens Abroad (ACA) as Amicus Curiae Supporting Petitioner at 2, Ex Parte Medellin, No. Ap-75, 207, 2005 WL 1532996 (Tex. Crim. App. June 22, 2005)).

216. *Id.*

217. Harrill, *supra* note 205 (quoting William C. Aceves, *The Vienna Convention on Consular Relations: A Study of Rights, Wrongs and Remedies*, 31 VAND. J. TRANSNAT'L L. 257, 268 (1998)).

218. Breard v. Pruett, 134 F.3d 615, 622 (4th Cir. 1998) (Butzner, J., concurring).

219. Kadish, *supra* note 89.

220. William C. Aceves, *The Vienna Convention on Consular Relations: A Study of Rights, Wrongs and Remedies*, 31 VAND. J. TRANSNAT'L L. 257, 314 (1998)

221. *Id.*

222. *Id.*

36, the United States is opening itself and its international visitors to the same treatment abroad.

VI. CONCLUSION

The United States continues to discount the value of international relations today. Another recent situation where the United States has chosen its independence over cooperation with other nations relates to the Kyoto Protocol.[223] The Kyoto Protocol recently was implemented internationally to reduce carbon dioxide emissions.[224] The United States declined to join the Protocol, choosing instead to regulate emissions through increased taxes.[225] The United States' decision against joining the Kyoto Protocol has resulted in some political backlash.[226] However, insufficient time has passed to determine whether the actual costs of not complying will outweigh the benefits.

The potential costs of failing to give deference to the ICJ are apparent. By doing so, the United States not only damages its reputation among its international neighbors, but also threatens the fair treatment of its citizens abroad. These potential risks may well outweigh any the benefit of judicial independence.

The question now remains of how to address this recurring problem. Should we revise the Vienna Convention on Consular Relations to provide for a specific remedy for violations of Article 36? Or should we enact a domestic statute that would provide for a specific remedy? Revising the VCCR may be problematic because it would require active involvement of all signatory nations—nations that may not perceive a problem with the current state of the treaty. Enacting a relevant domestic statue to provide for a specific remedy may be the proper answer. This, however, would require the Court to first acknowledge that the VCCR creates individually enforceable rights. Whatever the proper remedy, the United States' treatment of the ICJ's decisions has definite negative impacts on its relationship with other signatory countries that probably are not outweighed by any perceived benefit of judicial independence.

223. Richard A. Posner, *Efficient Responses to Catastrophic Risk*, 6 CHI. J. INT'L L. 511, 516 (2006).

224. *Id.*

225. *Id.*

226. Jamie Smyth, *EU Leaders Urged to Adopt Climate Change Package*, IRISH TIMES, March 8, 2007, at World, *available at* 2007 WLNR 4351419.