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## Procedural *Jus Cogens*

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# Procedural *Jus Cogens*

ANTHONY J. COLANGELO\*

*Jus cogens are a species of supernorm in international law. They are universally binding and trump all contrary rules—such as treaties and customary international law. They are typically framed in terms of substantive prohibitions: no genocide, no slavery, no crimes against humanity, etc. This Article seeks to identify a procedural jus cogens; namely, the right to due process of law made up of notice, a hearing, and an impartial and independent decisionmaker. To do so, it draws from what are called “general principles of international law”; that is, principles common to legal systems around the world, which make up a source of international law. It argues that a comparative approach to these principles can reveal an empirically supported, objective underlying natural law right. In particular, by looking to the rights that states deem most important, hierarchically superior, and foundational to their legal systems as contained in their constitutions, this approach solves major seemingly intractable jurisprudential and practical dilemmas for the international law of jus cogens by providing an alternative to horizontal, consent-based positivistic law of treaties and custom.*

*To make its argument, this Article examines the 193 member states of the United Nations as well as Kosovo, the Republic of China (Taiwan), and the Vatican City (Holy See). Diligent research has revealed that virtually all states in the world secure the most basic requirements of due process: notice, a hearing, and an impartial and independent decisionmaker. More*

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*specifically, 189 states provide notice to the accused, 196 states provide for the right to a hearing, and 196 states provide for an impartial and independent decisionmaker. Moreover, the vast majority of these protections are constitutional. The right to notice is protected in 179 constitutions, the right to a hearing is protected in 193 constitutions, and the right to an impartial and independent decisionmaker is protected in 193 constitutions. This analysis easily satisfies the recent International Law Commission criteria that for a norm to qualify as jus cogens it must be accepted by “a very large majority of states . . . across regions, legal systems and cultures.”*

*Discovering a procedural jus cogens would be revolutionary in some respects. A procedural jus cogens norm would expand the concept of jus cogens because such a norm would qualitatively differ from a substantive one, given that it is not merely a negative obligation on a state but imposes a positive duty to provide a right. Further, the Article’s argument holds powerful implications not just for international law but for domestic U.S. law as well. The Supreme Court long ago held that international law is part of our law, including the law of jus cogens, and mechanisms exist to enforce that law in U.S. courts.*

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## INTRODUCTION

*Jus cogens*, or peremptory norms of international law, are a special kind of international law in that they are universally applicable norms that trump all other sources of international law—such as treaties or custom—irrespective of state consent.<sup>1</sup> For instance, if Hitler and Mussolini entered into a treaty legalizing genocide, *jus cogens* would immediately swoop in to invalidate that treaty.<sup>2</sup> These norms are typically framed in terms of substantive prohibitions: no genocide,

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1. See Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT]:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

See also Int'l Law Comm'n, Rep. on the Work of Its Seventy-First Session, U.N. Doc. A/74/10, at 142 (2019) [hereinafter Int'l Law Comm'n Rep.] (“Peremptory norms of general international law (*jus cogens*) reflect and protect fundamental values of the international community, are hierarchically superior to other rules of international law”); *id.* at 153 cmt. (8), 155 cmt. (12); *id.* at 14 n.729 (citing Reservations to Convention on Prevention and Punishment of Crime of Genocide, Advisory Opinion, 1951 I.C.J. 15, 23 (May 28) (noting “the universal character of the condemnation of genocide”)); Jurisdictional Immunities of the State (Ger. v. It.; Greece intervening), Judgment, 2012 I.C.J. Rep. 99, ¶ 95 (Feb. 3) (“[A] *jus cogens* rule is one from which no derogation is permitted.”). It should be noted that these norms apply not just to treaty law but also to customary international law. See *infra* note 71; IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 513 (3d ed. 1979) (“The major distinguishing feature of such rules is their relative indelibility. They are rules of customary law which cannot be set aside by treaty or acquiescence.”).

2. VCLT, *supra* note 1, art. 53.

no torture, no crimes against humanity, etc.<sup>3</sup> Yet there has recently been some interest in the possibility of “procedural *jus cogens*.”<sup>4</sup>

The first question is where such a norm comes from. Treaties bind only states parties, yet as the example above explained, states cannot contract around *jus cogens*.<sup>5</sup> Custom comprises two elements: state practice and what is called “*opinio juris*,” or the belief that the practice arises from a sense of legal obligation or right.<sup>6</sup> Yet states can generally contract around custom by treaty, in much the same way parties to a civil dispute can contract around a default common law rule.<sup>7</sup> But there is another source of international law called general principles of international law<sup>8</sup>—that is, principles common to legal systems around the world—from which *jus cogens* may arise.<sup>9</sup> Unlike treaties and custom, these do not rely on a positivistic, consent-based model whereby states consent among one another to be bound by the rule in question.<sup>10</sup> Rather, the relevant consent may be conceptualized as that of the state to its own laws,<sup>11</sup> which does not so much create but *reveals*

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3. Int’l Law Comm’n Rep., *supra* note 1, at 204–06 cmts. (5)–(10); RESTATEMENT (THIRD) OF FOREIGN RELS. L. OF THE UNITED STATES § 702 cmt. n (AM. L. INST. 1986) [hereinafter RESTATEMENT (THIRD) OF FOREIGN RELATIONS].

4. *See generally* S.I. Strong, *General Principles of Procedural Law and Procedural Jus Cogens*, 122 PENN ST. L. REV. 347 (2018) (analyzing international arbitration in the civil context to argue for procedural *jus cogens*); *see also* LARRY MAY, *GLOBAL JUSTICE AND DUE PROCESS* 87–140 (2011) (arguing that habeas corpus should be a procedural *jus cogens* principally because it guarantees visibility); Evan J. Criddle & Evan Fox-Decent, *A Fiduciary Theory of Jus Cogens*, 34 YALE J. INT’L L. 331, 370–71 (2009) (arguing for an emerging due process *jus cogens* norm based on a fiduciary theory by which states act as guardians of their citizens’ rights, elaborated at *infra* notes 163–172 and accompanying text); Jenia Iontcheva Turner, *Nationalizing International Criminal Law*, 41 STAN. J. INT’L L. 1, 44 n.253 (2005) (mentioning “fundamental principles of due process” as peremptory norms); ALEXANDER ORAKHELASHVILI, *PEREMPTORY NORMS IN INTERNATIONAL LAW* 60 (2006) (mentioning due process and the right to a fair trial as peremptory norms).

5. *See infra* notes 60–70 and accompanying text.

6. *See infra* notes 109–111 and accompanying text.

7. *See* Dan Dubois, *The Authority of Peremptory Norms in International Law: State Consent or Natural Law?*, 78 NORDIC J. INT’L L. 133, 138 (2009).

8. Statute of the International Court of Justice art. 38(1)(c), Oct. 24, 1945, 33 U.N.T.S. 933.

9. *See generally* Strong, *supra* note 4; *see also infra* Section I.F.

10. *See infra* Section I.C.

11. *See infra* notes 175–178 and accompanying text. This comports with both the text of Article 38 of the Statute of the International Court of Justice (ICJ)—the accepted touchstone for the sources of international law—and the methodology for how general principles are recognized. As to the ICJ Statute, Article 38 lists three main sources: “(a) *international*

principles derived from legal systems around the world to identify a source of international law rooted in natural law.<sup>12</sup> That is to say, they

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conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (b) *international* custom, as evidence of a general practice accepted as law; [and] (c) the general principles of law recognized by civilized nations[.]” Statute of the International Court of Justice art. 38, Oct. 24, 1945, 33 U.N.T.S. 933 (emphasis added). Both (a) treaties and (b) custom are rules of “international law” governing the relations among states to which they consent in one form or another. *Id.* Treaties are obviously consent-based, and the customary rule component of *opinio juris*, or the acknowledgement that a certain practice has legally binding effect, similarly demonstrates consent to that rule as a matter of “international custom.” *Id.* General principles, by contrast, express no “international” aspect. *See id.* They are simply “principles of law recognized by civilized nations.” *Id.* Unlike treaties and custom, these do not rely on an *inter se* consent-based model whereby states consent among themselves to be bound by the rule in question. *See id.* Rather, the relevant consent is that of the state to its own laws, which are recognized as binding principles derived from legal systems around the world and make up a source of international law. That is, if enough states recognize the rule in question, it may become recognized as a binding principle of international law, which leads to the methodological test for discerning general principles: namely, a comparative analysis of states’ internal legal systems that searches for a common principle or rule, not their relations with other states. *See infra* notes 179–189 (description) and 310–894 (application). Yet it should be noted that the use to which this consent is put is not so much to create but rather to discover the underlying general principle as a matter of natural or quasi-natural law. *See infra* notes 94–101.

12. *See* Pulp Mills on the River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. 14, ¶¶ 10–11 (Apr. 20) (separate opinion by Trindade, J.). Article 38 drafter President Edward Descamps clearly reasserted his jusnaturalist position, in upholding—besides treaties and custom—the search for:

objective justice . . . under conditions which are calculated to prevent arbitrary decisions . . . [O]bjective justice is the natural principle to be applied by the judge . . . [and to prevent arbitrariness, Descamps] would allow [the judge] to take into consideration the legal conscience of civilized nations.

*Id.* ¶ 10.

Judge Trindade also noted that “[i]n the continuing debates of 3 July 1920, Lord Phillimore expressed his own view that general principles . . . were those accepted by all nations in *foro domestico*.” *Id.* ¶ 11. Similarly, “Albert de Lapradelle, while admitting that such principles ‘were also sources of international law’, added that they were so if they had obtained ‘unanimous or quasi-unanimous support.’” *Id.*; *see also* 1 HERSCH LAUTERPACHT, INTERNATIONAL LAW: BEING THE COLLECTED PAPERS OF HERSCH LAUTERPACHT 76 (Elihu Lauterpacht ed., 1970) (“[T]he ‘general principles of law’ conceived as a source of international law are in many ways indistinguishable from the law of nature as often applied in the past in that sphere.”); Niels Petersen, *Customary Law Without Custom? Rules, Principles, and the Role of State Practice in International Norm Creation*, 23 AM. U. INT’L L. REV. 275, 292 (2007) (“According to the drafting history, general principles in the sense of Article 31(1)(c) of the ICJ Statute were meant to serve as a *counterbalance* to legal positivism.”); Elena Carpanelli, *General Principles of International Law: Struggling with A Slippery Concept*, 46 IUS GENTIUM 125, 140 (2015) (emphasis added) (internal citation omitted):

fundamentally emanate from natural law; however, to figure out what the principles are requires a comparative analysis of legal systems around the world.<sup>13</sup> It is this feature that differentiates general

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Article 38(1)(c) . . . by failing to require States' consent as a pre-condition to the recognition of general principles, extends the notion of "source of international law" beyond legal positivism . . . regardless of whether States uphold or not the validity of a certain principle, they are nonetheless bound by its rule. In this way . . . international law could have the validity of its foundation extended beyond the will of States into the sphere of *natural law* and assume an aspect of its supra-national and supra-positive character.

See also CHARLES T. KOTUBY JR. & LUKE A. SOBOTA, GENERAL PRINCIPLES OF LAW AND INTERNATIONAL DUE PROCESS: PRINCIPLES AND NORMS APPLICABLE IN TRANSNATIONAL DISPUTES 68 (2017) ("[J]udgments rendered without service of process or notice are *coram non iudice* and contrary to 'immutable principles of *natural justice*.'"); Stephen Hall, *The Persistent Spectre: Natural Law, International Order and the Limits of Legal Positivism*, 12 EUR. J. INT'L L. 269, 296 (2001) (The "foundational and pre-positive nature of the general principles was emphasized by Bin Cheng") (citing BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 24 (1953) ("This part of international law does not consist . . . in specific rules formulated for practical purposes, but in general propositions underlying the various rules of law which express the essential qualities of *juridical truth itself*, in short of Law.")). But see Pulp Mills on the River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. 14, ¶¶ 8–9 (Apr. 20) (separate opinion by Trindade, J.) (elaborating on the more positivist views of Elihu Root).

13. MANLEY O. HUDSON, THE PERMANENT COURT OF INTERNATIONAL JUSTICE, 1920–1942: A TREATISE 611 (1943).

[T]he phrase "general principles of law recognized by civilized nations" . . . empowers the Court to go *outside the field in which States have expressed their will* to accept certain principles of law as governing their relations *inter se*, and to draw upon principles common to various systems of municipal law or generally agreed upon among interpreters of municipal law. It authorizes use to be made of analogies found in the national law of the various States. It makes possible the expansion of international law along lines forged by legal thought and legal philosophy in different parts of the world. It enjoins the Court to consult a *jus gentium* before fixing the limits of the *droit des gens*.

*Id.* (emphasis added). See CHENG, *supra* note 12, at 392 ("The comparative method of studying the legal systems of different nations is no doubt a valuable and even conclusive test [of] whether a given principle represents a general truth."); Wolfgang Friedmann, *The Uses of "General Principles" in the Development of International Law*, 57 AM. J. INT'L L. 279, 285 (1963) (emphasis added) (citing H.C. GUTTERIDGE, COMPARATIVE LAW: AN INTRODUCTION TO THE COMPARATIVE METHOD OF LEGAL STUDY AND RESEARCH 70–71 (2d ed. 1949)):

[A] principal object of the invocation of the 'general principles' is to provide "the judge . . . a guide to the exercise of his 'choice of a new principle' and . . . to prevent him from 'blindly following the teaching' of the jurists with which he is most familiar 'without first carefully weighing the merits and considering whether a principle of private law does in fact satisfy the demands of justice' if applied to the particular case before him. In other words . . . comparative law furnishes [him] with an *objective test* by which he can *measure the justice of a principle* which he believes to be the correct one and proposes to apply to the facts of a particular case when the existing rules of the law of nations do not furnish him with the materials for a decision."

principles from other norms of international law and may place them on the pedestal of *jus cogens*: not as a matter of incoherent positivistic argument or relativistic natural law reasoning, but rather as an empirically provable fact.

This Article argues that general principles may supply a relatively novel basis for a relatively novel form of *jus cogens*—namely, procedural *jus cogens*. As will be seen, a general principles account avoids major theoretical and doctrinal obstacles to the existence of *jus cogens* on prevailing consent-based models of international law rooted in horizontal obligations *inter se*, like treaties and custom—obligations that fail to explain how certain norms bind all states and become elevated to peremptory within the international system. General principles, by contrast, provide a normative hierarchy through an empirical survey of domestic laws from which *jus cogens* may be discerned.

General principles are an empirical phenomenon in that they rely on the practice of states; yet nobody to date has performed a systematic analysis of state practice regarding what states deem to be a fundamentally fair procedure through their constitutions and laws.<sup>14</sup> This Article seeks to perform such an analysis by looking to the constitutions and municipal laws of most, if not all, countries in the world regarding fundamental due process. Indeed, in the recent International Law Commission (ILC) Report, the Commission published Draft Conclusions on Peremptory Norms of International Law (*Jus Cogens*), which suggested that a “detailed and rigorous study” of potential *jus cogens* norms<sup>15</sup> “across regions, legal systems and cultures” may be necessary for more detailed conclusions.<sup>16</sup> The present study does just that and relies principally on constitutional provisions. Constitutions

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*See also id.* at 290 (“It is with regard to the substantive [general] principles of law . . . that the science of comparative law can render invaluable and indispensable.”); *supra* notes 179–187 and accompanying text.

14. To date, nobody has gathered the constitutional and municipal code provisions of all the countries in the world (where such information is available) and analyzed and grouped that data. Oona Hathaway has measured state parties’ compliance with the fair trial right contained in international human rights treaties, but expressly does not focus on the domestic legislative implementation requirements of those treaties. Oona Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 *YALE L.J.* 1935, 1972–74 (2002). Due process specifically has been argued as a general principle of law. Charles T. Kotubty and Luke A. Sobota argue for general principles of due process by analyzing select decisions by individual courts and arbitral tribunals. *See* KOTUBTY & SOBOTA, *supra* note 12, at 157–210. Importantly, their work regards general principles as definitively including “general principles of *due process*.” *Id.* at 1 (emphasis in original). For the proposition that due process is a general principle, see also Friedmann, *supra* note 13, at 290.

15. Int’l Law Comm’n Rep., *supra* note 1, at 204 cmt. (1).

16. *Id.* at 168 cmt. (6).



supply a perfect resource for measuring the existence of *jus cogens* because they represent states' most fundamental ideals, are hierarchically superior to other law, and lay the structural foundations of a given legal system. It should be noted, however, that even where these due process features are found only in municipal law, they still contribute to the general principle of fundamental due process.

A point of clarification before proceeding: General principles can serve multiple functions in international law. One is as “gap fillers” where an international tribunal decides a case when there is no extant international law upon which to rely.<sup>17</sup> Another function—and the one this Article relies upon—views general principles as standalone norms culled from a supermajority of states' laws from around the world. Indeed, in updating Bin Cheng's seminal 1953 work on general principles of international law, Charles T. Kotuby Jr. and Luke A. Sobota explicitly describe general principles as providing for “international *due process*.”<sup>18</sup> In other words, “international due process deriv[es] from the adjectival norms common to all systems of law,”<sup>19</sup> or “a baseline standard that is accepted by all modern legal regimes [that] reveals an accepted definition of international justice.”<sup>20</sup>

A word on methodology. Examining the 193 member states of the United Nations as well as Kosovo, the Republic of China (Taiwan), and the Vatican City (Holy See) has revealed that virtually all states in the world secure the most basic requirements of due process: notice, a hearing, and an impartial and independent decisionmaker.<sup>21</sup> More

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17. Hall, *supra* note 12, at 296–97:

[G]eneral principles of law provide a reservoir from which apparent gaps in the corpus of international law may be filled. They reinforce the view that international law should properly be regarded as a “complete system,” i.e. that every international situation is capable of being determined as a matter of law and that international tribunals may not pronounce a *non liquet*.

18. See KOBUTY & SOBOTA, *supra* note 12, at 1 (emphasis in original).

19. *Id.* at 69, 157.

20. *Id.* at 74, 86; see also Friedmann, *supra* note 13, at 290 (“There may, secondly, be said to exist a rudimentary code of principles of ‘due process,’ i.e., certain minimum standards in the administration of justice of such elementary fairness and general application in the legal systems of the world that they have become international legal standards.”). To be clear, it is not my contention that general principles are the *only* way *jus cogens* may be formed; rather, my argument is that general principles provide *a* way to identify procedural *jus cogens*. Although this involves critiquing other theories of *jus cogens*, it is not meant to preclude the existence and development of *jus cogens* where, for example, general principles are unavailable as a source of international law due to the nature of the norm. This raises the extraordinarily interesting question of whether different theories may justify different *jus cogens*.

21. See *infra* Part III.

specifically, 189 states provide notice to the accused,<sup>22</sup> 196 states provide for the right to a hearing,<sup>23</sup> and 196 states provide for an impartial and independent decisionmaker.<sup>24</sup> Moreover, the vast majority of these protections are constitutional<sup>25</sup>: The right to notice is protected in 179 constitutions;<sup>26</sup> the right to a hearing is protected in 193 constitutions;<sup>27</sup> and the right to an impartial and independent decisionmaker is protected in 193 constitutions.<sup>28</sup> This powerfully overwhelming supermajority of states clearly satisfies the ILC criterion that for a norm to develop into a *jus cogens*, the norm must be accepted by “a very large majority of states<sup>29</sup> . . . across regions, legal systems and cultures.”<sup>30</sup> Furthermore, its comparative law methodology reveals these natural law rights as concretely and objectively supported.

As to implications, discovering a procedural *jus cogens* would be revolutionary in some respects. A procedural *jus cogens* norm would expand the concept of *jus cogens*: Such a norm would qualitatively differ from a substantive one since it is not merely a negative obligation on a state, but imposes a positive duty to provide a right. Further, a general principles account of this norm domesticates *jus cogens* into municipal law, bringing international law closer to the individual.<sup>31</sup> Finally, the Article’s argument holds powerful implications

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22. See *infra* notes 310–499.

23. See *infra* notes 500–695.

24. See *infra* notes 696–891.

25. This Article adheres to the citation principles set out in the most recent edition of the Bluebook. See generally THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia L. Rev. Ass’n et al. eds., 21st ed. 2020). Thus, all foreign constitutions are cited by name; if the nature of the document is not otherwise clear from the context, “Constitution” is included in brackets following the document name. *Id.* at 192. As a result, whether a particular foreign document is constitutional in nature will be readily discernable to the reader. Some foreign legal systems, however, contain instruments that are constitutional in dimension yet do not bear the formal title of “constitution.” The reader is therefore given notice that the following foreign instruments bear the status of constitutional law in the legal systems of their respective states: Grundgesetz (Germany), Basic Laws (Israel), and Human Rights Act (United Kingdom). See, e.g., Paul G. Kauper, *The Constitutions of West Germany and the United States: A Comparative Study*, 58 MICH. L. REV. 1091, 1091 n.1 (1960); Dalia Dorner, *Does Israel Have a Constitution?*, 43 ST. LOUIS U. L.J. 1325, 1326 (1999); Douglas W. Vick, *The Human Rights Act and the British Constitution*, 37 TEX. INT’L L.J. 329, 361 n.255 (2002).

26. See *infra* notes 310–499.

27. See *infra* notes 500–695.

28. See *infra* notes 696–891.

29. Int’l Law Comm’n Rep., *supra* note 1, at 143.

30. *Id.* at 167–68.

31. See *infra* Conclusion.

not just for international law but for domestic U.S. law as well. The Supreme Court long ago held that international law is part of our law;<sup>32</sup> this includes the law of *jus cogens*.<sup>33</sup>

The Article begins by justifying the existence of a procedural *jus cogens* in light of contested theories to see the role that general principles play. *Jus cogens* have been criticized on a positivist account of international law because they purport to regulate states that have not voluntarily assented to them.<sup>34</sup> They thus often fall back on natural law moorings of morality and fundamental justice,<sup>35</sup> theories that have largely fallen into desuetude as overbroad, relativistic, and overly subjective;<sup>36</sup> or *jus cogens* may be justified as being necessary to the international order.<sup>37</sup> *Jus cogens* have also been conceptualized as a species of fiduciary duty the state owes to human beings over whom it has control.<sup>38</sup> Part I of this Article presents a general principles account of *jus cogens* that stands on its own, but also goes far to meet the positivist objection on its own terms. And its results, if not its theory, align with the fiduciary duty account. As to the positivist objection, virtually all states provide fundamental due process rights, and, if states agree that there exists a minimum level of due process owed to individuals over whom they assert power, these states will have already accepted the procedural norm. Nonetheless, general principles are not consent-based like treaties and custom, but instead empirically require a very large majority of states as objective evidence of a natural law principle to reveal *jus cogens*.<sup>39</sup> A general principles account takes the empirical data drawn from due process rights around the world not only to justify the existence of procedural *jus cogens*, but also to answer the hard jurisprudential question of what elevates a particular norm to *jus cogens* by examining what norms domestic legal systems have elevated in their hierarchical legal orders.

Next, before turning to a comprehensive account of procedural *jus cogens* in international law, Part II of this Article offers an account

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32. See *The Paquete Habana*, 175 U.S. 677, 677 (1900).

33. See *infra* notes 906–911.

34. See *infra* Section I.C.

35. See *infra* Section I.B.

36. See Criddle & Fox-Decent, *supra* note 4, at 342–43; *infra* notes 75–76 and accompanying text. But see Mary Ellen O’Connell, *Jus Cogens: International Law’s Higher Ethical Norms*, in *THE ROLE OF ETHICS IN INTERNATIONAL LAW* 98 (Donald Earl Childress III ed., 2012) (proposing the use of the positive law of treaties and custom as evidence of natural law).

37. See *infra* Section I.D.

38. See *infra* Section I.E.

39. See *infra* Section I.F.

of the distinction between substantive and procedural law in order to define the scope and contours of a procedural right and tie it to certain substantive rights, like the *jus cogens* prohibition on arbitrary arrest and detention. Here, both philosophical and doctrinal sources are useful, such as H.L.A. Hart's distinction between primary rules (rules governing primary human conduct out in the world) and secondary rules (rules governing how those primary rules are enacted, adjudicated and enforced),<sup>40</sup> as well as the Supreme Court's string of cases starting with *Erie Railroad Co. v. Tompkins*.<sup>41</sup> One might also explore the extent to which a procedural norm blends into substance, for example the primary expectation that some process will adjudicate the legality of one's conduct in accordance with the Rule of Law. That is to say, a procedural norm may represent not just a norm in a particular case, but may also be representative of the legal *system* to which actors expect to be subject.<sup>42</sup> It is only from this discussion that we can discern what is procedural and what is substantive for purposes of procedural *jus cogens*. The Article concludes that while invariably imperfect, Hart's and *Erie*'s tests provide useful heuristics to make this determination, and fundamental due process rights of notice, a hearing, and an impartial and independent decisionmaker fall on the procedural side of the line.

Finally, the Article tours the law of procedural rights in the traditional sources of international law: treaties, custom, and general principles. More specifically, it looks at major international instruments providing for due process rights, including the International Covenant on Civil and Political Rights, the European Convention on Human Rights and Fundamental Freedoms, the American Convention on Human Rights, the African Charter on Human Rights and Peoples, the League of Arab States' Charter on Human Rights, the Rome Statute for the International Criminal Court, the Statutes of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and the Geneva Conventions.<sup>43</sup> While indicative of an emphasis on procedural rights in international law, because none of these are universally ratified, they cannot overcome an *inter se* consent-based model on which they are grounded. Yet they can be useful for a general principles account where states incorporate treaties into their domestic laws, including their constitutions. As to custom, the discussion observes that the treaties listed above may also contribute to the formation of customary

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40. H.L.A. HART, *THE CONCEPT OF LAW* 81 (3d ed. 2012).

41. *See generally* *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938).

42. *See* MAY, *supra* note 4, at 48.

43. *See infra* Section II.B.

law, but that it is still plagued by its *inter se* consent-based source. The Article then turns to general principles of international law. As one scholar has stated, “[i]n order for an international lawyer to argue that a general principle of law is a binding rule of international law, it would be necessary to canvass all of the world’s great legal systems for evidence of that principle, and also to reference manifestations of that principle in the actual domestic law of as many nations as possible.”<sup>44</sup> That is exactly what this Article does. Indeed, it goes further and canvasses all of the world’s legal systems to demonstrate that virtually all of them provide for the basic due process rights of notice, a hearing, and an impartial and independent decisionmaker.

The Article concludes less by summarizing its argument and more by raising questions it provokes. For instance, what about emergencies, or war? To what extent do procedural *jus cogens* survive such situations? Some states deem such provisions non-derogable in states of emergency<sup>45</sup> while others do not.<sup>46</sup> International law is somewhat schizophrenic in this regard: it provides that *jus cogens* are non-derogable, and yet at the same time contemplates the death of established *jus cogens* norms and the birth of new ones.<sup>47</sup> If *jus cogens* were truly rigid and absolutely non-derogable, the development of new norms that displace old ones would be impossible. This is perhaps why some experts<sup>48</sup> and international bodies like the U.N. Human Rights Committee<sup>49</sup> view *jus cogens* as not necessarily non-derogable. Here the relevant established *jus cogens* would probably be the sovereign right of self-defense in times of emergency. This norm has already been chipped away by human rights—for example, no matter how dire the threat, states still may not torture.<sup>50</sup> In this connection, I would happy to cast a procedural *jus cogens* as an emerging norm of international law. Indeed, the whole purpose of this Article is to identify and make the case for a burgeoning norm.

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44. DAVID J. BEDERMAN, INTERNATIONAL LAW FRAMEWORKS 14 (2d ed. 2006).

45. See, e.g. CONSTITUTION OF THE REPUBLIC OF UGANDA, Sept. 22, 1995, art. 44. Article 44 sets out prohibitions on derogations of certain rights which includes the protections granted by the right to a fair hearing. *Id.*

46. See, e.g., K’IWAMI ĒRITIRA [CONSTITUTION] May 23, 1997, art. 26(3) (Eri). Article 26 excludes the right to notice and the right to a fair hearing from express protection against derogation. See *infra* note 554.

47. VCLT, *supra* note 1, art. 53.

48. See *infra* notes 899–902, 904 and accompanying text.

49. See *infra* note 903 and accompanying text.

50. See G.A. Res. 39/46, art. 2, ¶ 2, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984).

Furthermore, what are the implications of placing a positive duty on states to supply a right (as procedural *jus cogens* do) as opposed to a negative duty not to engage in certain activity (as substantive *jus cogens* do)? And, is there something special about procedural *jus cogens* rights that allows them to be waived? Criminal defendants waive their trial rights all the time. Finally, what is the potential interaction between procedural *jus cogens* and U.S. domestic law? As noted,<sup>51</sup> it has long been held that international law is part of our law. And U.S. courts have recently shown a willingness to strip foreign conduct-based immunity and U.S. federal immunity when they conflict with *jus cogens*,<sup>52</sup> as well as invalidate foreign acts of state under the Act of State doctrine when they constitute *jus cogens* violations.<sup>53</sup>

## I. JUS COGENS

### A. History and Concept

The history of the concept, if not the name, of *jus cogens* stretches back at least to Roman times.<sup>54</sup> This lineage provided classical international lawyers with the natural law concept of “necessary law.”<sup>55</sup> Hugo Grotius, who many consider the father of international law, put it in the following way:

The law of nature, again, is unchangeable—even in the sense that it cannot be changed by God. Measureless as is the power of God, nevertheless it can be said that there are certain things over which that power does not

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51. See *supra* note 32.

52. See *infra* notes 909–910.

53. See *infra* note 911.

54. Elizabeth Santalla Vargas, *In Quest of the Practical Value of Jus Cogens Norms*, 46 NETH. Y.B. INT’L L. 211, 214 n.11 (2016) (“[T]he notion of *jus cogens* can be traced back to Roman Law. While the term (*jus cogens*) was coined later on, the notion’s underlying rationale may be found in the *ius publicum* of Roman Law from which no derogation was accepted . . .”). Indeed, as Cicero stated:

It is wrong to pass laws obviating this [mandatory] law; it is not permitted to abrogate any of it; it cannot be totally repealed. We cannot be released from this law by the senate or the people . . . . There will not be one law at Rome and another at Athens, and now and another later, but all nations at all times will be bound by this one eternal and unchangeable law.

MARCUS TULLIUS CICERO, DE RE PUBLICA ET DE LEGIBUS [ON THE COMMONWEALTH AND ON THE LAWS] 115 (James E.G. Zetzel ed., Cambridge Univ. Press 1999) (c. 51 B.C.E.).

55. Dinah Shelton, *Sherlock Holmes and the Mystery of Jus Cogens*, 46 NETH. Y.B. INT’L L. 23, 27 (2016).

extend. . . . [And] [s]ince this law is not subject to change and the obligations which it imposes are necessary and indispensable, Nations can not alter it by agreement, nor individually or mutually release themselves from it.<sup>56</sup>

Other classical writers such as Christian Wolff and Emerich de Vattel spoke of a necessary law in the law of nations.<sup>57</sup> Vattel explained it thusly:

We use the term *necessary Law of Nations* for that law which results from applying the natural law to Nations. It is *necessary*, because Nations are absolutely bound to observe it. . . . This same law is called by Grotius and his followers the *internal Law of Nations*, inasmuch as it is binding upon the conscience of Nations . . . . It is by the application of this principle that a distinction can be made between lawful and unlawful treaties or conventions and between customs which are innocent and reasonable and those which are unjust and deserving of condemnation.<sup>58</sup>

Despite the rise of positivism in the twentieth century, the concept of a necessary law still prevailed with such writers as Lassa Oppenheim and William Hall.<sup>59</sup> For instance, Oppenheim explained that “a number of ‘universally recognized principles’ of international law existed which rendered any conflicting treaty void and that the peremptory effect of such principles was itself a unanimously recognized rule of international law.”<sup>60</sup> And Hall observed that there were certain “fundamental principles of international law” that “invalidate[], or at least render[] voidable,” conflicting international agreements.<sup>61</sup>

Perhaps the most groundbreaking scholarly work regarding the concept came with Alfred von Verdross’s article, *Forbidden Treaties*

56. *Id.* (quoting HUGO GROTIUS, DE JURE BELLI AC PACIS LIBRI TRES [ON THE LAW OF WAR AND PEACE] 40 (Francis W. Kelsey trans., Oxford: Clarendon Press 1925) (1625)).

57. *Id.*; see also ORAKHELASHVILI, *supra* note 4, at 36–37.

58. EMERICH DE VATTEL, LE DROIT DES GENS, OU PRINCIPES DE LA LOI NATURELLE, APPLIQUÉS À LA CONDUITE ET AUX AFFAIRES DES NATIONS ET DES SOUVERAINS [THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW APPLIED TO THE CONDUCT AND TO THE AFFAIRS OF NATIONS AND OF SOVEREIGNS] 4 (James Brown Scott ed., Charles G. Fenwick trans., Carnegie Inst. Washington 1916) (1758) (emphasis in original).

59. Criddle & Fox-Decent, *supra* note 4, at 334; Shelton, *supra* note 55, at 28.

60. Shelton, *supra* note 55, at 32.

61. WILLIAM E. HALL, A TREATISE ON INTERNATIONAL LAW 382 (A. Pearce Higgins ed., 8th ed. 1924).

in *International Law*.<sup>62</sup> Writing in the shadow of Nazism, Verdross asked “whether general international law contains rules which have the character of *jus cogens*.”<sup>63</sup> According to Verdross, “it is the quintessence of norms of this character that they prescribe a certain, positive or negative behavior unconditionally; norms of this character, therefore, cannot be derogated from by the will of the contracting parties.”<sup>64</sup> He concluded that international law did contain such norms, drawing from both a natural law<sup>65</sup> and what will be explained as a public order perspective.<sup>66</sup> Moreover, he justified the existence of such norms on the theory that they arose from general principles of law common to civilized nations,<sup>67</sup> a core argument of the present Article. Despite skepticism from positivists,<sup>68</sup> courts in the postwar period began to recognize the existence of certain *jus cogens* norms, such as the prohibition on genocide.<sup>69</sup>

The next major development in the history of *jus cogens* occurred in international treaty law. Under the heading “Treaties Conflicting with a Peremptory Norm of General International Law (*Jus Cogens*),” Article 53 of the Vienna Convention on the Law of Treaties (VCLT) provides:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by

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62. Alfred von Verdross, *Forbidden Treaties in International Law: Comments on Professor Garner's Report on "The Law of Treaties"*, 31 AM. J. INT'L L. 571, 571 (1937).

63. *Id.*

64. *Id.* at 571–72.

65. *See id.* at 572 (consisting of “norms determining which persons are endowed with the capacity to act in international law, what intrinsic and extrinsic conditions must be fulfilled that an international treaty may come into existence, what juridical consequences are attached to the conclusion of an international treaty”).

66. *See id.* (consisting norms “prohibiting states from concluding treaties *contra bonos mores*”); *see also infra* notes 146–147 and accompanying text.

67. Verdross, *supra* note 62, at 572–73.

68. Criddle & Fox-Decent, *supra* note 4, at 335–36.

69. *See, e.g.,* Reservations to Convention on Prevention and Punishment of Crime of Genocide, Advisory Opinion, 1951 I.C.J. 15, 23 (May 28) (“[T]he principles underlying the [Genocide] Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation.”).



a subsequent norm of general international law having the same character.<sup>70</sup>

As noted earlier, it is now widely accepted that *jus cogens* prohibitions extend beyond treaty law to customary international law as well.<sup>71</sup> Yet despite codifying *jus cogens* in international treaty law, the drafters of the VCLT studiously avoided explaining where such norms come from.<sup>72</sup> However, some clues may be found in the views of the International Law Commission's Special Rapporteur, Sir Hersch Lauterpacht.<sup>73</sup> In line with the classical tradition, Lauterpacht found that such norms derived from innate morality, but he also proposed that they arose from general principles of international law: "These principles . . . may be expressive of rules of international morality so cogent that an international tribunal would consider them forming a part of those principles of law generally recognized by civilized nations."<sup>74</sup> Again, it is from these principles that the present work later seeks to discern procedural *jus cogens*. Nonetheless, the textual hole left in the VCLT as to the origins of *jus cogens* sparked vigorous academic debate, to which we now turn.

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70. VCLT, *supra* note 1, art. 53.

71. Int'l Law Comm'n Rep., *supra* note 1, at 182–83 cmts. (1)–(5); *id.* at 149 cmt. (1) ("[The definition of *jus cogens*], though initially used for the purposes of the 1969 Vienna Convention, has come to be accepted as a general definition which applies beyond the law of treaties."); *id.* at 155 n.725 (citing *Sabbithi v. Al Saleh*, 605 F. Supp. 2d 122, 129 (D.D.C. 2009) ("[*jus cogens*] prevail over both customary international law and treaties"); *id.* at 154 n.717 (citing *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgment, ¶ 153 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 10, 1998)).

[*Jus cogens*] enjoys a higher rank in the international hierarchy than treaty law and even 'ordinary' customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from by states through international treaties or local or special customs or even general customary rules not endowed with the same normative force.

*Id.* at 150 n.701 (citing Vargas, *supra* note 54, at 223–24) ("[T]he potential effects of *jus cogens* not only expand beyond treaty law but they even appear more significant in situations that are not concerned with treaty law."); A. Mark Weisburd, *The Emptiness of the Concept of Jus Cogens, as Illustrated by the War in Bosnia-Herzegovina*, 17 MICH. J. INT'L L. 1, 18 (1995).

72. See generally VCLT, *supra* note 1.

73. *Report on the Law of Treaties by Mr. H. Lauterpacht, Special Rapporteur*, U.N. Doc. A/CN.4/63/1953 (Mar. 24, 1953).

74. *Id.*

### B. Natural Law

An immediate objection to the entire concept of *jus cogens* is: If international law is based on the consent of states, how can a rule exist that purports to bind states that have not consented to it? One way around this objection is to continue the classical reliance on natural law.<sup>75</sup> Despite natural law falling out of favor in modern jurisprudence as “artificially conflating law and morality, confusing parochial and relativistic ethical norms with objective principles of legal right and obligation,”<sup>76</sup> it has conspicuously survived in discussions of *jus cogens*. Indeed, at the Vienna Conference itself, a number of states relied upon natural law to support their views of *jus cogens*.<sup>77</sup> The ILC recites the origins of *jus cogens* in terms of “fundamental values,”<sup>78</sup> and a “moral value oriented public order.”<sup>79</sup> To be sure, the Commission concluded that although commentators have sometimes used different terminology to describe these fundamental values, “they indicate the important normative and moral background of the norm in question.”<sup>80</sup> Once again, in his First Report on the Law of Treaties as Rapporteur for the VCLT, Lauterpacht tied *jus cogens* explicitly to morality.<sup>81</sup> Gerald Fitzmaurice, the Second Special Rapporteur, echoed these views, explaining that “a feature common to [*jus cogens*], or to a great many of them, evidently is that they involve not only legal rules but considerations of morals and of international good order.”<sup>82</sup>

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75. See Shelton, *supra* note 55, at 48 (“[W]hen Grotius argued for the existence of higher law, he did not cite any contemporary state practice, but instead invoked the Talmud, Biblical sources, Greek and Roman jurisprudence and classical literature like the play *Antigone*.”).

76. Criddle & Fox-Decent, *supra* note 4, at 343.

77. See, e.g., Jean d’Aspremont, *Jus Cogens as a Social Construct Without Pedigree*, 46 NETH. Y.B. INT’L L. 23, 93 n.43 (2015) (noting statements of representatives of Mexico, Lebanon, Nigeria, Italy, Ecuador, Uruguay, Ivory Coast, and Monaco). See generally U.N. Conf. on the L. of Treaties, *Summary Records of the Plenary Meetings and of the Meetings of the Committee of the Whole*, U.N. Doc. A/CONF.39/11 (Jan. 1969).

78. Int’l Law Comm’n Rep., *supra* note 1, at 152–53 cmts. 5–6.

79. *Id.* at 153 cmt. 3 n.713 (quoting A. Pellet, *Comments in Response to Christine Chinkin and in Defense of Jus Cogens as the Best Bastion Against the Excesses of Fragmentation*, 17 FIN. Y.B. INT’L L. 83, 87 (2006)).

80. *Id.* at 153 cmt. 7; see also Verdross, *Forbidden Treaties in International Law*, *supra* note 62, at 572 (“No juridical order can . . . admit treaties between juridical subjects, which are obviously in contradiction to the ethics of a certain community”); *id.* at 576 (“A truly realistic analysis of the law shows us that every positive juridical order has its roots in the ethics of a certain community, that it cannot be understood apart from its moral basis.”).

81. THOMAS WEATHERALL, *JUS COGENS: INTERNATIONAL LAW AND SOCIAL CONTRACT* 72 (2015).

82. WEATHERALL, *supra* note 81, at 73.

Similarly, the International Court of Justice in its Advisory Opinion on *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* referred to “the universal character of the condemnation of genocide” which “shocks the conscience of mankind and results in great losses to humanity, and [which] is contrary to moral law.”<sup>83</sup> For its part, the Inter-American Court of Human Rights, in determining that the principle of non-discrimination had risen to the level of *jus cogens*, asked whether “it would form part of the fundamental rights of the human being and of universal morality.”<sup>84</sup> And in *Prosecutor v. Furundžija*, the ICTY explained that because of the “importance of the values it protects,” the prohibition on torture “has evolved into a peremptory norm or *jus cogens*, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules.”<sup>85</sup> U.S. courts have taken a similar tack. In *Siderman de Blake v. Republic of Argentina*, the Ninth Circuit observed that *jus cogens* norms are “derived from values taken to be fundamental by the international community.”<sup>86</sup> The courts of other countries have expressed similar views. For instance, the Constitutional Tribunal of Peru emphasized the “extraordinary importance of the values underlying” *jus cogens*,<sup>87</sup> and the Supreme Court of Argentina concluded that *jus cogens* protect “values and general interests

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83. Int’l Law Comm’n Rep., *supra* note 1, at 155–56 cmt. 13 n.729 (citing Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951 I.C.J. 15, at 21 (May 28)); *see also id.* at 149 n.699 (citing *Prosecutor v. Jelisić*, Case No. C-578/95, Judgment in the Trial Chamber, 431–33 ¶ 60 (Int’l Crim. Trib. for the Former Yugoslavia of Dec. 14 1999)).

84. Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 54 (Sept. 17, 2003) (concurring opinion by Trindade, J.):

It is evident that these principles of law do not depend on the ‘will,’ nor on the ‘agreement,’ nor on the consent of the subjects of law; the fundamental rights of the human person being the ‘necessary foundation of every legal order,’ which knows no frontiers, the human being is titulaire of inalienable rights, which do not depend on his statute of citizenship or any other circumstance.

85. Int’l Law Comm’n Report, *supra* note 1, at 151 cmt. 4 n.706 & 154 cmt. 9 n.717 (emphasis added) (citing *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgment in the Trial Chamber (Int’l Crim. Trib. for the Former Yugoslavia Dec. 10, 1998)).

86. *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 715 (9th Cir. 1992) (quoting David F. Klein, *A Theory for the Application of the Customary International Law of Human Rights by Domestic Courts*, 13 YALE J. INT’L L. 332, 351 (1988)); *see also* *Kashef v. BNP Paribas S.A.*, 925 F.3d 53, 61 (2d Cir. 2019).

87. Int’l Law Comm’n Report, *supra* note 1, at 152 cmt. 5 n.709 (citing 25 % del Número Legal de Congresistas Contra el Decreto Legislativo No. 1097, EXP. No. 0024-2010-PI/TC, Judgment of the Jurisdictional Plenary ¶ 53, Const. Trib. of Peru (Mar. 21, 2011) (“*de la extraordinaria importancia de los valores que subyacen a tal [jus cogens] obligacion*”)) (noting “the extraordinary importance of the values that underlie [the *jus cogens*] obligation”).

of the international community of States as a whole.”<sup>88</sup> Unfortunately, these courts largely fail to provide objective criteria for discerning a *jus cogens* norm other than their protection of fundamental values and morality, relying principally on the self-evident nature of the violation.

Yet a number of commentators have agreed with a natural law basis for *jus cogens*.<sup>89</sup> Mark Janis points out, for example, that the Nuremberg prosecutions would have had no legal basis without the concept of *jus cogens*.<sup>90</sup> Because the Nazis certainly did not agree to be bound by the international law that was being applied to them, some other, overriding norm must have been at play. This norm was the *jus cogens* prohibition on crimes against peace and crimes against humanity.<sup>91</sup> Thus, Thomas Kleinlein explains that “the formal criteria of

88. *Id.* at 152 n.710 (citing Corte Suprema de Justicia [C.S.J.] [Supreme Court], 24 agosto 2004, “Chile c. Arancibia” Case No. 259 ¶ 29); *id.* at 151–52 cmt. 4 n.706 (citing the Inter-American Commission on Human Rights opinion in Michael Domingues v. U.S., Case 12.285, Inter-Am. Comm’n H.R., Report No. 62/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 ¶ 49 (Oct. 22, 2000)).

89. *Id.* at 152–53 cmt. 6 n.711 (citing among others, ROBERT KOLB, PEREMPTORY INTERNATIONAL LAW: JUS COGENS: A GENERAL INVENTORY 32 (2015); A.A. Cançado Trindade, *Jus Cogens: The Determination and the Gradual Expansion of Its Material Content in Contemporary International Case-Law* at 6, XXXV Course of International Law, organized by OAS Inter-American Juridical Committee, Rio de Janeiro (Aug. 2008), oas.org/dil/esp/3 - cancado.LR.CV.3-30.pdf [https://perma.cc/DE49-2H6A] (*jus cogens* “does not emanate from the inscrutable ‘will’ of the States, but rather, in my view, from human conscience”); Kamrul Hossain, *The Concept of Jus Cogens and the Obligation Under the U.N. Charter*, 3 SANTA CLARA J. INT’L L. 72, 73 (2005); Louis Henkin, *International Law and the Inter-State System*, 216 COLLECTED COURSES OF THE HAGUE ACAD. OF INT’L L. 60 (1989); ANIEL CARO DE BEER, PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW (JUS COGENS) AND THE PROHIBITION OF TERRORISM 79–83 (2019); E. Petrič, *Principles of the Charter of the United Nations: Jus Cogens?*, 17 CZECH Y.B. OF PUB. AND PRIV. INT’L L. 8 (2016); *Id.* at 156 n.735 (citing Dubois, *supra* note 7, at 133–75); *see also* O’Connell, *supra* note 36, at 78–99; Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U. L. REV. 1, 13–14 (1982); INGRID DETTER DELUPIS, THE INTERNATIONAL LEGAL ORDER 174–76 (1994); Karen Parker, *Jus Cogens: Compelling the Law of Human Rights*, 12 HASTINGS INT’L & COMP. L. REV. 411, 419–22 (1989).

90. *See* Mark Janis, *The Nature of Jus Cogens*, 3 CONN. J. INT’L L. 359, 361 (1988); *see also* Stefan Kadelbach, *Genesis, Function and Identification of Jus Cogens Norms*, 46 NETH. Y.B. INT’L L. 147, 151 (2015).

91. David Luban et al., *Moral Responsibility in the Age of Bureaucracy*, 90 MICH. L. REV. 2348, 2350–51 (1992):

The Nuremberg Tribunal held individual Nazi officials responsible for acts that positive law did not forbid at the time they were committed—so-called ‘crimes against peace’ and ‘crimes against humanity.’ Anticipating the defendants’ protest that they were merely following official orders that carried the force of positive law, Article 8 of the Nuremberg Charter specifically provided that “[t]he fact that the defendant acted pursuant to an order of his government or a superior

invalidity as an effect of conflict, non-derogability, and qualified procedure alone cannot explain *jus cogens*. Rather, the heart of the matter is the recognition of moral paramouncy of *jus cogens*.<sup>92</sup>

Indeed, it is precisely because they operate outside of state consent that *jus cogens* are universally binding.<sup>93</sup> This is a somewhat tautological argument: The international law of *jus cogens* exists, therefore *jus cogens* must exist. But it is not vacuous in light of state practice in the form of treaty law and judicial opinions. That is to say, state practice supports the existence of *jus cogens* norms so they must come from somewhere. If it is not positive law, then it must be something else.

Other natural law theorists have focused on fundamental “human goods” represented by very broad categories such as life, health, and safety, and the means for achieving these goods.<sup>94</sup> For these theorists, “[p]olitical community and legal regulations are needed to mediate and structure the interactions between individuals as they

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shall not free him from responsibility.’ . . . The natural law argument that unjust laws lose their obligatory character provides a straightforward philosophical justification for Article 8. . . . [N]atural law . . . form[s] the most obvious justification for criminalizing ‘murder, extermination, enslavement, deportation, and other inhumane acts . . . whether or not in violation of domestic law . . .’ Such crimes against humanity are radically inconsistent with the common good, and any domestic legal system that permits them must violate natural law.

92. Thomas Kleinlein, *Jus Cogens as the ‘Highest Law’? Peremptory Norms and Legal Hierarchies*, 46 NETH. Y.B. INT’L L. 173, 176, 198 (2015):

Peremptory norms enjoy a special status because they are ‘believed to be morally paramount.’ Scholarly treatment of *jus cogens* norms generally assumes that part of the rationale for their distinctiveness is that states have recognized that they reflect important moral positions. *Jus cogens* can therefore be seen as a minimum of moral obligations in international law.

See *id.* at 198 nn.142–49 (citing Asif Hameed, *Unravelling the Mystery of Jus Cogens*, 84 BRIT. Y.B. INT’L L. 52, 92–93 (2014) (“A rule is *jus cogens* because it is believed by legal officials to be morally paramount.”); HUGH THIRLWAY, *THE SOURCES OF INTERNATIONAL LAW* 162 (2d ed. 2019) (“[T]he idea of *jus cogens* contains an ineradicable moral element”); STEVEN R. RATNER, *THE THIN JUSTICE OF INTERNATIONAL LAW: A MORAL RECKONING OF THE LAW OF NATIONS* 21 (2015); STEFAN KADELBACH, *ZWINGENDES VÖLKERRECHT* 167 (1992); Hermann Mosler, *The International Society as a Legal Community*, 140 RECUEIL DES COURS 1, 35 (1974); O’Connell, *supra* note 36, at 84; Frank Hoffmeister & Thomas Kleinlein, *International Public Order*, in *THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* (Rüdiger Wolfrum, ed., Oxford Univ. Press, Oxford and New York: 2013).

93. See Kleinlein, *supra* note 92, at 201 n.163 (citing Jure Vidmar, *Rethinking Jus Cogens After Germany v. Italy: Back to Article 53?*, 60 NETH. Y.B. INT’L L. 1, 26 (2013)).

94. Dubois, *supra* note 7, at 149; Weisburd, *supra* note 71, at 14 (citing Gerald Fitzmaurice, *Third Report on the Law of Treaties*, U.N. Doc. A/CN.4/115 (1958), reprinted in [1958] 2 Y.B. INT’L L. COMM’N 20, 27–28, 40–41, U.N. Doc. A/CN.4/SER.A/1958/Add.1) (referencing “considerations of morals and international good order which are *jus cogens* rules”).

participate, sometimes jointly, in any one of the basic goods.”<sup>95</sup> Because individuals cannot ensure human flourishing on their own, for example by rebuffing more powerful external threats, only a complete community can do so.<sup>96</sup> And the main tool for doing so is law.<sup>97</sup> Thus “[t]he authority of human rights norms, as with prohibitions on genocide, slavery and torture, results from their ability to secure the conditions necessary for human flourishing by protecting the ability of individuals to participate in a number of basic goods[.]”<sup>98</sup> Mary Ellen O’Connell calls these “person[-]centric” approaches.<sup>99</sup> “Taking this approach, scholars consider the nature of human beings and use reason to discover the necessary principles of a legal system based on what human beings need to thrive.”<sup>100</sup> Another, less subjective and more empirically grounded approach is the “community[-]centric” approach, which “starts with the community and evidence generated by the community as to its most important values. . . . It principally relies on judges reasoning on the basis of the evidence in the positive law to identify the fundamental principles that are superior to the positive law.”<sup>101</sup> Here she cites the positive law of treaties, custom, and soft law.<sup>102</sup> By relying on positive consent-based law, she runs into the roadblock of the persistent objector, discussed below.<sup>103</sup> Suffice it to say that there are difficulties using positive law that a state objects to then binding that state by calling the positive law in question natural law. Yet despite these natural law efforts, with the exception of O’Connell, who problematically relies on positive law, these theories fail to provide a concrete guide to objective, empirical criteria for identifying a *jus cogens* norm and thus fall prey to traditional natural law criticisms. And they have come under serious scholarly critique from those who view international law as fundamentally consent based, namely, positivists.

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95. Dubois, *supra* note 7, at 150.

96. *Id.* at 150–51.

97. *Id.* at 151.

98. *Id.* at 164.

99. O’Connell, *supra* note 36, at 93.

100. *Id.* These types of views have been more fully critiqued elsewhere. See Criddle & Fox-Decents *supra* note 4, at 343.

101. O’Connell, *supra* note 36, at 93–94.

102. *Id.* at 94. This Article, by contrast, asks courts to look at the objective evidence found in the natural law of general principles.

103. See *infra* notes 113–114, 132–139 and accompanying text.

### C. Positivism

Positivism in international law holds that any rule of law must stem from the will of the state.<sup>104</sup> For international lawyers, this means states must have consented to the rule in question. Modern international law is generally considered consent based.<sup>105</sup> As to *jus cogens*, the scholarly trend is in this direction: “Most contemporary commentators continue to view *jus cogens* through the positivist prism of state consent.”<sup>106</sup> As to the consent-based model, the Permanent International Court of Justice (prior to the adoption of the International Court of Justice Statute) early and famously put it in the *Lotus* case: “[t]he rules of law binding upon States . . . emanate from their own free will.”<sup>107</sup> Treaties only bind states that have consented to them,<sup>108</sup> and customary international law relies upon state practice and *opinio juris* for its formation.<sup>109</sup> Practice alone implies consent, but it is the *opinio juris* element of the equation that really forms the meat of the consent model. This is sometimes referred to as the “psychological” component of custom,<sup>110</sup> because it requires that the state is behaving according to a sense of international legal obligation or right.<sup>111</sup> In other words, the state is acting a certain way because it *thinks* international

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104. Dubois, *supra* note 7, at 141 n.29 (noting that the “paradox [of *jus cogens* norms] . . . only exists for the positivist [who] view[s] State consent as being the source of international law’s authority”).

105. LOUIS HENKIN, INTERNATIONAL LAW: POLITICS AND VALUES (DEVELOPMENTS IN INTERNATIONAL LAW) 27 (Kluwer 1995) (“State consent is the foundation of international law. The principle that law is binding on a state only by its consent remains an axiom of the political system, an implication of state autonomy.”); *see also* Shelton, *supra* note 55, at 34 (“Most contemporary commentators continue to view *jus cogens* through the prism of state consent.”).

106. Criddle & Fox-Decents *supra* note 4, at 339.

107. S.S. *Lotus* (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 44 (Sept. 7).

108. VCLT, *supra* note 1, art. 34 (“A treaty does not create either obligations or rights for a third State without its consent”). *See also id.* arts. 2(g), (h) (“Third State” means a . . . State which has [not] consented to be bound by the treaty and for which the treaty is [not] in force”).

109. Anthony D’Amato, *Trashing Customary International Law*, 81 AM. J. INT’L L. 101, 102 (1987).

110. *Id.*

111. *Id.*

For a practice of states to become a rule of customary international law it must appear that the states follow the practice from a sense of legal obligation (*opinio juris sive necessitatis*); a practice that is generally followed but which states feel legally free to disregard does not contribute to customary law.

RESTATEMENT (THIRD) OF FOREIGN RELATIONS, *supra* note 3, § 102 cmt. c; *see also* RESTATEMENT (FOURTH) OF FOREIGN RELATIONS § 402 cmt. b (2019) (“Customary international law results from a general and consistent practice of states followed out of a sense of international legal right or obligation.”).

law obligates it or gives it the right to act that way. Without this belief, there is no customary international law. But, of course, whether a state believes a practice is accompanied by *opinio juris* is up to the state. Thus it depends fundamentally on state consent.

Two key features of *jus cogens* make it incompatible with a consent-based theory of international law: it is compelling and it is universal.<sup>112</sup> It is compelling in that it overrides other rules of law states may have already consented to, say, via treaty or “ordinary” custom. And it is universal because it applies regardless of whether states have consented to it or not.<sup>113</sup> *Jus cogens* thus destroys the international law doctrine of persistent objector, by which a state may opt out of a certain rule of customary international law by persistently objecting to that rule,<sup>114</sup> a doctrine discussed in more detail below.<sup>115</sup>

Ulf Linderfalk explains that “[i]n the positivist’s universe . . . the *jus cogens* status of norms derives from ordinary processes creating customary international law.”<sup>116</sup> As a result, “it is difficult to reconcile peremptory norms that bind dissenting states with the positivist theory of international law.”<sup>117</sup> Or put more forcefully, “the introduction of a

112. Harry Gould, *Categorical Obligation in International Law*, 3 INT’L THEORY 254, 257, 266 (2011).

113. Int’l Law Comm’n Rep., *supra* note 1, at 156 cmt. 14 n.733 (citing *Smith v. Socialist People’s Libyan Arab Jamahiriya*, 101 F.3d 239, 242 (2d Cir. 1996)) (“[P]eremptory norms ‘do not depend on the consent of individual states, but are universally binding by their very nature.’”).

114. Vincy Fon & Francesco Parisi, *Stability and Change in International Customary Law*, 17 SUP. CT. ECON. REV. 279, 284–85 (2009).

115. See *infra* notes 133–140 and accompanying text.

116. Ulf Linderfalk, *Understanding the Jus Cogens Debate: The Pervasive Influence of Legal Positivism and Legal Idealism*, 46 NETH. Y.B. INT’L L. 51, 58 (2015). This is not, however, a forgone conclusion. Another way of looking at *jus cogens* is that it has been agreed to by treaty in general through the Vienna Convention if not specifically regarding the application of a particular norm. *Id.* at 63 (“[I]t is because S has consented to, or acquiesced in, the relevant law-creating processes. Stated in this revised form—separating the processes creating a rule of law from the source of the ensuing obligations—legal positivism has no problem coping with the idea of a non-derogable law.”); Criddle & Fox-Decent, *supra* note 4, at 339 (“The leading positivist theory of *jus cogens* conceives of peremptory norms as customary law that has attained peremptory status through state practice and *opinio juris*.”); see also RESTATEMENT (THIRD) OF FOREIGN RELATIONS, *supra* note 3, § 102 n.6 (noting *jus cogens* “is now widely accepted . . . as a principle of customary law (albeit of a higher status)”)).

117. Shelton, *supra* note 55, at 34.

There is an inherent tension between the concept of *jus cogens* and the idea that international law is derived from the consent of states . . . [F]or a devoted positivist the idea that some norms transcend the sovereign will of states must be irreconcilable with the very notion of sovereignty itself.



consensual ingredient into the concept of *jus cogens* leads inevitably, in the ultimate instance, to the very negation of that concept.”<sup>118</sup>

### 1. Compelling

In contrast to this trend, the ILC places *jus cogens* as “hierarchically superior to other rules of international law.”<sup>119</sup> In this way, it can be conceptualized as transforming the international system from a set of horizontal rules among states into a system comprising both horizontal and vertical components with *jus cogens* occupying a higher level, capable of trumping any lower-level horizontal rule.<sup>120</sup> This view is reflected in the language of international courts. The ICTY has found that the prohibition on torture “relates to the hierarchy of rules in the international normative order” and “has evolved into a peremptory norm or *jus cogens*, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules.”<sup>121</sup> The Inter-American Court of Human Rights has taken a similar view.<sup>122</sup> And in *Kadi v. Council and Commission*, the Court of First Instance of the European Communities observed that *jus cogens* is a “body of higher rules of public international law.”<sup>123</sup> The

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Maarten den Heijer & Harmen van der Wilt, *Jus Cogens and the Humanization and Fragmentation of International Law*, 46 NETH. Y.B. INT’L L. 3, 6 (2015).

118. JERZY SZTUCKI, *JUS COGENS AND THE VIENNA CONVENTION ON THE LAW OF TREATIES: A CRITICAL APPRAISAL* 64 (1974); Criddle & Fox-Decents *supra* note 4, at 342 (“As many positivists have recognized, the very concept of *jus cogens*—peremptory norms that bind states irrespective of state consent—is sharply at odds with the positivist account of international lawmaking.”).

Voluntarism holds that legal obligation over an agent can *only* be created by the consent of that agent, that is, for a state to be legally bound it must have consented (willed) to be bound. ‘A strictly voluntarist view of international law rejects the notion that a State may be bound to an international legal rule without its consent . . . . In international law there are no rules other than such rules as may be accepted by the state concerned.’ Obligation comes *only* from consent-to-be bound in this understanding.

Gould, *supra* note 112, at 261 (citations omitted).

119. Int’l Law Comm’n Rep., *supra* note 1, at 150.

120. ORAKHELASHVILI, *supra* note 4, at 9.

121. Int’l Law Comm’n Rep., *supra* note 1, at 154 cmt. 9 n.717 (citing Prosecutor v. Furundžija, Case No. IT-95-17/1-T, Judgment in the Trial Chamber, ¶ 153 (Int’l Crim. Trib. For the Former Yugoslavia Dec. 10, 1998)).

122. *Id.* at 154 n.718 (citing García Lucero, et al. v. Chile, Preliminary Objection, Merits, and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 267, ¶ 123 n.139 (Aug. 28, 2013)).

123. *Id.* at 154 n.719 (citing Case T-315-01, Yassin Abdullah Kadi v. Council of the European Union & Commission of the European Communities, 2005 E.C.R. II-3649, ¶ 226).

European Court of Human Rights in *Al-Adsani v. the United Kingdom* similarly described *jus cogens* as “a norm that enjoys a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules.”<sup>124</sup> State practice supports this view as well. In *Mann v. Republic of Equatorial Guinea*, the High Court of Zimbabwe described *jus cogens* as “endowed [with] the primacy in the hierarchy of rules that constitute the international normative order.”<sup>125</sup> With respect to U.S. practice, the U.S. Court of Appeals for the Ninth Circuit in *Siderman* explained that *jus cogens* norms are “deserving of the highest status in international law.”<sup>126</sup> Other national courts have agreed.<sup>127</sup> Official statements of states also confirm this view,<sup>128</sup> as do the writings of some commentators.<sup>129</sup> This has led positivist

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124. *Id.* at 154 n.720 (citing *Al-Adsani v. the United Kingdom*, App. No. 35763/97, 2001-XI Eur. Ct. H.R. 761, ¶ 60).

125. *Id.* at 154 cmt. 10 n.721 (citing *Mann v. Republic of Equatorial Guinea*, Case No. CA 507/07, Judgment, 2008 ZWHHC 1, 12 (High Ct.) (Zim.)).

126. *Id.* at 154 n.722 (citing *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 717 (9 Cir. 1992)).

127. *See id.* at 154–55 nn.723–25 (citing a number of national courts, including *Certain Employees of Sidhu & Sons Nursery Ltd., et al.*, Case Nos. 61942, 61973, 61966, 61995, Decision of 1 February 2012, BCLRB No. B28/2012, ¶ 44 (Can.) (*jus cogens* enjoy a “higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules”); *Julio Héctor Simón y otros s/ privación ilegítima de la libertad*, Case No. 17.768, Judgment of 14 June 2005, Sup. Ct. of Argentina, ¶ 48 (“[Q]ue se encuentra no sólo por encima de los tratados sino incluso por sobre todas las fuentes del derecho”) [“] which is not only above treaties but even above all sources of law”]; *Julio Lilo Mazzeo y otros s/rec. de casación e inconstitucionalidad*, Judgment of 13 July 2007, Sup. Ct. of Argentina, ¶ 15 (“Se trata de la más alta fuente del derecho internacional”) [*jus cogens* “is the highest source of international law”]; *Mario Luiz Lozano v. the General Prosecutor for the Italian Republic*, Case No. 31171/2008, Appeal Judgment of 24 July 2008, First Criminal Division, Sup. Ct. of Cassation, Italy, at 6 (“dandosi prevalenza al principio di rango più elevato e di *jus cogens*”) [“] P] [riority should be given to the principle of higher rank and of *jus cogens* . . .”].).

128. Int’l Law Comm’n Rep., *supra* note 1, at 155 n.726 (citing U.N. GAOR, 68th Sess., Summary record of the 25th mtg., ¶ 101, U.N. Doc. A/C.6/68/SR.25 (Dec. 2, 2013) (Statement of Van Den Bogaard, Netherlands) (“*Jus cogens* was hierarchically superior within the international law system, irrespective of whether it took the form of written law or customary law.”) (s)).

129. *Id.* at 155 n.728 (citing ORAKHELASHVILI, *supra* note 4, at 8 as “support in the literature for the hierarchical superiority of peremptory norms of general international law (*jus cogens*)”); Gennady M. Danilenko, *International Jus Cogens: Issues of Law-Making*, 2 EUR. J. INT’L L. 42, 42 (1991) (“The idea of international *jus cogens* as a body of ‘higher law’ of overriding importance for the international community is steadily gaining ground.”); William E. Conklin, *The Peremptory Norms of the International Community*, 23 EUR. J. INT’L L. 837–838 (2012) (“[T]he very possibility of a peremptory norm once again suggests a hierarchy of international law norms with peremptory norms being the ‘fundamental standards of the

commentators to conclude that “[i]nternational lawyers regard the status of *jus cogens* in the legal hierarchy as one of the most impenetrable mysteries” surrounding the concept.<sup>130</sup>

## 2. Universal

The other feature of *jus cogens* that causes seemingly intractable problems for a positivist view is that these norms are universally binding, even on states that have not agreed to them.<sup>131</sup> Members of the ILC at the time of the VCLT’s drafting considered *jus cogens* binding in this respect. Georgio Gaja, for example, stated that “lack of acceptance or even opposition on the part of one or a few States is no obstacle to a norm becoming peremptory.”<sup>132</sup> Others shared this view, explaining that “it is the essence of the concept that a peremptory norm is applicable against the states that have not accepted the rule,” and that *jus cogens* is “a corpus of rules binding on all states, and unlike rules of customary law, they would be binding on even the persistent

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international community’ at the pinnacle.”); Marjorie M. Whiteman, *Jus Cogens in International Law, with a Projected List*, 7 GA. J. INT’L & COMP. L. 609 (1977); Janis, *supra* note 90, at 359 (noting that “Tomuschat, for example, describes it as a certainty that peremptory norms of general international law (*jus cogens*) are superior to other norms,” and citing in support Christian Tomuschat, *Reconceptualizing the Debate on Jus Cogens and Obligations Erga Omnes: Concluding Observations*, in THE FUNDAMENTAL RULES OF THE INTERNATIONAL LEGAL ORDER: *JUS COGENS* AND OBLIGATIONS *ERGA OMNES* 425 (Christian Tomuschat & Jean-Marc Thouvenin, eds., 2006) (“One thing is certain, however: the international community accepts today that there exists a class of legal precepts which is hierarchically superior to ‘ordinary’ rules of international law”)); Antonio Cassese, *For an Enhanced Role of Jus Cogens*, in REALIZING UTOPIA: THE FUTURE OF INTERNATIONAL LAW 159 (Antonio Cassese, ed., 2012). For a contrary view, see KOLB, *supra* note 89, at 37 (who “suggest[s] that the language of hierarchy should be avoided and that the focus should be on voidness since the former concept—of hierarchy—leads to confusion and misunderstanding.”)).

130. Kleinlein, *supra* note 92, at 175 (internal quotations omitted).

131. Alexander Orakhelashvili, *Audience and Authority—The Merit of the Doctrine of Jus Cogens*, 46 NETH. Y.B. INT’L L. 115, 118–19:

A *jus cogens* norm is, therefore, premised on ‘community recognition’ and is meant to operate uniformly in relation to all members of that community. Non-derogability means the legal impossibility of opting out from the substantive scope of the rule or from peremptory effects of the same rule, reinforcing the requirement of the continuing uniformity in the application of the relevant norm, even despite the opposite will of mutually agreeing legal entities.

132. Gould, *supra* note 112, at 275.

objector”<sup>133</sup>—again, a point taken up below.<sup>134</sup> In a similar vein, the recent ILC Conclusion 3 holds these norms as “universally applicable.”<sup>135</sup> National courts share this view. In *Tel-Oren v. Libyan Arab Republic*, the U.S. Court of Appeals for the District of Columbia stated that *jus cogens* are “universal and obligatory.”<sup>136</sup> And the Second Circuit found that they “do not depend on the consent of individual states, but are universally binding by their very nature.”<sup>137</sup> Similarly, in *Youssef Nada v. State Secretariat for Economic Affairs*, the Swiss Federal Supreme Court explained that *jus cogens* are “binding on all subjects of international law.”<sup>138</sup>

All of this presents a problem for positivists. The persistent objector doctrine of international law mentioned earlier holds that states that persistently object to a rule of customary international law are not bound by that rule.<sup>139</sup> Ulf Linderfalk explains that:

[a]ccording to the rule of persistent objection . . . if, during the process of formation of a customary rule (R), a state (S) consistently objects to whatever pattern of conduct R requires, and then after the entry into force of R persistently upholds this position, then R is not opposable to S.<sup>140</sup>

This doctrine obviously creates a sharp tension with the very notion of *jus cogens* on a positivist account. But it is a tension that other methodologies can avoid; namely, a general principles account that uses laws from around the world to evince *jus cogens* as a matter of objectively ascertainable natural law.

133. *Id.*; Int’l Law Comm’n Rep., *supra* note 1, at 156 cmt. 15 (“[T]he persistent objector rule or doctrine is not applicable to peremptory norms of international law (*jus cogens*).”).

134. *See also* Int’l Law Comm’n Rep., *supra* note 1, at 184–85 n.843 and accompanying text (listing statements by various States to the effect that “[*jus cogens*] cannot be subject to the persistent objector rule”).

135. *Id.* at 150.

136. *Id.* at 156 cmt. 14 (citing *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 781 (D.C. Cir. 1984)).

137. *Id.* at 156 n.733 (citing *Smith v. Socialist People’s Libyan Arab Jamahiriya*, 101 F.3d 239, 242 (2d Cir. 1996)).

138. *Id.* at 156 cmt. 14 (citing *Youssef Nada v. State Secretariat for Economic Affairs and Federal Department of Economic Affairs, Administrative Appeal Judgment, Case No. 1A 45/2007, Bundesgericht [Bger] [Federal Supreme Court] Nov. 14, 2007, 133 ENTSCHEIDUNGEN DES SCHWEIZERISCHEN BUNDESGERICHTS [BGE] II 450, ¶ 7 (Switz.)*).

139. Linderfalk *supra* note 116, at 62.

140. *Id.*

#### D. Public Order

Another quite interesting justification of *jus cogens* comes in the form of a public order role. Boiled down, this argument too may appear somewhat tautological: the international legal system exists; therefore, there must be some basis for the international legal system to exist. But the tautology here is not analytically vacuous either. Nobody argues that there is no such thing as an international legal system. It follows that the system could not function without some baseline rules. And these baseline or structural rules constitute *jus cogens*.<sup>141</sup> Hence the chief *jus cogens* norm for a public order advocate is that international agreements are binding, or *pact[us] sunt servanda*.<sup>142</sup> This rationale comports with Hans Kelsen's concept of a "*grund-norm*,"<sup>143</sup> or "a stipulative bedrock, the origin of which was outside the realm of legal analysis, and made a matter of sociological inquiry."<sup>144</sup> As one scholar has explained:

The foundation for the non-derogable status of *jus cogens* norms is the common interests of States, as members of the international legal community, in a shared international order with a uniformity of values and rules which are essential to its continued existence. It is these rules, which are the rules and principles without which an international society would cease to exist, that States have an interest in granting non-derogable status.<sup>145</sup>

Indeed, Verdross relied in part on a public order rationale and explained its workings in terms of treaty law. He critiqued those who viewed international law as only consent based, because "they overlook the fact that each treaty presupposes a number of norms necessary for the very coming into existence of an international treaty."<sup>146</sup> Here

141. ORAKHELASHVILI, *supra* note 4, at 44.

142. HANS KELSEN, A PURE THEORY OF LAW 216 (M. Knight trans., Univ. of Cal. Press 1967).

143. *Id.* at 193–221; Gould, *supra* note 112, at 263; Shelton *supra* note 55, at 32, Linderfalks *supra* note 116, at 55.

144. Gould, *supra* note 112, at 263.

145. Dubois, *supra* note 7, at 141. There is another public order rationale that analogizes *jus cogens* to the public order exception in conflict of laws, whereby a state will refuse to apply a foreign law because it violates the state's public policy. ORAKHELASHVILI *supra* note 4, at 17–18. This view relies fundamentally on morality as the basis for the public policy and I would therefore group it more under the natural law approach. *Id.* at 48 ("It is widely accepted that the concept of public order is based on morality and its function is to outlaw the acts and transactions offending against the morality accepted in the given legal system.")

146. Verdross, *supra* note 62, at 572.

he cited “norms determining which persons are endowed with the capacity to act in international law, what intrinsic and extrinsic conditions must be fulfilled that an international treaty may come into existence, [and] what juridical consequences are attached to the conclusion of an international treaty.”<sup>147</sup> In other words, there must exist always some predicate set of norms operative in the system by which legal actors can enter into legally binding agreements in order for there to be a system in the first place. Lauterpacht too articulated a public order justification for *jus cogens*:

It would thus appear that the test [of] whether the object of the treaty is void for that reason is not inconsistency with customary international law pure and simple, but inconsistency with such overriding principles of international law which may be regarded as constituting principles of international public policy (*ordre international public*).<sup>148</sup>

For these reasons, public order advocates have also referred to *jus cogens* as constitutional norms of international law; that is to say, they constitute the system and limit lawmakers’ ability to craft law that contravenes a constitutional *jus cogens* principle.<sup>149</sup>

One problem with a public order rationale is that it seemingly fails to explain the inclusion of certain core *jus cogens* norms; namely, prohibitions guaranteeing human rights, especially in relation to intrastate human rights abuses.<sup>150</sup> Thus if State A tortures X, a national of State A, inside State A territory, there is arguably no public order rationale about guaranteeing the interstate legal system—as there would be with, say, *pactus sunt servanda*—that comes into play in such a purely intrastate setting.

This problem plagues another theory of international law that may be housed under the public order rationale; namely, systems theory. This theory treats international law as analogous to a biological organism.<sup>151</sup> International law differs from top-down systems of law in the world because it grows organically from the practice of states

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147. *Id.*

148. Weisburd, *supra* note 71, at 13 (citing Hersch Lauterpacht, *Law of Treaties: Report by Special Rapporteur*, [1953] 2 Y.B. Int’l L. Comm’n 90, 155 U.N. Doc. A/CN.4/63).

149. ORAKHELASHVILI, *supra* note 4, at 10.

150. Criddle & Fox-Decent, *supra* note 4, at 344–45.

151. Anthony J. Colangelo, *A Systems Theory of Fragmentation and Harmonization*, 49 N.Y.U.J. INT’L L. & POL. 1, 3 (2016).

accompanied by *opinio juris*.<sup>152</sup> Under a systems view, the system is autopoietic; it evolves for the purpose of its own survival; it is self-perpetuating through rules that tilt toward peace and trade over time. But like the public order rationales articulated above, it fails to explain purely intrastate human rights abuses as qualifying for *jus cogens* protection.

Still another public order rationale has recently been articulated by Thomas Weatherall. His project is to elevate the value of human dignity over the state on a public order rationale by marrying public order to the notion of a social contract informed by fundamental moral considerations.<sup>153</sup> In other words, the idea is to translate the evolution of human society from a state of nature to one of social contract.<sup>154</sup> Fundamental to the social contract is the peaceful coexistence of society governed by rules that safeguard core values.<sup>155</sup> According to Weatherall, this view theoretically captures what he calls “normative individualism,” “international constitutionalism,” and “cosmopolitanism.”<sup>156</sup> Normative individualism is based on the “essential premise . . . which holds that the fundamental purpose of law is the good of the individual.”<sup>157</sup> International constitutionalism holds that “[s]overeignty is no longer conceived to represent absolute freedom in the internal and external affairs of the State; rather, it is understood to be delegated by the individuals within its borders and contingent upon responsibilities owed to them.”<sup>158</sup> Finally, “the term ‘cosmopolitan’ refers to the most basic and fundamental, moral in origin yet legal in nature, that transcend the boundaries of the State and accrue to the individual.”<sup>159</sup>

Although superficially looking like a public order theory, by relying fundamentally on morality this theory falls into the natural law trap of defining what exactly it means by morality. All we have is that these core “interests necessary to social coexistence are expressed through principles regarded to be moral in character and as such evoke

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152. Anthea Elizabeth Roberts, *Traditional and Modern Approaches to Customary International Law: A Reconciliation*, 95 AM. J. INT’L L. 757, 757–58 (2001).

153. WEATHERALL, *supra* note 81, at 21, 71.

154. *Id.* at 98.

155. *Id.* at 100.

156. *Id.* at 447.

157. *Id.*

158. *Id.* at 449.

159. *Id.* at 450.

elements of natural law.”<sup>160</sup> And these moral principles relate to the elevation of human dignity.<sup>161</sup> As such, they place moral constraints on the sovereignty of states insofar as the exercise of sovereign power denigrates the rights of individuals, which are the primary subjects of international law within the community.<sup>162</sup> Weatherall’s reliance on natural law fails to adequately identify how to go about discerning natural law in an objective manner and its moral principles and thus runs into the same obstacle as traditionally relativistic and subjective natural law theories. Moreover, the theory at bottom rests on an analogy between the individual and the state, one that may well break down when one considers the nature of the international system made up of autonomous states versus civil society made up of human beings. The interests of states in the international system surely elevate peace among autonomous states but do not necessarily address purely intra-state activity that does not threaten that peace. Thus, as with other public order rationales, it cannot account for the bulk of modern *jus cogens* prohibiting gross human rights violations.

#### *E. Fiduciary Duty*

Another theory of *jus cogens* developed by Evan Criddle and Evan Fox-Decent holds that the state is a fiduciary of those under its control.<sup>163</sup> This theory attempts to avoid the positivist critique of *jus cogens* by basing the nature of these norms not on consent but on the relationship of the state to the individual.<sup>164</sup> It also distances itself from natural law theories’ rather amorphous reliance on general moral goods, and grounds *jus cogens* instead in a specific legal relationship.<sup>165</sup> Indeed, according to a fiduciary duty model, because the state-subject relationship is constitutive of sovereignty, norms guaranteeing that relationship reinforce sovereignty.<sup>166</sup>

The theory proceeds from the premise that “[p]opular sovereignty denotes that the state’s sovereign powers belong to the people, and so those powers are held in trust by their rulers on condition that

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160. *Id.* at 10 (“In the context of *jus cogens*, the higher interests of the community are ‘extra-State,’ concerning the whole of mankind, and designate the individual human being as their ultimate beneficiary.”).

161. *Id.* at 101–02.

162. *Id.* at 103.

163. Criddle & Fox-Decent, *supra* note 4, at 352–60.

164. *Id.* at 347.

165. *Id.* at 348.

166. *Id.*



they be used for the people's benefit."<sup>167</sup> It does not address dictatorial states where popular sovereignty is not the governing constitutional framework. This model also extends to non-citizens over whom the state exercises control,<sup>168</sup> leaving less clear how popular sovereignty rooted in democratic accountability and representation would relate to non-participants in that sovereign enterprise. Its characteristics are that states must treat individuals with integrity, fairness, equality, solicitude,<sup>169</sup> fundamental equal security,<sup>170</sup> and the rule of law.<sup>171</sup> Because *jus cogens* arises from the state's duty to the individual, Criddle and Fox-Decent identify due process as an emergent preemptory norm.<sup>172</sup> The empirical study here does not rely on a fiduciary account, but aligns with it in terms of the result that states owe *jus cogens* duties to human beings within their control.

#### F. General Principles

Finally, general principles of international law differ from treaty and custom in that they are considered fundamentally non-consent based;<sup>173</sup> rather, they are principles common to legal systems around the world that bind all states as a matter of natural law.<sup>174</sup> Consent does, however, play a role as objective empirical evidence of the underlying natural law principle. As such, general principles may be viewed as consent-based in a certain respect: They have been consented to by the large number of states that have affirmatively adopted

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167. *Id.* at 350; *see also* MAY, *supra* note 4, at 123:

By violating *jus cogens* norms and rendering citizens significantly less secure, States also render themselves less secure. In this sense, *jus cogens* norms are merely a reminder to States of what they need to do to secure their sovereignty by maintaining the only foundational duty that they have, to secure the *salus populi*, the safety of the people.

168. Criddle & Fox-Decent, *supra* note 4, at 359, 380 ("Because the fiduciary principle authorizes state power on behalf of every person subject to it, states can claim no greater entitlement to enslave or torture foreign nationals than they can claim vis-à-vis their own citizens.").

169. *Id.* at 363.

170. *Id.* at 366.

171. *Id.* at 367.

172. *Id.* at 370, 380–81.

173. *See supra* notes 11–12, 39 and accompanying text; MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 55–56 (4th ed. 2003).

174. *See infra* notes 310–894.

them.<sup>175</sup> Thus instead of being consent based *inter se* among states, they are consent based *intra se* within the world's legal systems. Broadly speaking, this would appear to bring international law closer to human beings as subjects of international law as opposed to just states. This feature also opens up analysis of which norms states consider hierarchically superior to other norms; namely, through their constitutions, and in this respect makes them a perfect candidate for the creation and identification of *jus cogens*. It also escapes the criticism of traditional natural law as too subjective and means that the best way to identify general principles is through a comparative law analysis<sup>176</sup>—just the type of analysis that the present work performs. “The basic notion is that a general principle of law is some proposition of law so fundamental that it will be found in virtually every legal system.”<sup>177</sup> Thus:

In order for an international lawyer to argue that a general principle of law is a binding rule of international law, it would be necessary to canvass all of the world's great legal systems for evidence of that principle, and also to reference manifestations of that principle in the actual domestic law of as many nations as possible.<sup>178</sup>

This article does precisely that. The comparative approach matches up exactly with the ILC test that a “very large majority”<sup>179</sup> of states “across regions, legal systems and cultures”<sup>180</sup> is needed to recognize a norm for it to be considered *jus cogens*. This language tattoos the report, which elaborates that “[a]cceptance and recognition by a

175. Though again, consent is used principally as objective evidence of a natural law principle. See *supra* note 39. It is this feature that makes them binding on all states as opposed to only those states that have affirmatively consented to them.

176. See *supra* notes 32, 179–189. For example, the Second Circuit concluded that torture violated the law of nations in *Filartiga v. Pena Irala*, 630 F.2d 876 (2d Cir. 1980). It supported its international law analysis with a species of general principles analysis when it cited to a survey of over fifty-five nations' constitutions outlawing torture. *Id.* at 884. Similarly, the Supreme Court in *United States v. Smith*, 18 U.S. 153, 163 (1820) surveyed the laws of multiple countries around the world to arrive at a definition of piracy.

177. JANIS, *supra* note 173, at 56; see also BEDERMAN, *supra* note 44, at 13 (explaining that “a principle would have to be ‘recognized’ not just in one legal system, but, rather, in most of the world's legal cultures” (quoting Statute of the International Court of Justice art. 38(1)(c), June 26, 1945, 59 Stat. 1031, 33 U.N.T.S. 993); KOTUBY & SOBOTA, *supra* note 12, at 23 (to avoid selection bias, comparative analysis should be as comprehensive as possible).

178. BEDERMAN, *supra* note 44, at 13.

179. Int'l Law Comm'n Rep., *supra* note 1, at 167 cmt. 5; see also Criddle & Fox-Decent, *supra* note 4, at 341.

180. Int'l Law Comm'n Rep., *supra* note 1, at 168 cmt. 6.

very large majority of States is required for the identification of a norm as a peremptory norm of general international law (*jus cogens*); acceptance and recognition by all States is not required.”<sup>181</sup> This view also reflects the statement of M.K. Yasseen, the Chairman of the Drafting Conference of the VCLT, that:

[T]here is no question of requiring a rule to be accepted and recognized as peremptory by all States. It would be enough if a very large majority did so; that would mean that, if one state in isolation refused to accept the peremptory character of a rule, or if that state was supported by a very small number of States, the acceptance and recognition of the peremptory character of the rule by the international community as a whole would not be affected.<sup>182</sup>

And the ILC commentary to Draft Article 19 of the Articles on State Responsibility for Internationally Wrongful Acts explains that for a norm to be *jus cogens*, “certainly does not mean the requirement of unanimous recognition by all the members of that community, which would give each state an inconceivable right of veto.”<sup>183</sup> Scholars are of the same opinion.<sup>184</sup>

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181. *Id.* at 165.

182. *Id.* at 167 n.788 (citing U.N. Conference on the Law of Treaties, *Official Records, Summary Records of the Plenary Meetings and of the Meetings of the Committee of the Whole* (Statement of Yasseen, M., Chairman of the Drafting Committee) 472 ¶ 12, A/CONF.39/11 (Mar. 26–May 24, 1968)).

183. Int’l Law Comm’n, Rep. on the Work of Its Twenty-Eighth Session, U.N. Doc. A/31/10, at 287 (1976), *reprinted in* [1976] 2 Y.B. Int’l L. Comm’n 119, U.N. Doc. A/CN.4/SER.A/1976/Add.1–2 [updated language from Yearbook]. Although Draft Article 19 does not appear in the final version of the Articles on State Responsibility for Internationally Wrongful Acts adopted by the Commission, Article 19’s characterization of violations of *jus cogens* norms as “serious,” and the severe consequences of such violations were nevertheless captured in Articles 40 and 41. *See* Int’l Law Comm’n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 112–16 (2001). As the International Law Commission commentaries to Article 40 explain, the Commission deliberately incorporated the previous list of “serious crimes” from Article 19 into Article 40. *See id.* at 112.

184. *Cf.* Sue S. Guan, *Jus Cogens: To Revise a Narrative*, 26 MINN. J. INT’L L. 461, 470 (2017); Markus Petsche, *Jus Cogens as a Vision of the International Legal Order*, 29 PENN ST. INT’L L. REV. 233, 266 n.130 (2010) (citing Walter Gangl, *The Jus Cogens Dimensions of Nuclear Technology*, 13 CORNELL INT’L L.J. 63, 76 (1980)) (citations omitted) (stating that “[A]rticle 53 [of the Vienna Convention] does not require universal acceptance”); Danilenko, *supra* note 129, at 49 (concluding and deploring the fact that Article 53 of the Vienna Convention creates “majority rule-making in the framework of the established sources [of

This test is thus a centerpiece of the ILC report<sup>185</sup> supported by other relevant international law materials.<sup>186</sup> And it is one that fits snugly with the comparative general principles account of *jus cogens* that calls out for “a detailed and rigorous study” of potential *jus cogens* as a general prescription in Conclusion 23(1).<sup>187</sup> I therefore use it as the test for discerning procedural *jus cogens* from general principles, which, as the Article shows, clearly demonstrate “[a]cceptance and recognition by a very large majority of states<sup>188</sup> . . . across regions, legal systems and cultures.”<sup>189</sup> Indeed, because their natural law roots are revealed by a comparative analysis of states’ internal laws, the ILC criterion comports precisely with the empirical, comparative approach of this Article’s argument.

Perhaps because general principles have less of a consent-based element to them, some sources find in them the basis for *jus cogens*.<sup>190</sup> As already noted, they certainly make sense of the principle that only a great majority of states must recognize them and that unanimity is not required<sup>191</sup> (but note that unanimity is quite close when one looks to the number of states that provide for basic due process protections).<sup>192</sup> Moreover, as will be shown below,<sup>193</sup> a general principles account of *jus cogens* remains faithful to the modern progenitors of the doctrine: Lauterpacht and Verdross.

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international law]”); Eva M. Kornicker Uhlmann, *State Community Interests, Jus Cogens and Protection of the Global Environment: Developing Criteria for Peremptory Norms*, 11 GEO. INT’L ENV’T. L. REV. 101, 112 (1998) (“Identifying a norm as *jus cogens* does not require recognition by each and every member of the international community, but only the consent of a very large majority reflecting the essential components of the international community.”).

185. Int’l Law Comm’n Rep., *supra* note 1, at 167–68 cmts. 5–6.

186. *Id.* at 167 n.788 (citing E. de Wet, *Jus Cogens and Obligations Erga Omnes*, in *THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW* 541, 543 (D. Shelton, ed., 1st ed. 2013) (“This threshold for gaining peremptory status is high, for although it does not require a consensus among all states . . . it does require the acceptance of a large majority of states.”); JOÃO ERNESTO CHRISTÓFOLO, *SOLVING ANTINOMIES BETWEEN PEREMPTORY NORMS IN PUBLIC INTERNATIONAL LAW* 125 (2016) (“[The formation of peremptory norms reflects] a common will represent[ing] the consent of an overwhelming majority of States. Neither one State nor a very small number of States can obstruct the formative process of peremptory norms.”).

187. *Id.* at 203–04 cmt. 1.

188. *Id.* at 165.

189. *Id.* at 168 cmt. 6; *see infra* notes 310–894 and accompanying text.

190. *See, e.g.*, Criddle & Fox-Decent, *supra* note 4, at 341; Strong, *supra* note 4, at 369.

191. *See supra* notes 173–174, 176–82 and accompanying text.

192. *See infra* Part III.

193. *See infra* notes 199–200.

The ILC leads the way on the contemporary use of general principles to derive *jus cogens*. Conclusion 5(2) states that “general principles of law may . . . serve as bases for peremptory norms of general international law (*jus cogens*).”<sup>194</sup> The Commentary to Conclusion 5 explains further that “[i]t is appropriate to refer to the possibility of general principles of law forming the basis of peremptory norms of general international law (*jus cogens*).”<sup>195</sup> It continues: “General principles of law are part of general international law since they have a general scope of application with equal force for all members of the international community.”<sup>196</sup> As far as judicial opinions go, in its Advisory Opinion on *Reservations to the Genocide Convention*, the International Court of Justice explained that “the principles underlying the Convention are principles which are recognized by civilized nations as binding on all States, even without any conventional

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194. Int’l Law Comm’n Rep., *supra* note 1, at 158.

195. *Id.* at 161–62 cmt. 8; *see also id.* at 162 n.764 (citing SÉVRINE KNUCHEL, *JUS COGENS: IDENTIFICATION AND ENFORCEMENT OF PEREMPTORY NORMS* 52 (2015) (“[G]eneral principles [of law] may be elevated to *jus cogens* if the international community of States as a whole accepts and recognizes [them as such.]”)); Shelton *supra* note 55, at 27 (explaining that “[a] related theory derives the concept of *jus cogens* from general principles of law”).

196. Int’l Law Comm’n Rep., *supra* note 1, at 161–62 cmt. 8; *see also* Int’l Law Comm’n, Provisional Summary Record of the 3416th Meeting (Seventieth Session), U.N. Doc. A/CN.4/SR.3416 at 10 (2018) (“[P]aragraph 2 of draft conclusion 17 indicated that resolutions of international organizations should be interpreted in a manner consistent with *jus cogens* norms . . . it should presumably also apply in the case of . . . general principles of law.”); Int’l Law Comm’n, Provisional Summary Record of the 3417th Meeting (Seventieth Session), U.N. Doc. A/CN.4/SR.3417, at 12 (2018):

He could not conceive of a situation in which a general principle of international law could conflict with a norm of *jus cogens*. If such a situation were to be asserted by a State, the general principle of law would surely be interpreted in a way that would render it consistent with *jus cogens*.

Int’l Law Comm’n, Provisional Summary Record of the 3417th Meeting (Seventieth Session) at 4, U.N. Doc. A/CN.4/SR.3418, (2018) (“The report included a discussion of the relationship between peremptory norms and customary law, unilateral acts and resolutions of international organizations, including the Security Council, but the relationship between peremptory norms and general principles of law should also be considered.”); Int’l Law Comm’n, Provisional Summary Record of the 3417th Meeting (Seventieth Session) at 4, U.N. Doc. A/CN.4/SR.3419 (2018) (“Draft conclusions 15, 16 and 17 provided for the invalidity or nullity of other sources of international law besides treaties . . . where those sources conflicted with *jus cogens*. Perhaps . . . general principles of law should also be included among those sources.”); Int’l Law Comm’n, Provisional Summary Record of the 3417th Meeting (Seventieth Session) at 4, U.N. Doc. A/CN.4/SR.3421 (2018) (“*Jus cogens* was, by its nature, potentially disruptive to international law: even the fundamental principle of *pacta sunt servanda* might, in rare cases, have to give way to it. So too might . . . general principles of law within the meaning of article 38(1)(c) . . .”).

obligation.”<sup>197</sup> Scholarship supports this view. As Criddle and Fox-Decent put it, a “popular theory of *jus cogens* asserts that peremptory norms enter international law as ‘general principles of law recognized by civilized nations.’”<sup>198</sup>

Again, general principles originally made up a large part of the justification of *jus cogens* by the primary progenitors of the concept during the World War II period: Lauterpacht and Verdross. To repeat, Lauterpacht found *jus cogens* in “principles . . . expressive of rules of international morality so cogent that an international tribunal would consider them forming a part of those principles of law generally recognized by civilized nations.”<sup>199</sup> And Verdross, who was dealing with treaties contrary to *jus cogens*, cited “the general principle prohibiting states from concluding treaties *contra bonos mores*. This prohibition, common to the juridical orders of all civilized states, is the consequence of the fact that every juridical order regulates the rational and moral coexistence of the members of a community.”<sup>200</sup>

Of course, the next question is where to find these general principles. The ILC has elaborated on this as well. The ILC explains that domestic legislation is a “way by which States express their views” and thus “provide evidence of the peremptory character of a norm of general international law.”<sup>201</sup> The primary sources this Article looks to are the constitutions and municipal laws of states, where the constitutions are skeletal in their fair trial rights. Again, constitutions form a particularly powerful source of *jus cogens* because they contain those principles states consider hierarchically superior, most important, and central to the structure of a particular legal system. Indeed, unlike *inter se* sources of law, general principles elevate certain norms within a legal hierarchy and place them at the center of a particular legal system. It is this feature that differentiates them from other norms of international law and places them on the pedestal of *jus cogens*; not as a

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197. Reservations to Convention on Prevention and Punishment of Crime of Genocide, Advisory Opinion, 1951 I.C.J. 15, at 23 (May 28).

198. Criddle & Fox-Decent, *supra* note 4, at 341; see also O’Connell, in THE ROLE OF ETHICS IN INTERNATIONAL LAW, *supra* note 36, at 83–84. It should be pointed out that there is another theory that takes “general principles to refer to precepts ‘accepted by all nations in *foro domestico*’, which are essentially ‘maxims of law’ adopted from domestic orders to fill gaps in international law to avoid *non liquet*.” WEATHERALL, *supra* note 81, at 129 (citations omitted).

199. *Law of Treaties: Report by Mr. H. Lauterpacht, Special Rapporteur*, [1953] 2 Y.B. Int’l L. Comm’n 155, U.N. Doc. A/CN.4/63.

200. Verdross, *supra* note 62, at 572.

201. See Int’l Law Comm’n Report, *supra* note 1, at 169–70 cmt. 5.

matter of subjective natural law reasoning, but rather as an empirically provable fact.<sup>202</sup>

## II. PROCEDURAL JUS COGENS

### A. Procedure vs. Substance

The first thing to do before exploring the existence and contours of procedural *jus cogens* is to try to differentiate procedure from substance. Such a distinction is helpful, for example, in distinguishing substantive *jus cogens* violations, like the prohibition on arbitrary arrest and detention, from the procedural right to notice and a hearing. The prohibition on arbitrary arrest and detention protects a substantive right, namely, the right to liberty, while a procedural right protects the process by which that substantive right is taken away.<sup>203</sup>

The line between procedure and substance is an eternal debate in the law. As Walter Wheeler Cook famously put it:

Nearly every discussion seems to proceed on the tacit assumption that . . . the object is to find out, as one writer puts it, “on which side of the line a set of facts falls.” This way of stating the problem, if taken literally, seems to the present writer to start us off on the wrong scent, and to divert our attention from the fact that we are thinking about the case precisely because there is no “line” already in existence which can be discovered by analysis alone . . . . [O]ur problem turns out to be not to discover the location of a pre-existing “line” but to decide where to draw a line.<sup>204</sup>

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202. Some scholars have expressly considered procedural *jus cogens* as arising from general principles of international law in other areas. For instance, Strong makes a compelling case for the use of arbitration proceedings as a source of *jus cogens* in civil matters, see Strong, *supra* note 4, at 362–70, and further extends her views to the Trump Administration’s immigration policies, analyzing another type of civil proceeding. See S.I. Strong, *Can International Law Trump Trump’s Immigration Agenda? Protecting Individual Rights Through Procedural Jus Cogens*, 2018 U. ILL. L. REV. ONLINE 272, 285–87 (2018). This Article by contrast deals largely with criminal actions and offers an entirely different empirical approach looking to the constitutions and municipal laws of states around the world.

203. MAY, *supra* note 4, at 51.

204. Walter Wheeler Cook, “Substance” and “Procedure” in the Conflict of Laws, 42 YALE L.J. 333, 335–36 (1933). Henry Maine made a similarly famous statement that “substantive law has at first the look of being gradually secreted in the interstices of procedure.” SIR HENRY S. MAINE, DISSERTATIONS ON EARLY LAW AND CUSTOM 389 (1883).

Nonetheless, legal philosophers and courts have tried to draw such a line. For example, H.L.A. Hart distinguished between “primary” and “secondary” rules.<sup>205</sup> For Hart, primary rules govern actors’ behavior out in the real world (drive below the speed limit); secondary rules prescribe how officials enact and enforce that primary rule (one gets a speeding ticket under a validly enacted law that one may challenge in court). The rules differ as to whom they address.<sup>206</sup> While primary rules address all of us, secondary rules address those government officials tasked with enforcing the law.<sup>207</sup> This distinction is helpful for our purposes because a procedural *jus cogens* does not regulate one’s primary behavior but only kicks in after that primary behavior has occurred. Similarly, it addresses itself to those tasked with enforcing the primary rule of conduct.

The question of procedure versus substance was also taken up by the U.S. Supreme Court in a line of cases starting with *Erie Railroad Co. v. Tompkins*.<sup>208</sup> *Erie* pronounced the death of the general federal common law and held that in federal diversity suits federal law governed procedural issues while state law governed matters of substance.<sup>209</sup> Almost immediately, courts began wrestling with the question of how to draw the line between procedure and substance.<sup>210</sup> In response, the Court began with a line that distinguished between rules that were “outcome determinative,” which were substantive, and those that were not, which were procedural.<sup>211</sup> This distinction naturally subjected itself to criticism because minor things like the color of a brief might be outcome determinative in litigation but could be classified as quintessentially procedural.<sup>212</sup> This test later evolved in concurrence into a test that “inquir[ed] if the choice of a rule would substantially affect those primary decisions respecting human conduct,”

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205. HART, *supra* note 40, at 81.

206. MAY, *supra* note 4, at 48.

207. *Id.*

208. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 64 (1938).

209. *Id.* at 78.

210. *See, e.g.*, *Cohen v. Benefit Indus. Loan Corp.*, 337 U.S. 541, 559 (1949) (Rutledge, J., dissenting) (“[I]n many situations procedure and substance are so interwoven that rational separation becomes well-nigh impossible. But, even so, this fact cannot dispense with the necessity of making a distinction.”).

211. *Guaranty Trust Co. v. York*, 326 U.S. 99, 109–10 (1945).

212. BARBARA A. BABCOCK, TONI M. MASSARO & NORMAN W. SPAULDING, *CIVIL PROCEDURE: CASES AND PROBLEMS* 923 (6th ed. 2017); *see also* *Hanna v. Plumer*, 380 U.S. 460, 468–69 (1965) (explaining that “every procedural variation is outcome determinative”); Lawrence Solum, *Procedural Justice*, 78 S. CAL. L. REV. 181, 192–206 (2004).



in which case it would be substantive,<sup>213</sup> and more recently by the Court, a test that provides that a procedural rule is a rule that “must ‘really regulat[e] procedure,—the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them.’”<sup>214</sup> Yet as Lawrence Solum has observed, fuzziness between procedure and substance nonetheless persists because “the entanglement of substance and procedure required by the application of abstract rules to concrete cases is a pervasive feature of litigation.”<sup>215</sup> Although subject to criticism, these tests are still heuristically useful for distinguishing procedural *jus cogens* from substantive ones. For the substantive rule regards the thing to be adjudicated while the procedural rule relates to the manner of adjudication.

None of this is to say that procedure and substance do not blend; they can and often do. As Larry May points out, procedural rules may comprise part of a legal system that impacts individuals in their day to day lives by guaranteeing that their behavior will not be subject to arbitrariness, a feature that goes directly to the Rule of Law.<sup>216</sup> Thus if I exceed the speed limit, I can expect that some established procedure will adjudicate the legality of my conduct, not the arbitrary whim of some governmental official. Or, as Solum points out, “even an idealized model of substance and procedure requires procedures to play the substantive role of action-guiding particularization of legal norms.”<sup>217</sup> Yet again, for purposes of the present discussion, Hart’s distinction between primary and secondary rules and the Supreme Court’s jurisprudence offer useful heuristics by which to gage the line between procedure and substance; *jus cogens* that guarantee things like notice, a hearing, and an impartial and independent decisionmaker fall on the procedural side of both.

### B. Treaty Law

Turning to the existence of a procedural *jus cogens*, treaty law by itself is an incomplete source on a positivist account because

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213. *Plumer*, 380 U.S. at 475 (Harlan, J., concurring).

214. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 407 (2010) (quoting *Sibbach v. Wilson & Co.*, 312 U.S. 1, 14 (1941)).

215. Solum, *supra* note 212, at 224.

216. MAY, *supra* note 4, at 52.

217. Solum, *supra* note 212, at 220.

treaties bind only states parties.<sup>218</sup> Nonetheless, there has been some reliance on it. One technique stems from the VCLT and argues that by signing on to the Convention, which affirms the existence of *jus cogens*, states parties have accepted the law of *jus cogens* even if they may later dispute a particular norm or application of a norm.<sup>219</sup> And the ILC cites treaty provisions as “bases for peremptory norms of general international law.”<sup>220</sup> Significantly, the Commission explains that the basis of a *jus cogens* norm extracted from a treaty is not the entire treaty itself but only those provisions of a treaty that reflect *jus cogens*.<sup>221</sup> Yet treaties are ultimately consent-based among states and do not explain their application to non-state parties.

Treaties do useful work, however. They crystalize customary international law, which is the subject of the next section. And they also provide evidence of domestic law in the form of general principles of law where the treaties are incorporated into domestic law (a not uncommon phenomenon). Thus, it is appropriate here to spell out those major treaties and international instruments created under the auspices of treaties providing for due process of law or its equivalent.

For a primary example, Article 14 of the widely ratified International Covenant on Civil and Political Rights (ICCPR), which has 173 state parties,<sup>222</sup> lays out extensive protections:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a

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218. Compare VCLT, *supra* note 1, art. 2(g) (“[P]arty’ means a State which has consented to be bound by the treaty and for which the treaty is in force”), with *id.* art. 2(h) (“[T]hird State’ means a State not a party to the treaty.”).

219. See Int’l Law Comm’n Rep., *supra* note 1, at 165 cmt. 5 (explaining that the “generally accepted interpretation of article 53 of the 1969 Vienna Convention” forms the basis for the “framework of acceptance and recognition by the international community of States” of *jus cogens*).

220. *Id.* at 158.

221. *Id.* at 162 cmt. 9.

222. International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Doc. E, 95-2, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976, adopted by the United States Sept. 8, 1992) [hereinafter ICCPR]; see *Status of Ratification: Interactive Dashboard*, U.N. OFFICE HIGH COMM’R, <https://indicators.ohchr.org/> [<https://perma.cc/E53N-BXAN>]. Feb32022

democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.<sup>223</sup>

The Human Rights Committee has elaborated these requirements.<sup>224</sup> As the text indicates, they cover equality of arms, the right of access to the courts,<sup>225</sup> and place a strong emphasis on “[t]he right to a fair and public hearing by a competent, independent and impartial tribunal established by law.”<sup>226</sup> As to the latter condition, “[t]he requirement of competence, independence and impartiality of a tribunal . . . is an absolute right that is not subject to any exception.”<sup>227</sup> As we will see, a central feature of this requirement in the European system is that the judiciary is separate from and not influenced by the other branches of government.<sup>228</sup> Interestingly, the impartiality requirement contains two separate subsidiary requirements: one, the tribunal must in fact be independent and impartial; and two, the tribunal

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223. ICCPR, *supra* note 222, art. 14.

224. Hum. Rts Comm. Gen. Comment No. 32, U.N. Doc. CCPR/C/GC/32, art. 14 (Aug. 23, 2007) [hereinafter General Comment No. 32].

225. *Id.* ¶¶ 8–9.

226. *Id.* ¶ 15.

227. *Id.* ¶ 19.

228. *Id.*

must give the appearance of independence and impartiality.<sup>229</sup> The Committee Report does not absolutely prohibit military trials of civilians but insists that such “exceptional” trials are “in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned.”<sup>230</sup> Again, and as we will see below, the European Court of Human Rights takes a much more skeptical view of military tribunals under the fair trial right in the European Convention on Human Rights and Fundamental Freedoms.<sup>231</sup>

As to the right to fair notice, the Human Rights Committee explains, “[t]he right of all persons charged with a criminal offence to be informed promptly and in detail in a language which they understand of the nature and cause of criminal charges brought against them . . . is the first of the minimum guarantees in criminal proceedings of article 14.”<sup>232</sup> And the Committee Report spells out in great detail the panoply of rights guaranteeing the right to a fair hearing, including adequate time and facilities for the preparation of a defense,<sup>233</sup> access to documents and all other material evidence,<sup>234</sup> prompt access to counsel, and the right to communicate with counsel.<sup>235</sup>

The European Convention on Human Rights and Fundamental Freedoms (ECHR), which has 47 states parties,<sup>236</sup> also contains detailed due process protections in Article 6:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life

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229. *Id.* ¶ 21.

230. *Id.* ¶¶ 22.

231. *See infra* notes 246–250.

232. General Comment No. 32, *supra* note 224, ¶¶ 31.

233. *Id.* ¶¶ 32.

234. *Id.* ¶¶ 33.

235. *Id.* ¶¶ 34.

236. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter European Convention]; *see Chart of Signatures and Ratifications of Treaty 005*, COUNCIL OF EUR., <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures> [<https://perma.cc/XRG8-EL87>].

of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.<sup>237</sup>

In the Grand Chamber of the European Court of Human Rights, *Öcalan v. Turkey* is a leading case on Article 6.<sup>238</sup> Before his arrest by Turkey, Öcalan was the leader of the Kurdish Separatist Movement, or PKK.<sup>239</sup> He challenged his conviction for terrorism under numerous provisions of the ECHR, including Article 6. In particular, Öcalan

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237. European Convention, *supra* note 236, art. 6.

238. *Öcalan v. Turk.*, 2005-IV Eur. Ct. H.R. 131. There is an earlier case challenging the domestic Turkish proceedings where the National Security Court was comprised of a military judge. *See Incal v. Turk.*, 1998-IV Eur. Ct. H.R. 48. Like *Öcalan*, the European Court of Human Rights addressed a challenge to the domestic proceedings based on Article 6 of the European Convention, *see id.* ¶ 61. And like the Court in *Öcalan*, the Court found a violation of right to an independent and impartial tribunal. *Id.* ¶¶ 65, 71, 73. Because the treatment of the issue is more fulsome and detailed in *Öcalan*, this Article focuses on that case in the body text.

239. *Öcalan*, 2005-IV Eur. Ct. H.R. 131 ¶ 13.

alleged violations of the right to a hearing before an impartial tribunal,<sup>240</sup> and the right to a fair trial, including in terms of: the right to equality of arms,<sup>241</sup> the right to legal assistance,<sup>242</sup> the right to consult with his lawyers out of the hearing of third parties,<sup>243</sup> the right to be visited by his lawyers,<sup>244</sup> and access to evidence.<sup>245</sup>

As to the right to an impartial tribunal set out in Article 6, Section 1 of the ECHR, the Court found a violation because one of the judges who made up the national security court that convicted Öcalan was a military judge.<sup>246</sup> It observed that, as a result, the national security court “might allow itself to be unduly influenced by considerations that had nothing to do with the nature of the case.”<sup>247</sup> Indeed, the Court took what seems to be a very liberal view of the right to an impartial tribunal because, while the case was being appealed, the military judge was replaced with a civilian judge. The Court found this insufficient to cure the fair trial defect:

In order to comply with the requirements of Article 6 regarding independence, the court concerned must be seen to be independent of the executive and the legislature at each of the three stages of the proceedings, namely the investigation, the trial and the verdict (those being the three stages in Turkish criminal proceedings according to the Government).<sup>248</sup>

Moreover, “where a military judge has participated in an interlocutory decision that forms an integral part of proceedings against a civilian, the whole proceedings are deprived of the appearance of having been conducted by an independent and impartial court.”<sup>249</sup> Because the “military judge [in Öcalan’s case] was present at two preliminary hearings and six hearings on the merits, when interlocutory decisions were taken,” the proceedings failed to provide for an independent tribunal under Article 6 and, significantly, the appearance of

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240. *Id.* ¶ 106.

241. *Id.* ¶ 124.

242. *Id.* ¶ 131.

243. *Id.* ¶¶ 132–33.

244. *Id.* ¶ 134.

245. *Id.* ¶¶ 138, 145.

246. *Id.* ¶ 112.

247. *Id.* ¶ 113.

248. *Id.* ¶ 114.

249. *Id.* ¶ 115.

justice.<sup>250</sup> Also quite interesting is that, while Öcalan's trial was underway, Turkish law changed to prohibit military judges from sitting on civilian criminal tribunal cases—a development that did not save Öcalan's trial from being unfair,<sup>251</sup> but that goes to general principles of international law discussed below.

Öcalan's various other objections housed under the right to a fair trial were met with a similarly expansive view of Article 6. As to access to counsel, the fact that Öcalan

was questioned by the security forces, a public prosecutor and a judge of the National Security Court while being held in police custody in Turkey for almost seven days . . . [and] received no legal assistance during that period and made several self-incriminating statements that were subsequently to become crucial elements of the indictment and the public prosecutor's submissions and a major contributing factor in his conviction . . .

deprived him of access to a lawyer under Article 6.<sup>252</sup> As to the right to consult with his lawyers outside the hearing of third parties, because Öcalan's discussions with his attorneys were observed by the government, he was deprived of this right as well.<sup>253</sup> The Court also found a violation of the fair trial right stemming from the limited interaction Öcalan was allowed with his legal team,<sup>254</sup> and his lawyers not being given sufficient opportunity to prepare their case:

The Court . . . notes that the presentation of th[e] highly complex charges generated an exceptionally voluminous case file . . . It considers that in order to prepare his defence to those charges the applicant required skilled legal assistance equal to the complex nature of the case. It finds that the special circumstances of the case did not justify restricting applicant to a rhythm of two one-hour meetings per week with his lawyers in order to prepare for a trial of that magnitude.<sup>255</sup>

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250. *Id.* ¶¶ 117–18.

251. *Id.* ¶ 43 (“On 18 June 1999 Turkey’s Grand National Assembly amended Article 143 of the Constitution to exclude both military judges and military prosecutors from national security courts.”).

252. *Id.* ¶ 131 (quoting the Lower Chamber).

253. *Id.* ¶¶ 132–33.

254. *Cf. id.* ¶¶ 134–37.

255. *Id.* ¶ 135 (quoting the Lower Chamber).



Other violations included his and his lawyers being given only limited access to a 17,000-page case file.<sup>256</sup>

The European Court of Human Rights also issued a document detailing with case citations the criminal rights contained in the ECHR, starting with the right that “everyone is entitled to a . . . hearing by [a] tribunal.”<sup>257</sup> The panoply of rights central to a fair hearing makes up the overwhelming bulk of the document.<sup>258</sup> As to independence and impartiality of the tribunal, like *Öcalan* the Court stressed independence of the judiciary from the political branches,<sup>259</sup> and both actual impartiality and the appearance of impartiality.<sup>260</sup> As to fair notice, the Court observed that “[i]n criminal matters the provision of full, detailed information concerning the charges against a defendant, and consequently the legal characterization that the court might adopt in the matter, is an essential prerequisite for ensuring that the proceedings are fair.”<sup>261</sup> Here “[p]articulans of the offence play a crucial role in the criminal process, in that it is from the moment of their service that the suspect is formally put on written notice of the factual and legal basis of the charges against him.”<sup>262</sup> To be sure, the Court emphasized that:

Article 6 § 3 (a) affords the defendant the right to be informed not only of the “cause” of the accusation, that is to say, the acts he is alleged to have committed and on which the accusation is based, but also of the “nature” of the accusation, that is, the legal characterization given to those acts.<sup>263</sup>

Indeed:

While the extent of the “detailed” information varies depending on the particular circumstances of each case, the accused must at least be provided with sufficient information to understand fully the extent of the charges

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256. *Id.* ¶ 142.

257. *Guide on Article 6 of the European Convention on Human Rights*, ECHR (Aug. 31, 2021), [https://www.echr.coe.int/Documents/Guide\\_Art\\_6\\_criminal\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf) [<https://perma.cc/JDS3-TR6T>] [hereinafter *Guide on Article 6*].

258. For a critical assessment of the criminal right to a fair trial, see generally RYAN GOSS, *CRIMINAL FAIR TRIAL RIGHTS, ARTICLE 6 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (2014).

259. *Guide on Article 6*, *supra* note 257, at 90.

260. *Id.* ¶¶ 103–34.

261. *Id.* ¶ 388 (citations omitted).

262. *Id.* ¶ 390 (citations omitted).

263. *Id.* ¶ 391 (citations omitted).

against him, in order to prepare an adequate defence. For instance, detailed information will exist when the offences of which the defendant is accused are sufficiently listed; the place and the date of the offence is stated; there is a reference to the relevant Articles of the Criminal Code, and the name of the victim is mentioned.<sup>264</sup>

An interesting move the ECHR makes, and the ICCPR hints at,<sup>265</sup> is to guarantee the right to a translation of the charges in a language the accused understands:

Whilst Article 6 § 3 (a) does not specify that the relevant information should be given in writing or translated in written form for a foreign defendant, a defendant not familiar with the language used by the court may be at a practical disadvantage if he is not also provided with a written translation of the indictment into a language which he understands.<sup>266</sup>

Thus, “[i]f it is shown or there are reasons to believe that the accused has insufficient knowledge of the language in which the information is given, the authorities must provide him with a translation.”<sup>267</sup> This is reinforced by the Article 6(3)(e) right to the “free assistance of an interpreter if [the person charged with a criminal offence] cannot understand or speak the language used in court.”<sup>268</sup>

Like the ECHR, the American Convention on Human Rights, which has 24 states parties, also contains a right to a fair trial.<sup>269</sup> Article 8, the “Right to a Fair Trial,” provides:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the

264. *Id.* ¶ 404 (citations omitted).

265. ICCPR, *supra* note 222, art. 14(3)(f).

266. Guide on Article 6, *supra* note 257, ¶ 409 (citations omitted).

267. *Id.* ¶ 408 (citations omitted).

268. European Convention, *supra* note 236, art. 6(3)(e).

269. Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter Am.CHR]; see *American Convention on Human Rights: Signatories and Ratifications*, ORG. AM. STATES, [https://www.oas.org/dil/treaties\\_b-32\\_american\\_convention\\_on\\_human\\_rights\\_sign.htm](https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm) [<https://perma.cc/8MFY-E4CY>].

determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

b. prior notification in detail to the accused of the charges against him;

c. adequate time and means for the preparation of his defense;

d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;

g. the right not to be compelled to be a witness against himself or to plead guilty; and

h. the right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.<sup>270</sup>

The Organization of American States Inter-American Commission on Human Rights has elaborated these provisions in its Report on Terrorism and Human Rights,<sup>271</sup> which encompasses “the jurisprudence of the inter-American human rights system, as articulated through opinions and judgments of the Inter-American Court of Human Rights and special and individual case reports of the Commission . . . .”<sup>272</sup> Article 8(2)(b) of Am.CHR obviously provides for the right to adequate notice.<sup>273</sup> As the Report states, one of the most “essential protections . . . include[s] the right of the accused to prior notification in detail of the charges against him or her,”<sup>274</sup> and, “[i]n cases where the defendant does not understand or speak the language of the court or tribunal he or she must be assisted without charge by a translator or interpreter.”<sup>275</sup> As with the ECHR, the bulk of the protections go to a fair hearing. Moreover, the right to an independent and impartial judiciary is an indispensable component of a fair hearing,<sup>276</sup> especially the judiciary’s independence from the executive.<sup>277</sup> To be sure, and in keeping with the European model, it is not just actual independence and impartiality that is required, but also the appearance of an independent and impartial court. The right “require[s] that a judge or tribunal not harbor any actual bias in a particular case, and that the judge or tribunal not reasonably be perceived as being tainted with any bias.”<sup>278</sup> Finally, the Report explains that the basic due process rights are non-derogable and cannot justifiably be suspended:

These protections include in particular the right to a fair trial by a competent, independent and impartial court for persons charged with criminal offenses . . . the right to be informed promptly and intelligibly of any criminal charge, the right to adequate time and facilities to prepare a defense, the right to legal assistance of one’s

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270. Am.CHR, *supra* note 269, art. 8.

271. *Report on Terrorism and Human Rights*, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. (Oct. 22, 2002).

272. *Id.* ¶ 221.

273. Am.CHR, *supra* note 269, art. 8(2)(b) (guaranteeing “prior notification in detail to the accused of the charges against him”).

274. *Id.* ¶ 235.

275. *Id.*

276. *See id.* ¶ 229.

277. *See id.* ¶¶ 230–31.

278. *Id.* ¶ 229 (citations omitted).

own choice or free legal counsel where the interests of justice require . . . .<sup>279</sup>

The African Charter on Human Rights and Peoples Rights, which has 54 parties, provides in Article 6: “No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”<sup>280</sup> And Article 7 provides:

1. Every individual shall have the right to have his cause heard. This comprises:

a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;

b) the right to be presumed innocent until proved guilty by a competent court or tribunal;

c) the right to defense, including the right to be defended by counsel of his choice;

d) the right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.<sup>281</sup>

Thus, as with the ICCPR and the ECHR, the African Charter also guarantees due process rights, although it is vague on notice.

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279. *Id.* ¶ 247 (citations omitted).

280. African (Banjul) Charter on Human and People’s Rights art. 6, June 27, 1981, 21 I.L.M. 58, (entered into force Oct. 21, 1986) [hereinafter Af.CHPR]; see *List of Countries Which Have Signed, Ratified/Acceded*, AFR. UNION (June 15, 2017), [https://au.int/sites/default/files/treaties/36390-sl-african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_2.pdf](https://au.int/sites/default/files/treaties/36390-sl-african_charter_on_human_and_peoples_rights_2.pdf) [<https://perma.cc/B5SV-LRDA>].

281. Af.CHPR, *supra* note 280, art. 7

The League of Arab States' Charter on Human Rights, which has 16 states parties, also contains (non-derogable) fair trial rights<sup>282</sup> at Article 13:

1. Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights.
2. Trials shall be public, except in exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights.<sup>283</sup>

As with the prior conventions, the League of Arab States' Charter provides due process protections, though is also vague in some respects, in particular on notice to the accused. Article 67, "Rights of the accused," of the Rome Statute for the International Criminal Court, which has 123 state parties,<sup>284</sup> provides:

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;
  - (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;

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282. League of Arab States, Arab Charter on Human Rights art. 4(2), May 22, 2004, *reprinted in* 12 Int'l Hum. Rts. Rep. 893 (2005) [hereinafter Ar.CHR]; *see Signature and Certification Human Rights Committee*, LEAGUE ARAB STATES, <http://www.lasportal.org/ar/humanrights/Committee/Pages/MemberCountries.aspx> [https://perma.cc/R7X4-L7SJ] Feb42022 (noting date of ratification for 16 state parties).

283. Ar.CHR, *supra* note 282, art. 13.

284. Rome Statute of the International Criminal Court art. 67, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute]; *see The State Parties to the Rome Statute*, INT'L CRIM. CT., [https://asp.icc-cpi.int/en\\_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx](https://asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx) [https://perma.cc/6M8A-H4CY].

- (c) To be tried without undue delay;
- (d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;
- (f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks;
- (g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- (h) To make an unsworn oral or written statement in his or her defence; and
- (i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.<sup>285</sup>

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285. Rome Statute, *supra* note 284, art. 67.

The Statutes of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)—bodies created under the auspices of the United Nations—also guarantee procedural rights. Article 21 of the ICTY Statute, under the heading, “Rights of the accused,” provides:

1. All persons shall be equal before the International Tribunal.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
  - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
  - (c) to be tried without undue delay;
  - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
  - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;



(g) not to be compelled to testify against himself or to confess guilt.<sup>286</sup>

The ICTR Statute contains similar protections in Article 20, under the heading “Rights of the accused”:

1. All persons shall be equal before the International Tribunal for Rwanda.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to article 21 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

(c) To be tried without undue delay;

(d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

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286. Statute of the International Criminal Tribunal for the Former Yugoslavia art. 21, U.N. Doc. S/25704, annex (May 25, 1993) and S/25704/Add.1 (May 19, 1993) [adopted by S.C. Res. 827 (May 25, 1993)] [hereinafter ICTY].

(f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;

(g) Not to be compelled to testify against himself or herself or to confess guilt.<sup>287</sup>

### C. Custom

As noted above, the primary power of treaties is manifested in their incorporation into the domestic law of states. One other role of treaties in relation to the establishment of *jus cogens* is their role in forming or crystalizing rules of customary international law. It is now well-settled that treaties may contribute to the formation of custom.<sup>288</sup> Indeed, the predominant view in court jurisprudence and scholarly literature is that *jus cogens* frequently arise out of custom. As the ILC unambiguously states: “Customary international law is the most common basis for peremptory norms of general international law (*jus cogens*).”<sup>289</sup> The ILC goes on to cite as examples jurisprudence from the Supreme Court of Argentina, the Constitutional Tribunal of Peru, the Supreme Court of the Philippines, the High Court of Kenya, the Supreme Court of Canada, and the U.S. Courts of Appeal for the Ninth and Sixth Circuits.<sup>290</sup> International courts are in accord: The ICTY has noted that the prohibition on torture arises from “customary

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287. Statute of the International Criminal Tribunal for Rwanda art. 20, Nov. 8, 1994, 33 I.L.M. 1958 [hereinafter ICTR]; *see also* Geneva Convention Relative to the Treatment of Prisoners of War art. 105, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

288. *See* North Sea Continental Shelf Cases (Ger./Den.; Ger./Neth.), Judgment, 1969 I.C.J. 3, ¶¶ 70–71 (Feb. 20). The argument of Denmark and the Netherlands:

involves treating [Article 6 of the Convention on the Continental Shelf] as a norm-creating provision which . . . has generated a rule which, while only conventional or contractual in its origin, has since passed into the general *corpus* of international law, and is now accepted as such by the *opinio juris*, so as to have become binding even for countries which have never, and do not, become parties to the Convention. There is no doubt that this process is a perfectly possible one and does from time to time occur: it constitutes indeed one of the recognized methods by which new rules of customary international law may be formed.

*Id.*; *see also* RESTATEMENT (THIRD) OF FOREIGN RELATIONS, *supra* note 3, § 102 n.5 (citation omitted) (“International agreements that do not purport to codify customary international law may in fact do so. International agreements may also help create customary law of general applicability.”).

289. Int’l Law Comm’n Rep., *supra* note 1, at 158 cmt. (1).

290. *Id.* at 159–61.

international law” and that it “constitutes a norm of *jus cogens*.”<sup>291</sup> And in *Prosecutor v. Jelisić*, the tribunal explained that “[t]here can be absolutely no doubt” that the prohibition on genocide is a norm of “customary international law” that has risen to the “level of *jus cogens*.”<sup>292</sup>

Commentators are of the same view. The Restatement (Third) of Foreign Relations Law of the United States explains that *jus cogens* “is now widely accepted . . . as a principle of customary international law (albeit of a higher status).”<sup>293</sup> Indeed, O’Connell refers to *jus cogens* as a species of “super customary law.”<sup>294</sup> And Weatherall states: “[T]he formal source by which peremptory norms of international law are evidenced as a matter of positive law remains customary international law.”<sup>295</sup> One interesting aspect of viewing *jus cogens* as customary law is that it avoids the maxim against retroactive law for violations occurring prior to the adoption of the VCLT. The idea is that *jus cogens* existed prior to the VCLT, which simply codified the preexisting law.<sup>296</sup>

Yet, rooting *jus cogens* in customary law presents its problems. If custom is comprised of state practice and *opinio juris*, it fails to account for the state that refuses to engage in the practice and persistently objects to the rule. That is to say, custom is (like treaty law) fundamentally consent based. Thus far there are no criteria for how to elevate a *jus cogens* norm from ordinary customary international law to a *jus cogens* norm. For these reasons, some have objected, arguing that “[c]alling peremptory norms customary distorts the concept of custom beyond recognition,” and “custom, unlike *jus cogens*, can be corrupted by contrary practice or persistent objection.”<sup>297</sup>

291. *Id.* at 161 cmt. (6) (citing *Prosecutor v. Delalić*, Case No. IT-96-21-T, Judgment in the Trial Chamber, ¶ 454 (Int’l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998)).

292. *Id.* at 161 cmt. (6) (citing *Prosecutor v. Jelisić*, Case No. IT-95-10-T, Judgment in the Trial Chamber, ¶ 60 (Int’l Crim. Trib. for the Former Yugoslavia Dec. 14, 1999)).

293. RESTATEMENT (THIRD) OF FOREIGN RELATIONS, *supra* note 3, § 102 n.6; *see also* d’Aspremont, *supra* note 77, at 101 (“Most . . . scholars resort to the doctrine of customary international law [as the source of *jus cogens*].”).

294. O’Connell, *supra* note 36, at 78 n.3, 83 (citing ANDRÉ DE HOOGH, OBLIGATIONS ERGA OMNES AND INTERNATIONAL CRIMES 44–48 (1996)); *see also* Linderfalk, *supra* note 116, at 80 (“[T]he *jus cogens* status of norms derives from ordinary processes creating customary international law.”); Kadelbach, *supra* note 90, at 167 (“[P]ractice and *opinio juris* is required with respect to the recognition of the rule itself.”) (citation omitted).

295. WEATHERALL, *supra* note 81, at 93.

296. Int’l Law Comm’n Rep., *supra* note 1, at 162 cmt. (8) n.764 (citing Vargas, *supra* note 54, at 214).

297. *Id.* at 163 n.766 (citing ORAKHELASHVILI, *supra* note 4, at 113–14).

As far as the present project is concerned, and contrary to the prevailing views, customary law does not do much work—largely because due process rights are simply not the stuff of international relations based on an *inter se* consent model that requires universality. Of course, one might say that all of the materials included under the section above regarding treaties may be translated into customary law since treaties may form custom, but that would still fail to account for states that have not consented to the rule in question. For all the customary work treaties do, they are still subject to the objection that international law is consent based and relies upon obligations states undertake as to each other. As we will see now, general principles of law do not necessarily rely on this consent-based model. Rather, they are principles derived from legal systems around the world that make up a source of international law grounded in natural law. In this respect, *jus cogens* are accepted not as consent based in terms of states vis-à-vis other states but rather as states vis-à-vis themselves revealing through objective, comparative evidence the norm in question.

#### *D. General Principles*

Rather than rehash all the characteristics of general principles elaborated above that make them attractive candidates for *jus cogens*, and a procedural *jus cogens* in particular, the next Part comprises an empirical survey that seeks to distill the basics of *jus cogens* in the municipal laws of the countries around the world. It begins by introducing the basic protections prescribed by U.S. law and then jumps into an empirical survey looking to all of the U.N. member states, as well as Kosovo, the Republic of China (Taiwan), and the Vatican City (Holy See).

### III. DISTILLING THE BASICS

It is far simpler to look to detailed written constitutions and municipal laws than to analyze case law that elaborates only skeletal provisions of the fair trial right. One example of the latter is, of course, the U.S. Constitution which, nonetheless, provides a good framework to move forward since the jurisprudence outlines the basics of the fair trial right. The U.S. Constitution secures fair trial guarantees through the vehicles of due process<sup>298</sup> and habeas corpus.<sup>299</sup> *Hamdi v.*

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298. U.S. CONST. amends. V & XIV, § 1.

299. U.S. CONST. art. I, § 9, cl. 2.

*Rumsfeld* is a prominent example of due process acting through the vessel of habeas corpus, in which the Supreme Court held that due process requires that “a citizen-detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government’s factual assertions before a neutral decisionmaker,” even in a state of armed conflict.<sup>300</sup> Interestingly, as noted, the requirements of due process state that:

[A]s critical as the Government’s interest may be in detaining those who actually pose an immediate threat to the national security of the United States during ongoing international conflict, history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse . . . .<sup>301</sup>

Thus, even in a state of armed conflict, due process applies. In fact, “[t]he war power ‘is a power to wage war successfully, and thus it permits the harnessing of the entire energies of the people in a supreme cooperative effort to preserve the nation. But even the war power does not remove constitutional limitations safeguarding individual liberties.’”<sup>302</sup> Justice O’Connor poetically explained that “[i]t is during our most challenging and uncertain moments that our nation’s commitment to due process is most severely tested; and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad.”<sup>303</sup>

*Boumediene v. Bush*<sup>304</sup> also affirmed extending the writ of habeas corpus to non-citizen detainees outside of the United States, but within U.S. jurisdiction and control, holding that “the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to the erroneous application or interpretation of relevant law.”<sup>305</sup> Moreover, the “habeas court must have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive’s power to detain.”<sup>306</sup> This authority must be able to guarantee, among other things, the ability to

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300. *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004).

301. *Id.* at 530.

302. *Id.* at 536 (quoting *Home Bldg. & Loan Assn. v. Blaisdell*, 290 U.S. 398, 426 (1934)).

303. *Id.* at 532.

304. *Boumediene v. Bush*, 553 U.S. 723 (2008).

305. *Id.* at 779 (internal citation and quotation marks omitted).

306. *Id.* at 783.

find and present evidence, an impartial decisionmaker, the assistance of counsel, and the full ability to question witnesses, even in a time of war.<sup>307</sup>

Extracting from these cases three basic components of due process—notice, a hearing, and an impartial and independent decisionmaker—what follows surveys the world’s nations on whether their constitutions and municipal laws contain these rights: 189 states provide for fair notice, 196 states provide for a hearing, and 196 states provide for an impartial and independent decisionmaker. Moreover, the vast majority of these protections are constitutional. The right to notice is protected in 179 constitutions, the right to a hearing is protected in 193 constitutions, and the right to an impartial and independent decisionmaker is protected in 193 constitutions.

One final, important point before jumping in. Because all the different nations of the world obviously will not describe due process using the exact same language, structure, and level of detail, a global “margin of appreciation” is appropriate.

The margin of appreciation introduces a degree of flexibility into the operation of the law. It is woven into the fabric of international society. Decentralization in the elaboration and application of norms calls for a certain deference towards the principal actors of society, the Nation-States.<sup>308</sup>

Thus, “[t]he margin of appreciation recognises that where appropriate procedures are in place a range of solutions compatible with

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307. *See id.* at 783–84. Note, however, that the United States has not been willing to extend habeas corpus to non-citizens detained in a foreign active theater of war where the United States does not have jurisdiction or control. *See Al Maqaleh v. Gates*, 605 F.3d 84, 88, 96–99 (D.C. Cir. 2010).

308. Jean-Pierre Cot, *Margin of Appreciation*, in MAX PLANCK ENCYCLOPEDIA OF PUB. INT’L L., ¶¶ 1 (Anne Peters ed. 2021) (internal parentheticals omitted) (last updated June 2007). All of the country reports have core features of due process, they just vary in terminology and level of detail. The harsh critic will say: “you purport to show a general principle of due process by pointing to country A’s law. But country A’s definition of notice is vague if not deficient. Thus, rather than establishing a due process norm you are actually showing that country A violates that purported norm, indicating its nonexistence.” Here the margin of appreciation comes in and says that just because the notice norm deviates from another country’s (or treaty’s) more robust norm in its provisions and details—which may make it look deficient—that is an acceptable deviation. This is assuming the existence of a core due process right (in the hypothetical, country A’s vague notice provision).

human rights may be available to the national authorities.”<sup>309</sup> Accordingly, while there is a wide range of variations in how states describe their procedural protections, those variations are accounted for—indeed built into—international law.

#### A. Notice\*

The right to notice of the charges against one and the facts giving rise to those charges is critical to a fair trial. According to the empirical study below, 189 states provide for notice, including: Afghanistan,<sup>310</sup> Albania,<sup>311</sup> Algeria,<sup>312</sup> Andorra,<sup>313</sup> Angola,<sup>314</sup> Antigua and Barbuda,<sup>315</sup> Argentina,<sup>316</sup> Armenia,<sup>317</sup> Australia,<sup>318</sup> Austria,<sup>319</sup> Azerbaijan,<sup>320</sup> Bahamas,<sup>321</sup> Bahrain,<sup>322</sup> Bangladesh,<sup>323</sup> Barbados,<sup>324</sup> Belarus,<sup>325</sup> Belgium,<sup>326</sup> Belize,<sup>327</sup> Benin,<sup>328</sup> Bolivia,<sup>329</sup> Bosnia and Herzegovina,<sup>330</sup> Botswana,<sup>331</sup> Brazil,<sup>332</sup> Bulgaria,<sup>333</sup> Burkina Faso,<sup>334</sup> Burundi,<sup>335</sup> Cambodia,<sup>336</sup> Cameroon,<sup>337</sup> Canada,<sup>338</sup> Cape Verde,<sup>339</sup> Central African Republic,<sup>340</sup> Chad,<sup>341</sup> Chile,<sup>342</sup> Colombia,<sup>343</sup> (Democratic Republic of) Congo,<sup>344</sup> (Republic of) Congo or Congo-Brazzaville,<sup>345</sup> Costa Rica,<sup>346</sup> Côte d’Ivoire,<sup>347</sup> Croatia,<sup>348</sup> Cuba,<sup>349</sup> Cyprus,<sup>350</sup> Czech Republic,<sup>351</sup> Denmark,<sup>352</sup> Djibouti,<sup>353</sup> Dominica,<sup>354</sup> Dominican Republic,<sup>355</sup> Ecuador,<sup>356</sup> Egypt,<sup>357</sup> El Salvador,<sup>358</sup> Equatorial Guinea,<sup>359</sup> Eritrea,<sup>360</sup> Estonia,<sup>361</sup> Ethiopia,<sup>362</sup> Fiji,<sup>363</sup> Finland,<sup>364</sup> France,<sup>365</sup> Gabon,<sup>366</sup> The Gambia,<sup>367</sup> Georgia,<sup>368</sup> Germany,<sup>369</sup> Ghana,<sup>370</sup> Greece,<sup>371</sup> Grenada,<sup>372</sup> Guatemala,<sup>373</sup> Guinea,<sup>374</sup> Guinea-Bissau,<sup>375</sup> Guyana,<sup>376</sup> Haiti,<sup>377</sup> Honduras,<sup>378</sup> Hungary,<sup>379</sup> Iceland,<sup>380</sup> India,<sup>381</sup> Indonesia,<sup>382</sup> Iran,<sup>383</sup> Iraq,<sup>384</sup> Ireland,<sup>385</sup> Israel,<sup>386</sup> Italy,<sup>387</sup> Jamaica,<sup>388</sup> Japan,<sup>389</sup> Jordan,<sup>390</sup> Kazakhstan,<sup>391</sup> Kenya,<sup>392</sup> Kiribati,<sup>393</sup> (Democratic People’s Republic of) Korea,<sup>394</sup> (Republic of) Korea,<sup>395</sup> Kosovo,<sup>396</sup> Kuwait,<sup>397</sup> Kyrgyzstan,<sup>398</sup> Lao (People’s Democratic Republic),<sup>399</sup> Latvia,<sup>400</sup> Lebanon,<sup>401</sup> Lesotho,<sup>402</sup> Liberia,<sup>403</sup> Libya,<sup>404</sup> Liechtenstein,<sup>405</sup> Lithuania,<sup>406</sup> Luxembourg,<sup>407</sup> Madagascar,<sup>408</sup> Malawi,<sup>409</sup> Malaysia,<sup>410</sup> Maldives,<sup>411</sup> Mali,<sup>412</sup> Malta,<sup>413</sup> Marshall Islands,<sup>414</sup> Mauritania,<sup>415</sup> Mauritius,<sup>416</sup> Mexico,<sup>417</sup> Micronesia,<sup>418</sup> Moldova,<sup>419</sup> Monaco,<sup>420</sup> Mongolia,<sup>421</sup> Montenegro,<sup>422</sup> Morocco,<sup>423</sup>

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309. Luzius Wildhaber, *A Constitutional Future for the European Court of Human Rights?*, 23 HUM. RTS. L. J. 161, 162 (2002). The margin of appreciation is reflected in various instruments of international law. For example, the notion is embodied in the European Convention on Human Rights, which “does not purport to impose uniform approaches to the myriad different interests which arise in the broad field of fundamental rights protection; it seeks to establish common minimum standards to provide an Europe-wide framework for domestic human rights protection.” *Id.*

\* In order to better format this Article, the editors of the *Columbia Journal of Transnational Law* have decided to place footnotes 310–891 in an appendix. See *infra* Appendix I.

Mozambique,<sup>424</sup> Namibia,<sup>425</sup> Nauru,<sup>426</sup> Nepal,<sup>427</sup> Netherlands,<sup>428</sup> New Zealand,<sup>429</sup> Nicaragua,<sup>430</sup> Niger,<sup>431</sup> Nigeria,<sup>432</sup> North Macedonia,<sup>433</sup> Norway,<sup>434</sup> Oman,<sup>435</sup> Pakistan,<sup>436</sup> Palau,<sup>437</sup> Panama,<sup>438</sup> Papua New Guinea,<sup>439</sup> Paraguay,<sup>440</sup> Peru,<sup>441</sup> Philippines,<sup>442</sup> Poland,<sup>443</sup> Portugal,<sup>444</sup> Qatar,<sup>445</sup> Romania,<sup>446</sup> Russian Federation,<sup>447</sup> Rwanda,<sup>448</sup> Saint Kitts and Nevis,<sup>449</sup> Saint Lucia,<sup>450</sup> Saint Vincent and the Grenadines,<sup>451</sup> Samoa,<sup>452</sup> San Marino,<sup>453</sup> São Tomé and Príncipe,<sup>454</sup> Senegal,<sup>455</sup> Serbia,<sup>456</sup> Seychelles,<sup>457</sup> Sierra Leone,<sup>458</sup> Singapore,<sup>459</sup> Slovakia,<sup>460</sup> Slovenia,<sup>461</sup> Solomon Islands,<sup>462</sup> Somalia,<sup>463</sup> South Africa,<sup>464</sup> South Sudan,<sup>465</sup> Spain,<sup>466</sup> Sri Lanka,<sup>467</sup> Sudan,<sup>468</sup> Suriname,<sup>469</sup> Swaziland,<sup>470</sup> Sweden,<sup>471</sup> Switzerland,<sup>472</sup> Syria,<sup>473</sup> Taiwan,<sup>474</sup> Tajikistan,<sup>475</sup> Tanzania,<sup>476</sup> Thailand,<sup>477</sup> Timor-Leste,<sup>478</sup> Togo,<sup>479</sup> Tonga,<sup>480</sup> Trinidad and Tobago,<sup>481</sup> Tunisia,<sup>482</sup> Turkey,<sup>483</sup> Turkmenistan,<sup>484</sup> Tuvalu,<sup>485</sup> Uganda,<sup>486</sup> Ukraine,<sup>487</sup> United Kingdom,<sup>488</sup> United States,<sup>489</sup> Uruguay,<sup>490</sup> Uzbekistan,<sup>491</sup> Vanuatu,<sup>492</sup> Vatican City,<sup>493</sup> Venezuela,<sup>494</sup> Vietnam,<sup>495</sup> Yemen,<sup>496</sup> Zambia,<sup>497</sup> and Zimbabwe.<sup>498</sup> Seven states do not guarantee the right to notice.<sup>499</sup>

### *B. Hearing*

Similarly, a fair procedure would be empty without an opportunity to be heard. In this respect, 196 states provide for the right to a fair hearing, including: Afghanistan,<sup>500</sup> Albania,<sup>501</sup> Algeria,<sup>502</sup> Andorra,<sup>503</sup> Angola,<sup>504</sup> Antigua and Barbuda,<sup>505</sup> Argentina,<sup>506</sup> Armenia,<sup>507</sup> Australia,<sup>508</sup> Austria,<sup>509</sup> Azerbaijan,<sup>510</sup> Bahamas,<sup>511</sup> Bahrain,<sup>512</sup> Bangladesh,<sup>513</sup> Barbados,<sup>514</sup> Belarus,<sup>515</sup> Belgium,<sup>516</sup> Belize,<sup>517</sup> Benin,<sup>518</sup> Bhutan,<sup>519</sup> Bolivia,<sup>520</sup> Bosnia and Herzegovina,<sup>521</sup> Botswana,<sup>522</sup> Brazil,<sup>523</sup> Brunei Darussalam,<sup>524</sup> Bulgaria,<sup>525</sup> Burkina Faso,<sup>526</sup> Burundi,<sup>527</sup> Cambodia,<sup>528</sup> Cameroon,<sup>529</sup> Canada,<sup>530</sup> Cape Verde,<sup>531</sup> Central African Republic,<sup>532</sup> Chad,<sup>533</sup> Chile,<sup>534</sup> China,<sup>535</sup> Colombia,<sup>536</sup> Comoros,<sup>537</sup> (Democratic Republic of) Congo,<sup>538</sup> (Republic of) Congo or Congo-Brazzaville,<sup>539</sup> Costa Rica,<sup>540</sup> Côte d'Ivoire,<sup>541</sup> Croatia,<sup>542</sup> Cuba,<sup>543</sup> Cyprus,<sup>544</sup> Czech Republic,<sup>545</sup> Denmark,<sup>546</sup> Djibouti,<sup>547</sup> Dominica,<sup>548</sup> Dominican Republic,<sup>549</sup> Ecuador,<sup>550</sup> Egypt,<sup>551</sup> El Salvador,<sup>552</sup> Equatorial Guinea,<sup>553</sup> Eritrea,<sup>554</sup> Estonia,<sup>555</sup> Ethiopia,<sup>556</sup> Fiji,<sup>557</sup> Finland,<sup>558</sup> France,<sup>559</sup> Gabon,<sup>560</sup> The Gambia,<sup>561</sup> Georgia,<sup>562</sup> Germany,<sup>563</sup> Ghana,<sup>564</sup> Greece,<sup>565</sup> Grenada,<sup>566</sup> Guatemala,<sup>567</sup> Guinea,<sup>568</sup> Guinea-Bissau,<sup>569</sup> Guyana,<sup>570</sup> Haiti,<sup>571</sup> Honduras,<sup>572</sup> Hungary,<sup>573</sup> Iceland,<sup>574</sup> India,<sup>575</sup> Indonesia,<sup>576</sup> Iran,<sup>577</sup> Iraq,<sup>578</sup> Ireland,<sup>579</sup> Israel,<sup>580</sup> Italy,<sup>581</sup> Jamaica,<sup>582</sup> Japan,<sup>583</sup> Jordan,<sup>584</sup> Kazakhstan,<sup>585</sup> Kenya,<sup>586</sup> Kiribati,<sup>587</sup> (Democratic People's Republic of) Korea,<sup>588</sup> (Republic of) Korea,<sup>589</sup> Kosovo,<sup>590</sup> Kuwait,<sup>591</sup> Kyrgyzstan,<sup>592</sup> Lao (People's Democratic Republic),<sup>593</sup> Latvia,<sup>594</sup> Lebanon,<sup>595</sup> Lesotho,<sup>596</sup> Liberia,<sup>597</sup> Libya,<sup>598</sup> Liechtenstein,<sup>599</sup> Lithuania,<sup>600</sup> Luxembourg,<sup>601</sup> Madagascar,<sup>602</sup>



Malawi,<sup>603</sup> Malaysia,<sup>604</sup> Maldives,<sup>605</sup> Mali,<sup>606</sup> Malta,<sup>607</sup> Marshall Islands,<sup>608</sup> Mauritania,<sup>609</sup> Mauritius,<sup>610</sup> Mexico,<sup>611</sup> Micronesia,<sup>612</sup> Moldova,<sup>613</sup> Monaco,<sup>614</sup> Mongolia,<sup>615</sup> Montenegro,<sup>616</sup> Morocco,<sup>617</sup> Mozambique,<sup>618</sup> Myanmar,<sup>619</sup> Namibia,<sup>620</sup> Nauru,<sup>621</sup> Nepal,<sup>622</sup> Netherlands,<sup>623</sup> New Zealand,<sup>624</sup> Nicaragua,<sup>625</sup> Niger,<sup>626</sup> Nigeria,<sup>627</sup> North Macedonia,<sup>628</sup> Norway,<sup>629</sup> Oman,<sup>630</sup> Pakistan,<sup>631</sup> Palau,<sup>632</sup> Panama,<sup>633</sup> Papua New Guinea,<sup>634</sup> Paraguay,<sup>635</sup> Peru,<sup>636</sup> Philippines,<sup>637</sup> Poland,<sup>638</sup> Portugal,<sup>639</sup> Qatar,<sup>640</sup> Romania,<sup>641</sup> Russian Federation,<sup>642</sup> Rwanda,<sup>643</sup> Saint Kitts and Nevis,<sup>644</sup> Saint Lucia,<sup>645</sup> Saint Vincent and the Grenadines,<sup>646</sup> Samoa,<sup>647</sup> San Marino,<sup>648</sup> São Tomé and Príncipe,<sup>649</sup> Saudi Arabia,<sup>650</sup> Senegal,<sup>651</sup> Serbia,<sup>652</sup> Seychelles,<sup>653</sup> Sierra Leone,<sup>654</sup> Singapore,<sup>655</sup> Slovakia,<sup>656</sup> Slovenia,<sup>657</sup> Solomon Islands,<sup>658</sup> Somalia,<sup>659</sup> South Africa,<sup>660</sup> South Sudan,<sup>661</sup> Spain,<sup>662</sup> Sri Lanka,<sup>663</sup> Sudan,<sup>664</sup> Suriname,<sup>665</sup> Swaziland,<sup>666</sup> Sweden,<sup>667</sup> Switzerland,<sup>668</sup> Syria,<sup>669</sup> Taiwan,<sup>670</sup> Tajikistan,<sup>671</sup> Tanzania,<sup>672</sup> Thailand,<sup>673</sup> Timor-Leste,<sup>674</sup> Togo,<sup>675</sup> Tonga,<sup>676</sup> Trinidad and Tobago,<sup>677</sup> Tunisia,<sup>678</sup> Turkey,<sup>679</sup> Turkmenistan,<sup>680</sup> Tuvalu,<sup>681</sup> Uganda,<sup>682</sup> Ukraine,<sup>683</sup> United Arab Emirates,<sup>684</sup> United Kingdom,<sup>685</sup> United States,<sup>686</sup> Uruguay,<sup>687</sup> Uzbekistan,<sup>688</sup> Vanuatu,<sup>689</sup> Vatican City,<sup>690</sup> Venezuela,<sup>691</sup> Vietnam,<sup>692</sup> Yemen,<sup>693</sup> Zambia,<sup>694</sup> and Zimbabwe.<sup>695</sup>

### *C. Impartial and Independent Decisionmaker*

Finally, notice and an opportunity to be heard could be rendered meaningless absent the right to an impartial and independent decisionmaker, which 196 states guarantee, including: Afghanistan,<sup>696</sup> Albania,<sup>697</sup> Algeria,<sup>698</sup> Andorra,<sup>699</sup> Angola,<sup>700</sup> Antigua and Barbuda,<sup>701</sup> Argentina,<sup>702</sup> Armenia,<sup>703</sup> Australia,<sup>704</sup> Austria,<sup>705</sup> Azerbaijan,<sup>706</sup> Bahamas,<sup>707</sup> Bahrain,<sup>708</sup> Bangladesh,<sup>709</sup> Barbados,<sup>710</sup> Belarus,<sup>711</sup> Belgium,<sup>712</sup> Belize,<sup>713</sup> Benin,<sup>714</sup> Bhutan,<sup>715</sup> Bolivia,<sup>716</sup> Bosnia and Herzegovina,<sup>717</sup> Botswana,<sup>718</sup> Brazil,<sup>719</sup> Brunei Darussalam,<sup>720</sup> Bulgaria,<sup>721</sup> Burkina Faso,<sup>722</sup> Burundi,<sup>723</sup> Cambodia,<sup>724</sup> Cameroon,<sup>725</sup> Canada,<sup>726</sup> Cape Verde,<sup>727</sup> Central African Republic,<sup>728</sup> Chad,<sup>729</sup> Chile,<sup>730</sup> China,<sup>731</sup> Colombia,<sup>732</sup> Comoros,<sup>733</sup> (Democratic Republic of) Congo,<sup>734</sup> (Republic of) Congo or Congo-Brazzaville,<sup>735</sup> Costa Rica,<sup>736</sup> Côte d'Ivoire,<sup>737</sup> Croatia,<sup>738</sup> Cuba,<sup>739</sup> Cyprus,<sup>740</sup> Czech Republic,<sup>741</sup> Denmark,<sup>742</sup> Djibouti,<sup>743</sup> Dominica,<sup>744</sup> Dominican Republic,<sup>745</sup> Ecuador,<sup>746</sup> Egypt,<sup>747</sup> El Salvador,<sup>748</sup> Equatorial Guinea,<sup>749</sup> Eritrea,<sup>750</sup> Estonia,<sup>751</sup> Ethiopia,<sup>752</sup> Fiji,<sup>753</sup> Finland,<sup>754</sup> France,<sup>755</sup> Gabon,<sup>756</sup> The Gambia,<sup>757</sup> Georgia,<sup>758</sup> Germany,<sup>759</sup> Ghana,<sup>760</sup> Greece,<sup>761</sup> Grenada,<sup>762</sup> Guatemala,<sup>763</sup> Guinea,<sup>764</sup> Guinea-Bissau,<sup>765</sup> Guyana,<sup>766</sup> Haiti,<sup>767</sup> Honduras,<sup>768</sup> Hungary,<sup>769</sup> Iceland,<sup>770</sup> India,<sup>771</sup> Indonesia,<sup>772</sup> Iran,<sup>773</sup> Iraq,<sup>774</sup> Ireland,<sup>775</sup> Israel,<sup>776</sup> Italy,<sup>777</sup> Jamaica,<sup>778</sup> Japan,<sup>779</sup> Jordan,<sup>780</sup> Kazakhstan,<sup>781</sup> Kenya,<sup>782</sup> Kiribati,<sup>783</sup> (Democratic People's Republic of)

Korea,<sup>784</sup> (Republic of) Korea,<sup>785</sup> Kosovo,<sup>786</sup> Kuwait,<sup>787</sup> Kyrgyzstan,<sup>788</sup> Lao (People's Democratic Republic),<sup>789</sup> Latvia,<sup>790</sup> Lebanon,<sup>791</sup> Lesotho,<sup>792</sup> Liberia,<sup>793</sup> Libya,<sup>794</sup> Liechtenstein,<sup>795</sup> Lithuania,<sup>796</sup> Luxembourg,<sup>797</sup> Madagascar,<sup>798</sup> Malawi,<sup>799</sup> Malaysia,<sup>800</sup> Maldives,<sup>801</sup> Mali,<sup>802</sup> Malta,<sup>803</sup> Marshall Islands,<sup>804</sup> Mauritania,<sup>805</sup> Mauritius,<sup>806</sup> Mexico,<sup>807</sup> Micronesia,<sup>808</sup> Moldova,<sup>809</sup> Monaco,<sup>810</sup> Mongolia,<sup>811</sup> Montenegro,<sup>812</sup> Morocco,<sup>813</sup> Mozambique,<sup>814</sup> Myanmar,<sup>815</sup> Namibia,<sup>816</sup> Nauru,<sup>817</sup> Nepal,<sup>818</sup> Netherlands,<sup>819</sup> New Zealand,<sup>820</sup> Nicaragua,<sup>821</sup> Niger,<sup>822</sup> Nigeria,<sup>823</sup> North Macedonia,<sup>824</sup> Norway,<sup>825</sup> Oman,<sup>826</sup> Pakistan,<sup>827</sup> Palau,<sup>828</sup> Panama,<sup>829</sup> Papua New Guinea,<sup>830</sup> Paraguay,<sup>831</sup> Peru,<sup>832</sup> Philippines,<sup>833</sup> Poland,<sup>834</sup> Portugal,<sup>835</sup> Qatar,<sup>836</sup> Romania,<sup>837</sup> Russian Federation,<sup>838</sup> Rwanda,<sup>839</sup> Saint Kitts and Nevis,<sup>840</sup> Saint Lucia,<sup>841</sup> Saint Vincent and the Grenadines,<sup>842</sup> Samoa,<sup>843</sup> San Marino,<sup>844</sup> São Tomé and Príncipe,<sup>845</sup> Saudi Arabia,<sup>846</sup> Senegal,<sup>847</sup> Serbia,<sup>848</sup> Seychelles,<sup>849</sup> Sierra Leone,<sup>850</sup> Singapore,<sup>851</sup> Slovakia,<sup>852</sup> Slovenia,<sup>853</sup> Solomon Islands,<sup>854</sup> Somalia,<sup>855</sup> South Africa,<sup>856</sup> South Sudan,<sup>857</sup> Spain,<sup>858</sup> Sri Lanka,<sup>859</sup> Sudan,<sup>860</sup> Suriname,<sup>861</sup> Swaziland,<sup>862</sup> Sweden,<sup>863</sup> Switzerland,<sup>864</sup> Syria,<sup>865</sup> Taiwan,<sup>866</sup> Tajikistan,<sup>867</sup> Tanzania,<sup>868</sup> Thailand,<sup>869</sup> Timor-Leste,<sup>870</sup> Togo,<sup>871</sup> Tonga,<sup>872</sup> Trinidad and Tobago,<sup>873</sup> Tunisia,<sup>874</sup> Turkey,<sup>875</sup> Turkmenistan,<sup>876</sup> Tuvalu,<sup>877</sup> Uganda,<sup>878</sup> Ukraine,<sup>879</sup> United Arab Emirates,<sup>880</sup> United Kingdom,<sup>881</sup> United States,<sup>882</sup> Uruguay,<sup>883</sup> Uzbekistan,<sup>884</sup> Vanuatu,<sup>885</sup> Vatican City,<sup>886</sup> Venezuela,<sup>887</sup> Vietnam,<sup>888</sup> Yemen,<sup>889</sup> Zambia,<sup>890</sup> and Zimbabwe.<sup>891</sup>

Such an overwhelming majority of states agreeing upon the same due process protections elevates those protections to the status of *jus cogens* within the ILC view<sup>892</sup> and explains the studied criterion that for the formation of *jus cogens*, it is sufficient for “a very large majority of states” to accept the norm,<sup>893</sup> and that it be accepted “across regions, legal systems and cultures.”<sup>894</sup>

## CONCLUSION

The existence of procedural *jus cogens* is a novel development in international law. This Article is the first to identify that norm by employing general principles of international law common to legal systems around the world. To do so, the Article looked to most if not all state constitutions and municipal legal systems to discern the basics

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892. See *supra* notes 179–87 and accompanying text.

893. ILC Report, *supra* note 1, at 167, concl. 7 cmt. (5).

894. *Id.* at 168, cmt.(6).

of a fair trial: notice, a hearing, and an impartial and independent decisionmaker.

The first-order question of the existence of a procedural *jus cogens* norm raises a number of second-order questions that now must be answered.

For instance, what about emergencies<sup>895</sup> or war<sup>896</sup> presaged by *Hamdi* and *Boumediene*? Do procedural *jus cogens* survive such situations? Some constitutions deem procedural rights non-derogable in emergencies<sup>897</sup> while others do not.<sup>898</sup> Yet individual rights can still be *jus cogens* under the VCLT, even if they are considered formally derogable in times of emergency. In this respect, the language of the VCLT requiring that the norm be non-derogable has taken on an overly formalistic, acontextual reading. As Alexander Orakhelashvili has explained, the VCLT deals with bilateral *treaties*, which cannot contract out of peremptory international law “by attempt[ing] to replace public order norms, to make them inapplicable and inoperative *inter se*, themselves deciding when and how to derogate.”<sup>899</sup> It does not deal with

895. Criddle and Fox-Decent have specifically argued that the most basic procedural *jus cogens* survive states of emergency under a fiduciary duty. See Criddle & Fox-Decent, *supra* note 4 at 370–71; Evan Criddle & Evan Fox-Decent, *Human Rights, Emergencies, and the Rule of Law*, 34 HUM. RTS. Q. 39, 67 (2012).

896. The right to a fair trial is also guaranteed during times of war. Common Article 3 of the 1949 Geneva Conventions prohibits “the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.” Geneva Convention Relative to the Treatment of Prisoners of War art. 3(d), Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135. Additional Protocol I (which is generally considered to have passed into customary law) covers those not covered by Common Article 3. See Protocol Additional to the Geneva Conventions of 12 August, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3; see also ICTR, *supra* note 287, art. 20, ¶¶ 1–4; PHILIP ALSTON & RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS 466 (2013).

897. See e.g., CONSTITUTION OF THE REPUBLIC OF UGANDA, Sept. 22, 1995, art. 44. Article 44 sets out prohibitions on derogations of certain rights which includes the protections granted by the right to a fair hearing. *Id.*, see also *supra* note 682 and accompanying text.

898. See e.g., K’IWAMI ĒRITIRA, art. 26(3). Article 26 excludes the right to notice and the right to a fair hearing from express protection against derogation. *Id.*, see also *supra* note 554 and accompanying text.

899. ORAKHELASHVILI, *supra* note 4, at 59. One may conceptualize this as a limitation on party autonomy in choice of law. While parties are generally free to contract for the chosen law, there are certain “‘overriding’ mandatory rules that invalidate the choice of the parties. SYMEON C. SYMEONIDES & WENDY COLLINS PERDUE, CONFLICT OF LAWS: AMERICAN, COMPARATIVE, INTERNATIONAL: CASES AND MATERIALS 463 n.44 (4th ed. 2019). “Because of the importance of the interests they embody, these rules displace, override, or preempt the

emergencies under rights instruments.<sup>900</sup> Rather, “[i]n clarifying whether a formally ‘derogable’ right can still be part of *jus cogens* the relevant criterion would be the content of specific rights and their status under general international law, namely their embodiment of the community interest as distinct from individual State interests”—such “derogable” yet peremptory rights explicitly include the right to a “fair trial and due process.”<sup>901</sup> He both ties these rights to treaties and domesticates them by deeming their deprivation “non-bilateralizable.”<sup>902</sup> Indeed, just because a right is derogable under a rights instrument does not mean it is not peremptory. Here he cites the UN Human Rights Committee, which explained:

The enumeration of non-derogable provisions in article 4 [ICCPR] is related to, but not identical with, the question whether certain human rights obligations bear the nature of peremptory norms of international law . . . . [T]he category of peremptory norms extends beyond the list of non-derogable provisions as given in article 4, paragraph 2 [ICCPR]. States-parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of . . . peremptory norms of international law, for instance . . . by deviating from fundamental principles of fair trial.<sup>903</sup>

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ordinary choice of law process: they apply immediately (*immediatament*), directly, and mandatorily.” *Id.* at 259. *Jus cogens* can be viewed as the ultimate mandatory rule.

900. ORAKHELASHVILI, *supra* note 4, at 58; Alexander Orakhelashvili, *The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions*, 16 EUR. J. INT’L L. 59, 65 (2005).

901. ORAKHELASHVILI, *supra* note 4, at 58.

902. *Id.* at 59.

903. *Id.* at 59. There are human rights sources holding that fair trial guarantees survive emergency situations. Hum. Rts. Comm., CCPR General Comment 29, States of Emergency: Article 4: Derogation During a State of Emergency, ¶ 16, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001) (“[T]he Committee finds no justification for derogation from [fair trial] guarantees during . . . emergency situations. The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party’s decision to derogate from the Covenant.”); Judicial Guarantees in States of Emergency (Arts. 27(2), 25, and 8 American Convention of Human Rights), Advisory Opinion OC-9/87, Inter-Am. Ct. H.R. (ser. A) No. 9, ¶ 29 (Oct. 6, 1987) (“The concept of due process of law expressed in Article 8 of the Convention should be understood as applicable, in the main, to

Orakhelashvili concludes, “[t]herefore, certain ‘derogable’ rights can be preemptory. This is clear with regard to due process guarantees and the right to a fair trial, as well as the freedom from illegal deprivation of liberty.”<sup>904</sup>

Next, does such a norm, which places a positive obligation on states, stand in contrast to other, substantive *jus cogens*, which merely prohibit states from doing things? In other words, other *jus cogens* norms are just instructions to states not to do things: no slavery, no torture, no crimes against humanity, etc. But a procedural *jus cogens* puts the burden on the state to take affirmative action to ensure that the norm is not violated. A follow up question is: Can *jus cogens* norms be waived? Criminal defendants accept plea bargains all the time; what is to stop them from waiving the procedural *jus cogens* to a fair trial? Further, what effect do procedural *jus cogens* have on international institutions? In the famous *Kadi* cases, for example, the European Court of Justice held that the deprivation of Kadi’s right to notice and a hearing violated a fundamental freedom of the European Union in the face of United Nations Security Council resolutions.<sup>905</sup>

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all the judicial guarantees referred to in the American Convention, even during a suspension governed by Article 27 of the Convention.”).

904. ORAKHELASHVILI, *supra* note 4, at 60 (internal citations and quotations omitted).

905. Joined Cases Nos. C-402/05 P & C-415/04 P, *Kadi v. Council and Comm’n*, 2008 E.C.R. I-06351, ¶¶ 326–28.

[I]n the light of the actual circumstances surrounding the inclusion of the appellants’ names in the list of persons and entities covered by the restrictive measures contained in Annex I to the contested regulation, it must be held that the rights of the defence, in particular the right to be heard, and the right to effective judicial review of those rights, were patently not respected.

*Id.* ¶ 334.

Because the Council neither communicated to the appellants the evidence used against them to justify the restrictive measures imposed on them nor afforded them the right to be informed of that evidence within a reasonable period after those measures were enacted, the appellants were not in a position to make their point of view in that respect known to their advantage. Therefore, the appellant’s rights of defence, in particular the right to be heard, were not respected.

*Id.* ¶ 348. Joined Cases Nos. C-584/10 P, C-593/10 P, & C-595/10 P, *Comm’n v. Kadi (Kadi II)*, ECLI:EU:C:2013:518, ¶ 67 (July 18, 2013) (“[T]he requirement that the European Union institutions should pay due regard to the institutions of the United Nations must not result in there being no review of the lawfulness of [Security Council] measures, in the light of . . . fundamental rights”); *id.* ¶ 97 (“[T]he Courts of the European Union must . . . ensure the review, in principle the full review, of the lawfulness of all Union acts in the light of . . . fundamental rights . . . including review of such measures as are designed to give effect to resolutions adopted by the Security Council”); *id.* ¶¶ 98–99 (“[T]he right[] of defence . . . includes the right to be heard and the right to have access to the file, subject to legitimate interests in maintaining confidentiality.”).

Moreover, what are the precise contours of a procedural *jus cogens* right to a fair hearing? All this Article has shown is that there is a minimum, but there is great variation among procedures in countries around the world.

And finally, what about questions of how procedural *jus cogens* interact with U.S. domestic law? The United States has opened itself to claims alleging violations of procedural *jus cogens* through statutes like the Alien Tort Statute,<sup>906</sup> allowing aliens to sue for violations of the law of nations,<sup>907</sup> as well as through “a federal common law right [against the U.S. government] derived from international law that entitles individuals not to be the victims of *jus cogens* violations.”<sup>908</sup> What would be the chance of such cases moving forward in light of recent decisions stripping foreign conduct-based immunity for *jus cogens* violations<sup>909</sup> and U.S. sovereign immunity for *jus cogens* violations,<sup>910</sup> and holding that *jus cogens* override the Act of State doctrine?<sup>911</sup> These and other questions must await future scholarship for which this Article has hopefully set the stage.

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[T]he right to effective judicial protection . . . requires that the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him is based . . . so as to make it possible for him to defend his rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in his applying to the court having jurisdiction, and in order to put the latter fully in a position to review the lawfulness of the decision in question.

*Id.* ¶¶ 98–100; *see also id.* ¶¶ 25, 88 (describing the “fundamental right[]” of “independent and impartial review, including review of European Union measures based on international law”); *id.* ¶¶ 111–14, 118, 125, 135.

906. 28 U.S.C. § 1350.

907. *See id.* (“The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”).

908. *Al Shimari v. CACI Premier Tech., Inc.*, 368 F. Supp. 3d 935, 959 (E.D. Va. 2019), *appeal dismissed*, 775 F. App’x 758, 759–60 (4th Cir. 2019), *petition for cert. filed*, No. 19-648 (U.S. Nov. 15, 2019).

909. *See Yousuf v. Samantar*, 699 F.3d 763, 775–77 (4th Cir. 2012).

910. *Al Shimari*, 368 F. Supp. 3d at 968 (“[T]he United States does not retain sovereign immunity for violations of *jus cogens* norms of international law.”).

911. *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 718–19 (9th Cir. 1992); *Kashef v. BNP Paribas S.A.*, 925 F.3d 53, 61–62 (2d Cir. 2019).

## APPENDIX I

310. QĀNŪN-I ASAŚĪ-I AFGHĀNISTĀN [CONSTITUTION] Jan. 26, 2004, art. 31. Afghanistan has also acceded to the ICCPR. The State “observe[s] . . . international treaties to which Afghanistan has joined.” *Id.* art. 7. *See* ICCPR, *supra* note 222, art. 14, ¶ 3(a); *Status of Treaties: ICCPR*, UNITED NATIONS, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&clang=_en) [<https://perma.cc/6ABX-KAXP>] (listing countries that have acceded to the ICCPR).

311. KUSHTETUTA E REPUBLIKËS SË SHQIPËRISË [CONSTITUTION] Nov. 28, 1998, art. 28(1), 31(a) (Alb.). Albania has also acceded to the ICCPR and ratified international agreements that “constitute[ ] part of the internal juridical system.” *Id.* art. 122, ¶ 1. *See Status of Treaties: ICCPR*, *supra* note 310; *see also* KUSHTETUTA E REPUBLIKËS SË SHQIPËRISË Nov. 28, 1998, arts. 5, 116(1)(b); Hum. Rts. Comm., Second Periodic Reports of States Parties: Albania, ¶ 1, U.N. Doc. CCPR/C/ALB/2 (2011) (noting that ICCPR accession was implemented through Law No. 7510).

312. Algeria has ratified the ICCPR and its constitution provides that “treaties ratified . . . are superior to the law.” DUSTUR ALJAZAYIR [CONSTITUTION] Feb. 23, 1989, art. 150 (Alg.). *See Status of Treaties: ICCPR*, *supra* note 310.

313. CONSTITUCIÓ DEL PRINCIPAT D’ANDORRA [CONSTITUTION] Apr. 28, 1993, art. 10(2) (Andorra). Andorra has also ratified the ICCPR and the European Convention on Human Rights (ECHR). *Id.* arts. 5(2), 6(3)(a); *Status of Treaties: ICCPR*, *supra* note 310; *Signatures and Ratifications of European Convention on Human Rights*, COUNCIL OF EUR., [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p\\_auth=yH8iALrv](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=yH8iALrv) [<https://perma.cc/N4FN-XLKM>]. “Treaties and international agreements take effect in the legal system from the moment of their publication in the Official Gazette.” CONSTITUCIÓ DEL PRINCIPAT D’ANDORRA Apr. 28, 1993, art. 3(4).

314. Angola has acceded to the ICCPR, and “[r]atified international treaties . . . come into force in the Angolan legal system after they have been officially published.” CONSTITUIÇÃO DE ANGOLA [CONSTITUTION] Jan. 21, 2010, art. 13. *See Status of Treaties: ICCPR*, *supra* note 310.

315. CONSTITUTION OF ANTIGUA AND BARBUDA Nov. 1, 1981, arts. 5(2), 15(2)(b). Antigua and Barbuda has acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR*, *supra* note 310.

316. Hum Rts. Comm., Second Periodic Reports of States Parties Due in 1992: Addendum: Argentina, ¶ 58, U.N. Doc. CCPR/C/75/add.1 (1994) (citing CÓDIGO PROCESAL PENAL DE LA NACIÓN [CÓD. PROC. PEN.] [CRIMINAL PROCEDURE CODE], art. 298). The Argentinian constitution incorporates by reference the ICCPR, CONSTITUCIÓN NACIONAL Aug. 22, 1994, art. 75(22) (Arg.), and the American Convention on Human Rights, AMCHR, *supra* note 269, art. 7(4). *See also* CONSTITUCIÓN NACIONAL Aug. 22, 1994, art. 31 (Arg.) (stating that treaties are part of the supreme law). Argentina is a party to both conventions. *Status of Treaties: ICCPR*, *supra* note 310; *Signatories and Ratifications of American Convention on Human Rights*, ORG. OF AM. STATES, [https://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm) [[perma.cc/7RPE-9WX3](https://perma.cc/7RPE-9WX3)].

317. HAYASTANI HANRAPETUTYAN SAHMANADRUTYUN [CONSTITUTION] July 5, 1995, arts. 27(2), 67(1) (Arm.). Armenia has also acceded to the ICCPR and “[t]he practice of bodies

operating on the basis of international human rights treaties . . . ratified by the Republic of Armenia, shall be taken into account when interpreting the provisions of the Constitution on fundamental rights and freedoms.” *Id.* art. 81(1). *See Status of Treaties: ICCPR, supra* note 310.

318. *Human Rights Act 2019* (Cth) ss 29(4), 32(2)(a) (Austl.). Australia ratified the ICCPR and notes that ICCPR’s application influences domestic law without having to incorporate it through legislation or a constitutional provision. *See* Hum. Rts. Comm., Sixth Periodic Report of States Parties Due in 2013: Australia, ¶ 28, U.N. Doc. CCPR/C/AUS/6 (2016); *Status of Treaties: ICCPR, supra* note 310.

319. BUNDESVERFASSUNGSGESETZ ÜBER DEN SCHUTZ DER PERSÖNLICHEN FREIHEIT [THE FEDERAL CONSTITUTIONAL ACT ON THE PROTECTION OF PERSONAL LIBERTY] No. 684/1988, as amended, art. 4(6), <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000950> (Austria); Hum. Rts. Comm., Fifth Periodic Reports of States Parties Due in 2012: Austria, ¶ 101, U.N. Doc. CCPR/C/AUT/5 (2013), (citing STRAFGESETZBUCH [STGB] [PENAL CODE] No. 60/1974, as amended, § 171, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296>); Hum. Rts. Comm., Fourth Periodic Report: Austria, ¶ 126, U.N. Doc. CCPR/C/AUT/4 (2006) (citing STRAFPROZESSORDNUNG [STPO][CODE OF CRIMINAL PROCEDURE] No. 631/1975, as amended, ¶ 178, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002326>). Austria has ratified the ICCPR and its constitution provides that “universally acknowledged rules of international law are valid constituent parts of the laws of the Confederation.” BUNDES-VERFASSUNGSGESETZ [B-VG] [CONSTITUTION] BGBl No. 1/1930, as last amended by BUNDESVERFASSUNGSGESETZ [BVG] BGBl | No. 102/2014, art. 9, ¶ 1, <https://www.ris.bka.gv.at/Geltendefassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138> (Austria); *see Status of Treaties: ICCPR, supra* note 310.

320. AZERBAIJAN RESPUBLIKASININ KONSTITUSIYASI [CONSTITUTION] Nov. 12, 1995, art. 67, § I (Azer.). Azerbaijan has also acceded to the ICCPR and its constitution provides that “international treaties, to which the Republic of Azerbaijan is a party, are an inalienable substantive part of the legal system.” *Id.* at 148, § II. *See Status of Treaties: ICCPR, supra* note 310.

321. CONSTITUTION OF THE COMMONWEALTH OF THE BAHAMAS July 10, 1973, arts. 19(2), 20(2)(b). The Bahamas has also ratified the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *See Status of Treaties: ICCPR, supra* note 310.

322. Hum. Rts. Comm., Concluding Observations on the Initial Report of Bahrain, ¶ 40, U.N. Doc. CCPR/C/BHR/1 (2017). Bahrain has also acceded to the ICCPR and its constitution provides that “a treaty shall have the force of law once it has been concluded and ratified and published in the Official Gazette.” DUSTUR MAMLAKAT AL-BAHRAYN [CONSTITUTION] July 10, 1973, art. 37 (Bahr.). *See Status of Treaties: ICCPR, supra* note 310. .

323. GAṆAPRAJĀTANTRĪ BĀNLĀDĒŚĒRA SĀMBIDHĀNA [CONSTITUTION] Nov. 4, 1972, art. 33(1), (5) (Bangl.). Bangladesh has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310. *Cf.* Hum. Rts. Comm., Initial Reports of States Parties Due in 2001: Bangladesh, ¶ 8, U.N. Doc. CCPR/C/BGD/1 (2015) (indicating that Bangladesh does not automatically incorporate international treaties).



324. CONSTITUTION OF BARBADOS Nov. 22, 1966, arts. 13(2), 18(2)(b). Barbados has also acceded to the ICCPR and the AMCHR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR*, *supra* note 310; *Signatories and Ratifications of American Convention on Human Rights*, *supra* note 316.

325. Hum. Rts. Comm., Fourth Periodic Report of States Parties Due in 1993: Addendum: Belarus, ¶¶ 64, 67, U.N. Doc. CCPR/C/84/Add.4 (1996) (citing OFFICE OF THE PROCURATOR OF THE REPUBLIC OF BELARUS ACT Jan 29, 1993). Belarus has also ratified the ICCPR and “recognize[s] the supremacy of universally acknowledged principles of international law and ensures its laws comply.” KANSTYTUCYJA RESPUBLIKI BIELARUS [CONSTITUTION] May 9, 1994, art. 8. *See Status of Treaties: ICCPR*, *supra* note 310.

326. Belgium has ratified the ICCPR and the ECHR and “treaties take effect only after they have received approval of the House of Representatives.” 1994 CONST. (Belg.) art. 167, § 2; *see Status of Treaties: ICCPR*, *supra* note 310; *Signatures and Ratifications of European Convention on Human Rights*, *supra* note 313.

327. CONSTITUTION OF BELIZE Sept. 21, 1981, arts. 5(2)(a), 6(3)(b). Belize has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *See Status of Treaties: ICCPR*, *supra* note 310.

328. Benin references common law cases as evidence of the right to notice in its legal system. Hum. Rts. Comm., Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Benin, ¶ 67(a), U.N. Doc. CCPR/C/BEN/2004/1/Add.1 (2004). Benin has also acceded to the ICCPR and “treaties . . . regularly ratified have, on their publication, an authority superior to that of the laws.” CONSTITUTION DE LA RÉPUBLIQUE DU BÉNIN Dec. 11, 1990, art. 147. *See Status of Treaties: ICCPR*, *supra* note 310.

329. CONSTITUCIÓN POLÍTICA DEL ESTADO Feb. 7, 2009, art. 23(V) (Bol.). Bolivia has also acceded to the ICCPR and the ACHR, and “international treaties and conventions ratified . . . which recognize human rights . . . prevail over internal law.” *Id.* at 13(IV); *see Status of Treaties: ICCPR*, *supra* note 310; *Signatories and Ratifications of American Convention on Human Rights*, *supra* note 316; *see also* CONSTITUCIÓN POLÍTICA DEL ESTADO Feb. 7, 2009, art. 256(I)–(II).

330. CRIMINAL PROCEDURE CODE OF BOSNIA AND HERZEGOVINA arts. 4(1), 6(1). Bosnia and Herzegovina is also a party to the ICCPR through succession and has ratified the ECHR. *Status of Treaties: ICCPR*, *supra* note 310; *Signatures and Ratifications of European Convention on Human Rights*, *supra* note 313. The Bosnia and Herzegovinian constitution incorporates and prioritizes the ECHR over all other law and incorporates the ICCPR by reference. USTAV BOSNE I HERZEGOVINE [CONSTITUTION] Dec. 14, 1995, art. 2(2), ann. I ¶ 7; *see also id.* at 4(3)(b) (stating that “general principles of international law shall be an integral part of the law”).

331. CONSTITUTION OF BOTSWANA Sept. 30, 1966, arts. 5(2), 10(2)(b), 16(2)(a). Botswana has also ratified the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *See Status of Treaties: ICCPR*, *supra* note 310.

332. Brazil has acceded to the ICCPR and the ACHR, and “treaties and conventions on human rights . . . [are] equivalent to Constitutional Amendments.” CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 5, §3º (Braz.); *see Status of Treaties: ICCPR*, *supra* note 310;

*Signatories and Ratifications of American Convention on Human Rights*, *supra* note 316; *see also* Hum. Rts. Comm., Initial Reports of States Parties Due in 1993: Addendum: Brazil, § II(16), U.N. Doc. CCPR/C/81/Add.6 (1995) (stating that the ICCPR came into force and then was promulgated by Decree No. 592); *id.* at 3 (treaties protecting human rights are self-executing).

333. Hum. Rts. Comm., Third Periodic Report of States Parties: Bulgaria, ¶ 255, U.N. Doc. CCPR/C/BGR/3 (2009) (citing RULES ON APPLICATION OF THE LAW ON MINISTRY OF INTERIOR, art. 63). Bulgaria has also ratified the ICCPR and the ECHR, and its constitution provides that “[a]ny international treaty, which has been ratified...promulgated...[and] entered into force...shall be part of the domestic law of the land.” KONSTITUTSIA NA REPUBLIKA BULGARIA [CONSTITUTION] July 13, 1991, art. 5(4); *see Status of Treaties: ICCPR*, *supra* note 310; *Signatures and Ratifications of European Convention on Human Rights*, *supra* note 313.

334. Burkina Faso acceded to the ICCPR and “treaties and agreements regularly ratified . . . have, on their publication, an authority superior to its laws.” CONSTITUTION DU BURKINA FASO June 2, 1991, art. 151. *See Status of Treaties: ICCPR*, *supra* note 310.

335. Burundi acceded to the ICCPR and “[t]he rights and duties proclaimed and guaranteed by the international texts related to the rights of man regularly ratified are [an] integral part of the Constitution.” CONSTITUTION DE LA RÉPUBLIQUE DU BURUNDI June 7, 2018, art. 19; *see Status of Treaties: ICCPR*, *supra* note 310.

336. CRIMINAL PROCEDURE CODE OF [THE] KINGDOM OF CAMBODIA Aug. 6, 2007, art. 238. *See* RODTHATHOMMONOUNH NH NEI PREAHREACHEANEACHAKR KAMPOUCHEA [CONSTITUTION] Sept. 21, 1993, art. 38(8) (Cambodia); Hum. Rts. Comm., Initial Reports of States Parties Due in 1993: Addendum: Cambodia, ¶ 134, U.N. Doc. CCPR/C/81/Add.12 (1998) (Stating that the right to defense provision includes right to be informed of accusation). Cambodia also acceded to the ICCPR and “recognizes and respects human rights as enshrined in...all the treaties and conventions related to human rights.” RODTHATHOMMONOUNH NH NEI PREAHREACHEANEACHAKR KAMPOUCHEA Sept. 21, 1993, art. 31; *see Status of Treaties: ICCPR*, *supra* note 310.

337. Hum. Rts. Comm., Fourth Periodic Reports of States Parties: Cameroon, ¶¶ 417–423, U.N. Doc. CCPR/C/CMR/4 (2009) (citing CRIMINAL PROCEDURE CODE (CAMEROON), §§ 31, 39–41, 56–57, 167, 410). Cameroon also acceded to the ICCPR and “ratified treaties and international agreements shall, following their publication, override national laws.” CONSTITUTION DE LA RÉPUBLIQUE DU CAMEROUN [ June 2, 1972, art. 45; *see Status of Treaties: ICCPR*, *supra* note 310.

338. Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11 (U.K.), arts. 10(a), 11(a). Canada has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR*, *supra* note 310.

339. CONSTITUIÇÃO DA REPÚBLICA DA CABO VERDE [CONSTITUTION] Sept. 28, 1992, art. 28(3), 29(1) (Cape Verde). Cape Verde has also acceded to the ICCPR and “international treaties and agreements, validly approved or ratified, shall be in force in the Capeverdean legal order after their official publication.” *Id.* at 11(2); *see Status of Treaties: ICCPR*, *supra* note 310; *see also* CONSTITUIÇÃO DA REPÚBLICA DA CABO VERDE Sept. 28, 1992, art. 11(1), (4); Hum. Rts. Comm., Initial Report Submitted by Cabo Verde Under Article 40 of the Covenant, Due in 1994, ¶ 3, U.N. Doc. CCPR/C/CPV/1 (2018) (ICCPR published through Law 75/IV/92).

340. Central African Republic acceded to the ICCPR, and “[r]eaffirms its adherence to all International Conventions duly ratified.” CONSTITUTION DE LA RÉPUBLIQUE CENTRAFRICAINE [CONSTITUTION] Mar. 27, 2016, pmbli.; see *Status of Treaties: ICCPR*, *supra* note 310.

341. Hum. Rts. Comm., Second Periodic Reports of States Parties: Chad, ¶ 360, U.N. Doc. CCPR/C/TCD/2 (2013) (citing CODE OF CRIMINAL PROCEDURE, art. 239). Chad has also acceded to the ICCPR and its constitution provides that “the Treaties and Agreements regularly ratified have, on their publication, an authority superior to that of the national laws.” CONSTITUTION DE LA RÉPUBLIQUE DU TCHAD Mar. 31, 1996, art. 225; see *Status of Treaties: ICCPR*, *supra* note 310.

342. Hum. Rts. Comm., Fifth Periodic Report: Chile, ¶¶ 154–55, U.N. Doc. CCPR/C/CHL/5 (2006) (citing CODE OF CRIMINAL PROCEDURE, arts. 93–94). Chile has also ratified the ICCPR and the ACHR, and “it is the duty of the organs of the State to respect and promote [essential] rights guaranteed . . . by the international treaties ratified by Chile.” CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] Oct. 21, 1980, as amended, art. 5; see *Status of Treaties: ICCPR*, *supra* note 310; *Signatories and Ratifications of American Convention on Human Rights*, *supra* note 316; see also Hum. Rts. Comm., Fourth Periodic Reports of States Parties Due in 1994: Addendum: Chile, ¶ 9, U.N. Doc. CCPR/C/95/Add.11 (1998) (ICCPR promulgated through Decree No. 778 of the Ministry of Foreign Affairs in 1976 and published and given full force of law in 1989).

343. Colombia ratified the ICCPR and “international treaties . . . ratified by the Congress that recognize human rights . . . have prevalence in the internal order.” CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] July 4, 1991, arts. 93–94; see *Status of Treaties: ICCPR*, *supra* note 310.

344. CONSTITUTION DE LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO Feb. 18, 2006, art. 18. Democratic Republic of the Congo has also acceded to the ICCPR and “international treaties . . . have, on their publication, an authority superior to that of the laws.” *Id.* at 215; see *Status of Treaties: ICCPR*, *supra* note 310.

345. CONSTITUTION DE LA RÉPUBLIQUE DU CONGO Nov. 6, 2015, art. 11. Republic of the Congo has also acceded to the ICCPR and “treaties . . . have, from their publication, an authority superior to that of the laws.” *Id.* at 223; see *Status of Treaties: ICCPR*, *supra* note 310.

346. Hum. Rts. Comm., Fourth Periodic Reports of States Parties Due in 1995: Addendum: Cost Rica, ¶ 235, U.N. Doc. CCPR/C/103/Add.6 (1998) (citing CODE OF CRIMINAL PROCEDURE art. 278, 373). Costa Rica has also ratified the ICCPR and the ACHR, and its constitution provides that “public treaties . . . international agreements . . . duly approved by the Legislative Assembly, will have from their promulgation . . . authority superior to that of the laws.” CONSTITUCIÓN POLÍTICA DE COSTA RICA Nov. 7, 1949, art. 7; see *Status of Treaties: ICCPR*, *supra* note 310; *Signatories and Ratifications of American Convention on Human Rights*, *supra* note 316.

347. CONSTITUTION IVOIRIENNE Nov. 8, 2017, art. 7 (Côte d’Ivoire). Côte d’Ivoire has also acceded to the ICCPR and its constitution provides that “[t]he Treaties and Agreements regularly ratified have, on their publication, an authority superior to that of the laws.” *Id.* at 123; see *Status of Treaties: ICCPR*, *supra* note 310.

348. USTAV REPUBLIKE HRVATSKE [CONSTITUTION] Dec. 22, 1990, arts. 24, 29 (Croat.). Croatia is also party to the ICCPR through succession and ratified the ECHR, and “[i]nternational treaties which have been concluded and ratified . . . published and . . . entered into force

shall be a component of the domestic legal order . . . and shall have primacy over domestic law.” *Id.* at 134; *see Status of Treaties: ICCPR, supra* note 310.

349. CONSTITUCIÓN DE LA REPÚBLICA DE CUBA Apr. 10, 2019, art. 95(f) (Cuba).

350. ΣΥΝΤΑΓΜΑ ΤΗΣ ΚΥΠΡΙΑΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ [CONSTITUTION] Aug. 16, 1960, arts. 11(4), 12(5)(a), 30(3)(a) (Cyprus). Cyprus has also ratified the ICCPR and the ECHR, and its constitution provides that “treaties, conventions and agreements . . . shall have, as from their publication . . . superior force to any municipal law.” *Id.* at 169(3); *see Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313 *see also* ΣΥΝΤΑΓΜΑ ΤΗΣ ΚΥΠΡΙΑΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ Aug. 16, 1960, art. 169(2).

351. LISTINA ZÁKLADNÍCH PRÁV A SVOBOD [CHARTER OF FUNDAMENTAL RIGHTS AND BASIC FREEDOMS] art. 8(3) (Czech). *See generally* ÚSTAVNÍ ZÁKON Č 1/1993 SB., ÚSTAVA ČESKÉ REPUBLIKY [CONSTITUTION OF THE CZECH REPUBLIC] art. 3 (stating that the Charter of Fundamental Rights and Basic Freedoms forms part of the constitutional order). Czech Republic is also party to the ICCPR through succession and has ratified the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313. Its constitution provides that “[p]romulgated treaties, to the ratification of which Parliament has given its consent . . . form a part of the legal order.” ÚSTAVNÍ ZÁKON Č 1/1993 SB., ÚSTAVA ČESKÉ REPUBLIKY [CONSTITUTION OF THE CZECH REPUBLIC] art. 10; *see also* Hum. Rts. Comm., Initial Report of the Czech Republic on the Implementation of the International Covenant on Civil and Political Rights for the Period 1993-1999, ¶ 2, U.N. Doc. CCPR/C/CZE/2000/1 (2000) (ICCPR took effect in in the Czechoslovak Socialist Republic in 1976. The Czech Republic succeed into the obligations arising from the ICCPR in 1993).

352. CONSTITUTIONAL ACT OF DENMARK June 5, 1953, § 71(3). Denmark has also ratified the ICCPR and the ECHR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313.

353. Djibouti has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310. Its constitution provides that “treaties or agreements regularly ratified have, on their publication, an authority superior to that of the laws.” CONSTITUTION DE LA RÉPUBLIQUE DE DJIBOUTI Sept. 15, 1992, art. 70;

354. CONSTITUTION OF THE COMMONWEALTH OF DOMINICA Nov. 3, 1978, §§ 3(2), 8(2)(b). Dominica has also acceded to the ICCPR and the ACHR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316.

355. Dominican Republic acceded to the ICCPR and ratified the ACHR. *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316. Its constitution provides that “[t]he norms in force of ratified international agreements will govern within the domestic sphere.” CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA June 13, 2015, art. 26(2). *See also* Hum. Rts. Comm., Third Periodic Reports of States parties Due in 1991: Dominican Republic, ¶ 4, U.N. Doc. CCPR/C/70/Add.3 (1992) (ICCPR ratified through decision No. 684 and published in *Gaceta Oficial* No. 9,451).

356. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR Oct. 20, 2008, arts. 77(3), 77(7)(a). The Ecuadorean constitution provides that “international human rights treaties ratified by the

State that recognize rights that are more favorable than those enshrined in the Constitution shall prevail over any other legal regulatory system.” *Id.* arts. 424–25. Ecuador has also ratified the ICCPR and the ACHR. *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316; *see also* Hum. Rts. Comm., Initial Reports of States Parties Due in 1977: Addendum: Ecuador 14, U.N. Doc. CCPR/C/1/Add.8 (1977) (ICCPR ratified by Executive Decree No. 37).

357. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 54. The constitution provides that the country “[is] bound by the international human rights agreements, covenants and conventions ratified by Egypt, and which shall have the force of law after publication.” *Id.* art. 93. Egypt has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* Hum. Rts. Comm., The Combined Third and Fourth Periodic Reports of Egypt Submitted to the Human Rights Committee 3, U.N. Doc. CCPR/C/EGY/2001/3 (2001) (accession to ICCPR pursuant to Presidential Decree No. 537 of 1981 and subsequently published).

358. CONSTITUCIÓN DE LA REPÚBLICA DE EL SALVADOR Dec. 20, 1983, arts. 12, 13. El Salvador’s constitution provides that “international treaties formalized by El Salvador... constitute laws of the Republic once they enter into effect.” *Id.* art. 144. El Salvador has also ratified the ICCPR and the ACHR. *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316.

359. CONSTITUCIÓN DE GUINEA ECUATORIAL [CONSTITUTION] Feb. 26, 2012, art. 13(1)(n) (Eq. Guinea). Equatorial Guinea’s constitution provides that the country “respects the principles of International Law and reaffirms its adherence to the rights and obligations that emanate from the International Organizations and Organs to which it has adhered.” *Id.* art. 8. Equatorial Guinea has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

360. K’IWAMI ĒRITIRA [CONSTITUTION] May 23, 1997, art. 17(3) (Eri.). Eritrea has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

361. EESTI VABARIIGI PÕHISEADUS [CONSTITUTION] July 3, 1992, art. 21 (Est.). Estonia’s constitution provides that “generally recognized principles and rules of international law are an inseparable part of the Estonian legal system.” *Id.* art. 3. Estonia has also acceded to the ICCPR and ratified the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313.

362. YE’TTIYOP’IYA FĒDĒRALAWĪ DIMOKIRASIYAWĪ RĪPEBĪLĪKI HĪGE MENIGĪŠITI [CONSTITUTION] Aug. 21, 1995, arts. 19–20 (Eth.). The constitution provides that “[a]ll international agreements ratified by Ethiopia are an integral part of the law of the land.” *Id.* art. 9(4). Ethiopia has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

363. CONSTITUTION OF THE REPUBLIC OF FIJI Sept. 6, 2013, art. 13(1)(a)(i), (g). The constitution provides that “[a]n international treaty or convention binds the State only after it has been approved by Parliament.” *Id.* art. 51. Fiji has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

364. *See* Hum. Rts. Comm., Initial Reports of States Parties Due in 1977: Addendum: Finland 9, U.N. Doc. CCPR/C/1/Add.32 (1978) (Finland acknowledging notice in practice but no citation to municipal law or constitutional provision); *id.* art. 1 (ratification and enforcement of the Covenant in state by Decree No. 108 of 30 January 1976). Finland has also ratified the ICCPR and the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313. The Finnish constitution

provides that “provisions of treaties and other international obligations . . . are brought into force by an Act.” SUOMEN PERUSTUSLAKI [CONSTITUTION] June 11, 1999, § 95 (Fin.).

365. See Hum. Rts. Comm., Third Periodic Reports of States Parties Due in 1992: Addendum: France, ¶ 115, U.N. Doc. CCPR/C/76/Add.7 (1997) (citing Code de Procedure Penale [C. pr. pen.] [Criminal Procedure Code] art. 123(Fr.)). France has also acceded to the ICCPR and the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313. The constitution provides that “[t]reaties and agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament.” 1958 CONST., pmb. (Fr.); *Cf.* Int’l Hum. Rts. Instruments, Core Document Forming Part of the Reports of States Parties: France, ¶ 93, U.N. Doc. HRI/CORE/1/Add.17/Rev.1 (1996) (providing that international human rights treaties are self-executing).

366. Gabon has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310. The constitution provides that “treaties take effect only after having been ratified and published.” CONSTITUTION DE LA RÉPUBLIQUE GABONAISE [CONSTITUTION] Mar. 3, 1991, art. 114 (Gabon).

367. THE CONSTITUTION OF THE REPUBLIC OF THE GAMBIA Jan. 16, 1997, arts 19(2), 24(3)(b). The constitution provides that “[t]he State . . . shall be guided by international human rights instruments to which The Gambia is a signatory and which recognize and apply particular basic human rights to development processes.” *Id.* at 216(3). The Gambia has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

368. SAKARTVELOS K’ONSTITUTSIA [CONSTITUTION] Oct. 17, 1995, art. 13(4) (Geor.). The constitution provides that “[t]he legislation of Georgia shall comply with the universally recognized principles and norms of international law. An international treaty shall take precedence over domestic normative acts unless it comes into conflict with the Constitution.” *Id.* art. 4(5). Georgia has also acceded to the ICCPR and ratified the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313; *see also* SAKARTVELOS K’ONSTITUTSIA Oct. 17, 1995, art. 4(2).

369. GRUNDGESETZ [GG] [BASIC LAW], translation at [http://www.gesetze-im-internet.de/englisch\\_gg/index.html](http://www.gesetze-im-internet.de/englisch_gg/index.html), art. 104(3) (Ger.). The constitution provides that “general rules of international law shall be an integral part of federal law. They shall take precedence over the laws.” *Id.* art. 25. Germany has also ratified the ICCPR and ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313. *See also* Hum. Rts. Comm., Fourth Periodic Reports of States Parties Due in 1993: Addendum: Germany, ¶ 7, U.N. Doc. CCPR/C/84/Add.5 (1996) (implementing Covenant indirectly under Unification Treaty in 1990); Int’l Hum. Rts. Instruments, Core Document Forming Part of the Reports of States Parties: Germany, ¶ 88, U.N. Doc. HRI/CORE/1/Add.75 (1996) (ICCPR has become an integral part of German law by ratification).

370. CONSTITUTION OF THE REPUBLIC OF GHANA. Jan. 7, 1993, arts. 14(2), 19(2)(d). Ghana has also ratified the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310. *But see* Hum. Rts. Comm., Initial Reports of States Parties Due in 2001: Ghana, ¶ 101, U.N. Doc. CCPR/C/GHA/1 (2014) (Ghana stating domestication of ICCPR is Chapter 5 of 1992 Constitution).

371. 2001 SYNTAGMA [SYN.] [CONSTITUTION] 2 art. 6(1) (Greece). The constitution provides that “international conventions . . . shall become an integral part of domestic Greek law.”

*Id.* art. 28. Greece has also acceded to the ICCPR and ratified the ECHR. *Status of Treaties: ICCPR*, *supra* note 310; *Signatures and Ratifications of European Convention on Human Rights*, *supra* note 313; *see also* Hum. Rts. Comm., Initial Report: Greece 5, U.N. Doc. CCPR/C/GRC/2004/1 (2004) (ratification of Covenant and its two Optional Protocols by virtue of Law 2462/1997).

372. CONSTITUTION OF GRENADA Dec. 19, 1973, arts. 3(2), 8(2)(b). Grenada has also acceded to the ICCPR and ratified the ACHR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR*, *supra* note 310; *Signatories and Ratifications of American Convention on Human Rights*, *supra* note 316.

373. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA Jan. 14, 1986, art. 7. The constitution provides that “within the matter of human rights, the treaties and agreements approved and ratified by Guatemala, have preeminence over the internal law.” *Id.* art. 46. Guatemala has also acceded to the ICCPR and ratified the ACHR. *Status of Treaties: ICCPR*, *supra* note 310; *Signatories and Ratifications of American Convention on Human Rights*, *supra* note 316; *see also* Hum. Rts. Comm., Initial Reports of States Parties Due in 1993: Addendum: Guatemala, ¶ 1, U.N. Doc. CCPR/C/81/Add.7 (1995) (ICCPR entering into force by Decree No. 9-92).

374. Hum. Rts. Comm., Thirteenth Periodic Report Submitted by Guinea Under Article 40 of the Covenant, Due in 1994, ¶ 113, U.N. Doc. CCPR/C/GIN/3 (2017) (citing CODE OF CRIMINAL PROCEDURE art. 90 (Guinea)). The constitution provides that “treaties or agreements regularly approved or ratified have, from their publication, a[n] authority superior to that of the laws.” CONSTITUTION DE LA GUINÉE Apr. 19, 2010, art. 151 (Guinea). Guinea has also ratified the ICCPR. *Status of Treaties: ICCPR*, *supra* note 310.

375. CONSTITUIÇÃO DA REPÚBLICA DA GUINÉ-BISSAU [CONSTITUTION] May 16, 1984, art. 39(1) (Guinea-Bissau). Guinea-Bissau has also ratified the ICCPR, and “fundamental rights consecrated by [its] Constitution shall not exclude any others foreseen by...the applicable rules of international law.” *Id.* art. 29; *Status of Treaties: ICCPR*, *supra* note 310.

376. THE CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA ACT Oct. 6, 1980, arts. 139(3), 144(2)(b). The constitution provides that “human rights enshrined in the said international treaties...shall be respected and upheld by...all organs and agencies of Government.” *Id.* art. 154A(1). Guyana has also ratified the ICCPR. *Status of Treaties: ICCPR*, *supra* note 310.

377. CONSTITUTION D’HAÏTI Mar. 10, 1987, art. 24.3(a)(b). The constitution provides that “once international treaties or agreements are approved and ratified...they become part of the legislation of the country.” *Id.* art. 276.2. Haiti has also acceded to the ICCPR and the ACHR. *Status of Treaties: ICCPR*, *supra* note 310; *Signatories and Ratifications of American Convention on Human Rights*, *supra* note 316.

378. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE HONDURAS Jan. 11, 1982, art. 84. Honduras has also ratified the ICCPR and the ACHR, and “[i]nternational treaties...form part of the domestic law as soon as they enter into force.” *Id.* art. 16; *Status of Treaties: ICCPR*, *supra* note 310; *Signatories and Ratifications of American Convention on Human Rights*, *supra* note 316; *see also* CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE HONDURAS Jan. 11, 1982, art. 18.

379. Hum. Rts. Comm., Initial Reports of States Parties Due in 1977: Addendum: Hungary 5, U.N. Doc. CCPR/C/1/Add.11 (1977) (citing ACT ON PENAL PROCEDURE art. 132

(Hung.). Hungary has also ratified the ICCPR and the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313; *see also* MAGYARORSZÁG ALAPTÖRVÉNYE [THE FUNDAMENTAL LAW OF HUNGARY], ALAPTÖRVÉNY Jan. 1, 2012, art. Q(2) (“[E]nsure[s] that Hungarian law is in conformity with international law”); Hum. Rts. Comm., Initial Reports of States Parties Due in 1977: Addendum: Hungary 1, U.N. Doc. CCPR/C/1/Add.11 (1977) (ICCPR entered into force Mar. 22, 1976).

380. STJÓRNARSKRÁ LÝÐVELDISINS ÍSLANDS [CONSTITUTION] June 17, 1944, art. 67 (Ice.). Iceland also ratified the ICCPR and the ECHR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313. *But see* Hum. Rts. Comm., Third Periodic Reports of States Parties: Addendum: Iceland, ¶ 9, U.N. Doc. CCPR/C/94/Add.2 (1995) (ECHR incorporated into Icelandic law by Act No. 62/1944).

381. India Const. art. 22(1). The constitution provides that the country “endeavour[s] to foster respect for international law and treaty obligations.” *Id.* art. 51(c). India has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

382. Hum. Rts. Comm., Initial Reports of States Parties: Indonesia, ¶ 210(c), U.N. Doc. CCPR/C/IDN/1 (2012) (citing CRIMINAL PROCEEDING CODE arts. 50–68 (Indon.)). Indonesia also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

383. ISLAHAT VA TAQYRATI VA TATMIMAH QANUNI ASSASSI [AMENDMENT TO THE CONSTITUTION] 1989 art. 32 (Iran). Iran has also ratified the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

384. Iraq “respects its international obligations.” Article 8, *Dustūr Jumh. ūrīyat al-‘Irāq* [The Constitution of the Republic of Iraq] of 2005. Iraq has also ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

385. *See* CONSTITUTION OF IRELAND 1937 art. 38(1); Hum. Rts. Comm., Initial Reports of States Parties Due in 1991, ¶ 123(i), U.N. Doc. CCPR/C/68/Add.3 (1992) (holding right to notice is an inherent requirement of article 38 in the Constitution); *id.* ¶ 55 (citing Criminal Justice Act (SI 119/1987)). Ireland has also ratified the ICCPR and the ECHR, and an international agreement is part of the domestic law after being determined by the Oireachtas, its legislative body. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313; *see* Constitution of Ireland 1937 art. 29(6).

386. §§ 24–25, Criminal Procedure Law, 5742–1982, LSI 36 40 (1981–82), as amended (Isr.), [https://knisset.gov.il/review/data/eng/law/kns10\\_criminallaw\\_eng.pdf](https://knisset.gov.il/review/data/eng/law/kns10_criminallaw_eng.pdf) [<https://perma.cc/TW8P-TR8L>]. Israel has also ratified the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

387. Art. 111 COSTITUZIONE [COST.] (It.). The constitution provides that “international treaties which involve...changes in the law become effective from the date of Parliament’s convocation.” *Id.* at Transitional and Final Provisions, pt. V. Italy has also ratified the ICCPR and the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313; *see also* Art. 10 COSTITUZIONE



[COST.] (It.) (“[L]egal system shall conform to generally recognized principles of international law”).

388. CONSTITUTION OF JAMAICA July 25, 1962, §§ 15(2), 16(6)(a). Jamaica also ratified the ICCPR and the ACHR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316.

389. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 34, ¶ 1 (Japan). The constitution provides that “treaties concluded by Japan and established laws of nations [are] faithfully observed.” *Id.* at 98, ¶ 2. Japan has also ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

390. Hum. Rts. Comm., Third Periodic Reports of States Parties Due in 1992: Addendum: Jordan, ¶ 17, U.N. Doc. CCPR/C/76/Add.1 (1993) (citing CODE OF CRIMINAL PROCEDURE, art. 116 (Jordan)). Jordan has also ratified the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

391. The constitution provides that “[i]nternational treaties ratified by the Republic have priority over its laws.” QAZAQSTAN RESPÝBLIKASYNYŇ KONSTITÝTSHASY [CONSTITUTION] Aug. 30, 1995, art. 4(3) (Kaz.). Kazakhstan has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310. *See generally* QAZAQSTAN RESPÝBLIKASYNYŇ KONSTITÝTSHASY Aug. 30, 1995, art. 4(1).

392. CONSTITUTION OF KENYA Aug. 27, 2010, arts. 49(1)(a), 50(2)(b). The constitution provides that “[a]ny treaty or convention ratified by Kenya shall form part of the law.” *Id.* art. 2(6). Kenya has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

393. CONSTITUTION OF KIRIBATI, Jul. 12, 1979, arts. 5(2), 10(2)(b).

394. Hum. Rts. Comm., Second Periodic Report of the Democratic People’s Republic of Korea, ¶ 62, U.N. Doc. CCPR/C/PRK/2000/2 (2000) (citing CRIMINAL PROCEDURE ACT, art. 103 (N. Kor.)). North Korea has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

395. DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 12 (S. Kor.). The constitution provides that “[t]reaties...and the generally recognized rules of international law shall have the same effect as the domestic laws.” *Id.* art. 6(1). South Korea has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* Hum. Rts. Comm., Initial Reports of States Parties Due in 1991: Addendum: Republic of Korea, ¶ 5, U.N. Doc. CCPR/C/68/Add.1 (1991) (referencing constitutional article 6, paragraph 1 of the constitution to show that separate domestic legislation is unnecessary for ICCPR to have force of law).

396. CONSTITUTION OF THE REPUBLIC OF KOSOVO, Sept. 7, 1990, art. 29(2).

397. Hum. Rts. Comm., Second Periodic Report of States Parties: Kuwait, ¶ 139, U.N. Doc. CCPR/C/KWT/2 (2009) (citing CODE OF CRIMINAL PROCEDURE AND TRIALS, art. 155 (Kuwait)). The constitution provides that a “treaty [has] the force of law after it is signed, ratified, and published in the Official Gazette.” AD-DISTÜR AL-KUWAYTI [CONSTITUTION] Nov. 11, 1962, art. 70. Kuwait has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* Hum. Rts. Comm., Initial Report of States parties Due in 1997: Kuwait, ¶¶ 28, 40, U.N. Doc. CCPR/C/120/Add.1 (1999) (accession to ICCPR by virtue of Law No. 12 of 1996 and confirmed publication in Official Gazette).

398. KIRGIZ RESPUBLIKASININ KONSTITUTSIYASI [CONSTITUTION], June 27, 2010, art. 24(5) (Kyrg.). The constitution provides that “international treaties...and also universally recognized principles and norms of international law shall be a constituent part of the legal system.” *Id.* art. 6(3). Kyrgyzstan has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

399. Hum. Rts. Comm., Initial Reports of States Parties Due in 2010: Lao People’s Democratic Republic, ¶ 67, U.N. Doc. CCPR/C/LAO/1 (2017) (citing LAW ON CRIMINAL PROCEDURE, art. 138, ¶ 2 (Laos)). Lao People’s Democratic Republic has also ratified the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

400. Hum. Rts. Comm., Second Period Report: Latvia, ¶ 201, U.N. Doc. CCPR/C/LVA/2002/2 (2002) (citing CRIMINAL PROCEDURE CODE art. 150 (Lat.)). The constitution “recognize[s] and protect[s] fundamental human rights in accordance with...international agreements binding upon Latvia.” LATVIJAS REPUBLIKAS SATVERSME [CONSTITUTION] Feb. 15, 1922, art. 89 (Lat.). Latvia has also acceded to the ICCPR and ratified the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313; *see also* Hum. Rts. Comm., Initial Reports of States Parties Due in 1993: Latvia, ¶ 2, U.N. Doc. CCPR/C/81/Add.1/Rev. 1 (1994) (detailing procedure from Latvia’s accession to the ICCPR and entering it into force in the state).

401. Decree 328 of 7 Aug. 2001, arts. 76, 107 (Code of Criminal Procedure) (Leb.). Lebanon has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

402. CONSTITUTION OF LESOTHO, Apr. 2, 1993, arts. 6(2), 12(2)(b). Lesotho has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

403. CONSTITUTION OF THE REPUBLIC OF LIBERIA, Jan. 6, 1986, art. 21(c). Liberia has also ratified the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

404. Libya “commit[s] itself to joining international...declarations and charters which protect such [human] rights and [basic] freedoms. AL’HELAN ALDSTWRY ALMUAQAT ALLIYBII [CONSTITUTION] Aug. 3, 2011, art. 7 (Libya). Libya has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

405. Hum. Rts. Comm., Initial Report: Liechtenstein, ¶ 117, U.N. Doc. CCPR/C/LIE/2003/1 (2003) (citing STRAFPROZESSORDNUNG [CODE OF CRIMINAL PROCEDURE] [STPO] §§ 165(3), 166(1) (Liech.)). Liechtenstein has also acceded to the ICCPR and ratified the ECHR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 309; *Signatures and Ratifications of European Convention on Human Rights, supra* note 316. *But see* Hum. Rts. Comm., Initial Report: Liechtenstein, ¶ 38, U.N. Doc. CCPR/C/LIE/2003/1 (2003) (Liechtenstein stating ratified international treaties are self-executing and no domestic law needed unless treaty provisions are not sufficiently specific).

406. Hum. Rts. Comm., Second Periodic Report: Lithuania, ¶ 199, U.N. Doc. CCPR/C/LTU/2003/2 (2003) (citing CODE OF CRIMINAL PROCEDURE art. 44(2) (Lith.)). The constitution provides that “international treaties ratified by the Seimas...shall be a constituent

part of the legal system.” LIETUVOS RESPUBLIKOS KONSTITUCIJA [CONSTITUTION] Oct. 25, 1992, art. 138 (Lith.). Lithuania has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313.

407. Luxembourg has ratified the ICCPR and the ECHR, and treaties will have effect after having been approved by the law and published. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313. See LÉTZEBUERGER KONSTITUTIOUN [CONSTITUTION] Oct. 17, 1868, art. 37bis (Lux.).

408. Hum. Rts. Comm., Third Periodic Report: Madagascar, ¶ 152, U.N. Doc. CCPR/C/MDG/2005/3 (2005) (citing Act No. 97-036 of 30 Oct. 1997). The constitution provides that “the treaties or agreements regularly ratified...have, from their publication, an authority superior to that of the laws.” CONSTITUTION DE LA QUATRIEME REPUBLIQUE [CONSTITUTION] Dec. 11, 2010, art. 137 (Madag.). Madagascar has also ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

409. CONSTITUTION OF THE REPUBLIC OF MALAWI May 17, 1994, art. 42(1)(a), (2)(b), (2)(f)(ii). The constitution provides that “international agreements...form part of the law of the Republic.” *Id.* at 211. Malawi has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; see also Hum. Rts. Comm., Initial Reports of States Parties: Malawi, ¶ 8, U.N. Doc. CCPR/C/MWI/1 (2012) (Referencing constitutional article 211(1) to verify that the ICCPR forms part of its law).

410. PERLEMBAGAAN PERSEKUTUAN MALAYSIA [CONSTITUTION] Sept. 16, 1963, art. 5(3).

411. DHIVEHI RAAJJEYGE JUMHOORIYYAAGE QAANOON ASAASEE [CONSTITUTION] Aug. 7, 2008, art. 48(a), 51(a) (Maldives). The Maldives has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

412. See Hum. Rts. Comm., Second Periodic Report: Mali, at 22, U.N. Doc. CCPR/C/MLI/2003/2 (2003) (Referencing article 9 of the constitution, stating right to a defence includes right to notice). The constitution provides that “treaties or agreements regularly ratified or approved have, on their publication, an authority superior to that of the laws.” CONSTITUTION DU REPUBLIQUE DU MALI Jan. 12, 1992, art. 116. Mali has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; see also Hum. Rts. Comm., Second Periodic Report: Mali, at 40, U.N. Doc. CCPR/C/MLI/2003/2 (2003) (acceded to ICCPR by Ordinance No. 25/CMLN of 3 July 1974). See generally CONSTITUTION DU REPUBLIQUE DU MALI Jan. 12, 1992, art. 115.

413. COSTITUZIONE DI MALTA [CONSTITUTION] Sept. 21, 1964, arts. 34(2), 39(6)(a). The Maltese Parliament makes laws “in conformity with full respect for human rights, generally accepted principles of international law . . . [and] international . . . obligations in particular those assumed by the treaty of accession to the European Union.” *Id.* art. 65(1). Malta has also acceded to the ICCPR and the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313; see also Hum. Rts. Comm., Initial reports of States Parties Due in 1991: Malta, ¶ 1, U.N. Doc. CCPR/C/68/Add.4 (1993) (confirming ICCPR entered into force but referring to already incorporated rights through Constitution and Act XIV of 1987 that made ECHR part of its law).

414. CONSTITUTION OF THE REPUBLIC OF THE MARSHALL ISLANDS, May 1, 1979, art. II, § 4(4). The Marshall Islands has also acceded to the ICCPR but does not have any constitutional

provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

415. The constitution provides that “treaties or agreements regularly ratified or approved have, on their publication, an authority superior to that of the laws.” DUSTUR JUMHURIAT MURITANIA AL’IISLAMIA [CONSTITUTION] July 12, 1991, art. 80. Mauritania has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; DUSTUR JUMHURIAT MURITANIA AL’IISLAMIA July 12, 1991, art. 78.

416. LA CONSTITUTION DE MAURICE Mar. 12, 1968, art.s 5(2), 10(2)(b) (Mauritius). Mauritius has also acceded to the ICCPR but does not have any constitutional provisions that explain the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310. *Cf.* Hum. Rts. Comm., Initial Reports of States Parties Due in 1977: Addendum: Mauritius, ¶ 3, U.N. Doc. CCPR/C/1/Add.21 (1978) (stating that Mauritius did not find it necessary to give ICCPR force of law since substance present in Constitution or other specific enactments).

417. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CPEUM], art. 20(B)(III), Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 03-06-20 (Mex.). The constitution provides that “all the Treaties that are in accord with [the Constitution and the laws of Congress], celebrated by the President with approval of the Senate, will be the Supreme Law of all of the Union.” *Id.* at 133. Mexico has also acceded to the ICCPR and ACHR. *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316; *see also* Hum. Rts. Comm., Third Periodic Reports of States Parties Due in 1992: Mexico, ¶ 2, U.N. Doc. CCPR/C/76/Add.2 (1993) (referencing constitutional article 133 to confirm that ICCPR forms part of Mexican law and can serve as the basis and foundation for any legal action).

418. CONSTITUTION OF THE FEDERATED STATES OF MICRONESIA, May 10, 1979, art. IV, § 6.

419. CONSTITUȚIA REPUBLICII MOLDOVA [CONSTITUTION], July 29, 1994, art. 25(5). The constitution “commits to observe...the treaties to which it is a party.” *Id.* art. 8(1). Moldova has also acceded to the ICCPR and the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313; *see also* Hum. Rts. Comm., Initial Report of States Parties Due in 1994: Moldova, ¶ 2, U.N. Doc. CCPR/C/MDA/2000/1 (2001) (ICCPR ratified through Parliament’s Decision No. 217-XII and subsequently entered into force).

420. Hum. Rts. Comm., Second Periodic Report: Principality of Monaco, ¶ 400, U.N. Doc. CCPR/C/MCO/2 (2007) (citing proposed amendments for CODE OF CRIMINAL PROCEDURE art. 1401–12 (Monaco)); Hum. Rts. Comm., Initial Report of the Principality of Monaco, ¶ 117, U.N. Doc. CCPR/C/MCO/99/1 (2000) (referencing CONSTITUTION DE LA PRINCIPAUTÉ DE MONACO Dec. 17, 1962, art. 19 to include right to notice and CODE OF CRIMINAL PROCEDURE, art. 166). Monaco has also ratified the ICCPR and the ECHR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313.

421. MONGOL ULSYN ÜNDSÉN KHUULI [CONSTITUTION] Jan. 13, 1992, art. 16(13) (Mong.). The constitution provides that “international treaties . . . become effective as domestic legislation, upon the entry into force of its laws on their ratification or accession.” *Id.* art. 10(3). Mongolia has also ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

422. USTAV CRNE GORE [CONSTITUTION] Oct. 22, 2007, arts. 29, 37 (Montenegro). The constitution provides that “ratified and published international agreements and generally accepted rules of international law . . . make an integral part of the internal legal order . . . [and] have the supremacy over the national legislation.” *Id.* art. 9. Montenegro has also succeeded the ICCPR and ratified the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313.

423. DUSTUR ALMAMLAKAT ALMAGHRIBIA [CONSTITUTION], July 29, 2011, art. 23 (Morocco). The constitution “reaffirms . . . and commits itself: [t]o comply with the international conventions duly ratified by it.” *Id.* at pmbl. Morocco has also ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

424. CONSTITUIÇÃO DA REPÚBLICA DE MOÇAMBIQUE [CONSTITUTION] Dec. 21, 2004, art. 64 (Mozam.). The constitution provides that “ratified international treaties and agreements . . . enter into force in the Mozambican legal order once . . . officially published.” *Id.* at 18(1). Mozambique has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* CONSTITUIÇÃO DA REPÚBLICA DE MOÇAMBIQUE Dec. 21, 2004, art. 18(2) (stating norms of international law have the same force in its legal order as infra-constitutional legislative acts).

425. CONSTITUTION OF THE REPUBLIC OF NAMIBIA, Feb. 9, 1990, art. 11(2). The constitution provides that “international agreements binding upon Namibia . . . shall form part of the law.” *Id.* art. 143. Namibia has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* Hum. Rts. Comm., Initial Report: Namibia, ¶ 118, U.N. Doc. CCPR/C/NAM/2003/1 (2003) (Namibia stating treaties are self-executing under the Constitution); CONSTITUTION OF THE REPUBLIC OF NAMIBIA, Feb. 9, 1990, art. 144 (general rules of public international law also form part of the law).

426. CONSTITUTION OF THE REPUBLIC OF NAURU, Jan. 31, 1968, arts. 5(2), 10(3)(b). Nauru is only a signatory to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

427. NEPĀLAKO SAMVIDHĀNA [CONSTITUTION] Jan. 22, 2015, art. 20(1). Nepal has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

428. Hum. Rts. Comm., Third Periodic Report: Netherlands, ¶ 405, U.N. Doc. CCPR/C/NET/99/3 (2000) (citing Art. 82 Sv. [WETBOEK VAN STRAFVORDERING] [CODE OF CRIMINAL PROCEDURE]). The constitution provides that “[p]rovisions of treaties . . . become binding after they have been published.” *Id.* [CONSTITUTION] art. 93 (Neth.). The Netherlands has also ratified the ICCPR and the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313.

429. BILL OF RIGHTS ACT 1990, arts. 23 (1)(a), 24(a) (N.Z.). The constitution incorporates by reference the ICCPR to which New Zealand is a party. *Id.* at pmbl; *Status of Treaties: ICCPR, supra* note 310.

430. CONSTITUCIÓN POLITICA DE LA REPUBLICA DE NICARAGUA [Cn.] tit. IV, ch. I, art. 33(2)(2.1), LA GACETA, DIARIO OFICIAL [L.G.] 9 January 1987, as amended by Ley No. 854, Feb. 8, 2014, Reforma Parcial a la Constitución Política de la República de Nicaragua, L.G. Feb. 18, 2014. The constitution incorporates by reference the ICCPR and the ACHR to which Nicaragua is a party. *Id.* tit. IV, ch. I, art. 46; *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316.

431. Hum. Rts. Comm., Second Periodic Report Submitted by the Niger Under Article 40 of the Covenant, Due in 1994, ¶ 188, U.N. Doc. CCPR/C/NER/2 (2018) (Niger stating right

to notice guaranteed with no reference to municipal or constitutional law). The constitution incorporates by reference the ICCPR to which Niger is a party. CONSTITUTION DE LA RÉPUBLIQUE DU NIGER Nov. 25, 2010, pmb1.; *Status of Treaties: ICCPR, supra* note 310. *See generally* CONSTITUTION DE LA RÉPUBLIQUE DU NIGER Nov. 25, 2010, art. 171 (published ratified treaties have an authority superior to that of the laws).

432. CONSTITUTION OF NIGERIA (1999), § 36(6)(a). The constitution provides that “a treaty has the force of law if it has been enacted into law by the National Assembly.” *Id.* at § 12. Nigeria has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also Hum. Rts. Comm., Initial Reports of States Parties Due in 1994: Nigeria*, ¶¶ 3–5, U.N. Doc. CCPR/C/92/Add.1 (1996) (Nigeria explaining ICCPR rights in Constitution, and the Supreme Court’s and Government’s approaches to the enforceability of human rights treaties).

433. USTAV NA REPUBLIKA MAKEDONIJA [CONSTITUTION] Nov. 17, 1991, art. 12 (Maced.). The constitution provides that “international agreements ratified . . . are part of the internal order.” *Id.* art. 118. Macedonia has also ratified the ECHR. *Signatures and Ratifications of European Convention on Human Rights, supra* note 313.

434. The constitution provides that “the authorities of the State . . . respect and ensure human rights . . . in the treaties concerning human rights that are binding to Norway.” KONGERIKET NORGES GRUNNLOV [CONSTITUTION] May 17, 1814, art. 92 (Nor.). Norway has ratified the ICCPR and the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313.

435. ALNIZAM AL’ASASII LILDAWLA [CONSTITUTION] Nov. 6, 1996, art. 24 (Oman).

436. PAKISTAN CONST., art. 10, § 1. Pakistan has ratified the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

437. UCHETEMEL A LLACHER A BELUUER A BELAU [CONSTITUTION] Jan. 1, 1981, art. IV, § 7 (*Palau*). Palau is only a signatory to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

438. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE PANAMÁ Oct. 11, 1972, arts. 21, 22. Panama has also acceded to the ICCPR and the ACHR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316. *But see* CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE PANAMÁ Oct. 11, 1972, art. 4 (Panama complies with international law norms).

439. CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA, Sept. 16, 1975, arts. 37(4)(b), 42(2)(a). The constitution is “subject only to such obligations at international law as are freely accepted.” *Id.* art. 2(2). Papua New Guinea has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310. *But see* CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA, Sept. 16, 1975, art. 117(7) (stating treaties do not form municipal law unless given status by a Constitutional Law or an Act of Parliament).

440. CONSTITUCIÓN DE LA REPÚBLICA DEL PARAGUAY Aug. 9, 1940, art. 12(1). The constitution provides that “treaties, conventions and international agreements approved and ratified . . . integrate the positive national law.” *Id.* art. 137. Paraguay has also ratified the ICCPR and the ACHR. Hum. Rts. Comm., Second Periodic Report: Paraguay, ¶ 8, U.N. Doc. CCPR/C/PRY/2004/2 (2004) (ICCPR ratified by Act No. 5 of 9 Apr. 1992); *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316; *see also* CONSTITUCIÓN DE LA REPÚBLICA DEL PARAGUAY Aug. 9, 1940, art. 141 (treaties are part of the internal legal order).

441. CONSTITUCIÓN POLÍTICA DEL PERÚ Dec. 29, 1993, art. 139(14), (15). The constitution provides that “treaties concluded by the State and are in force are part of the national law.” *Id.* art. 55. Peru has also ratified the ICCPR and the ACHR. *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316.

442. CONST. (1987), art. III, §14(2) (Phil.). A treaty is valid and effective when it is concurred in by at least two-third of all the Members of the Senate. *Id.* art. VII, § 21. Philippines has also ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

443. KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION] Oct. 17, 1997, art. 41(3) (Pol.). The constitution provides that “[a]fter promulgation . . . a ratified international agreement shall constitute part of the domestic legal order.” *Id.* art. 91(1). Poland has also ratified the ICCPR and the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313; *see also* KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ Oct. 17, 1997, arts. 9, 87, 91(2) (Pol.) (provisions concerning other effects of international law and agreements on the State).

444. CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [CONSTITUTION] Apr. 25, 1976, 27(4), 28(1) (Port.). The constitution provides that “rules set out in duly ratified . . . international agreements . . . come into force in Portuguese internal law once . . . officially published.” *Id.* art. 8(2). Portugal has also ratified the ICCPR and the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313; *see also* CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA Apr. 25, 1976, art. 8(1), (4) (rules and principles of general international law form an integral part of internal law).

445. Hum. Rts. Comm., Initial Report Submitted by Qatar Under Article 40 of the Convention, Due in 2019, ¶ 136, U.N. Doc. CCPR/C/QAT/1 (2019) (citing CODE OF CRIMINAL PROCEDURE art. 113 (Qatar)). The constitution provides that “international charters and conventions, and strives to implement all international agreements, charters, and conventions it is party thereof.” DASTÜR QATAR [CONSTITUTION] Apr. 29, 2003, art. 6. Qatar has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* Hum. Rts. Comm., Initial Report Submitted by Qatar Under Article 40 of the Convention, Due in 2019, ¶ 1, U.N. Doc. CCPR/C/QAT/1 (2019) (acceded to ICCPR pursuant to Decree No. 40 of 2018 and subsequently entered into force).

446. CONSTITUȚIA ROMÂNIEI [CONSTITUTION] Oct. 29, 2003, art. 23(8) (Rom.). Romania has also ratified the ICCPR and ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 316; *see also* CONSTITUȚIA ROMÂNIEI Oct. 29, 2003, art. 20 (constitutional provisions interpreted in conformity with treaties and international regulations take precedence in conflict).

447. *See* Hum. Rts. Comm., Initial Reports of States Parties Due in 1977: Addendum: Union of Soviet Socialist Republics, at 9–11, U.N. Doc. CCPR/C/1/Add.22 (1978) (citing the Regulations on the Procedure for Short-Term Detention of Persons Suspected of Having Committed a Crime, art. 10 (1977) and CODE OF CRIMINAL PROCEDURE OF THE RSFSR, art. 92). The constitution provides that “international treaties and agreements of the Russian Federation shall be a component part of its legal system.” KONSTITUTSIJA ROSSIJSKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 15(4) (Russ.). Russia has also ratified the ICCPR and the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313; *see also* KONSTITUTSIJA ROSSIJSKOI FEDERATSII [KONST. RF] art. 55(1). *Cf.* Hum. Rts. Comm., Initial Reports of States Parties Due in 1977: Addendum: Union of Soviet Socialist Republics, at 2, U.N. Doc. CCPR/C/1/Add.22 (1978)

(Russia stating ICCPR ratification and entry into force “did not necessitate any changes in or additions to Soviet laws”).

448. ITEGEKO NSHINGA RYA REPUBULIKA Y’U RWANDA [CONSTITUTION] Dec. 24, 2015, art. 29(1°) (Rwanda). The constitution provides that ratified treaties “have the force of law as national legislation.” *Id.* art. 168. Rwanda has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* Hum. Rts. Comm., Third Periodic Report: Rwanda, ¶ 1, U.N. Doc. CCPR/C/RWA/3 (2007) (“ICCPR incorporated into domestic law pursuant to Decree-Law No. 8/75”).

449. CONSTITUTION OF SAINT CHRISTOPHER AND NEVIS June 23, 1983 (St. Kitts & Nevis), arts. 5(2), 10(2)(b).

450. CONSTITUTION OF SAINT LUCIA Dec. 20, 1978, art. 3(2), 8(2)(b). Saint Lucia is only a signatory to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

451. CONSTITUTION OF SAINT VINCENT AND THE GRENADINES Oct. 27, 1979, arts. 3(2), 8(2)(b), (f). Saint Vincent and the Grenadines has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

452. O LE FAAVAE O LE MALO TUTOATASI O SAMOA [CONSTITUTION] Oct. 28, 1960, arts. 6(3), 9(4)(a) (Samoa). Samoa has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

453. *See* Hum. Rts. Comm., Second Periodic Report: San Marino, ¶ 100, U.N. Doc. CCPR/C/SMR/2 (2007) (San Marino stating in stop and hold cases, “police shall draw up a report and notify the interested party and his or her counsel”). The constitution “recognizes, as an integral part of its own legal system, generally recognized principles of international law and conforms its law and conduct to them.” DICHIARAZIONE DEI DIRITTI DEI CITTADINI E DEI PRINCIPI FONDAMENTALI DELL’ORDINAMENTO SAMMARINESE [CONSTITUTION] July 8, 1974, art. 1 (San Marino). San Marino has also acceded to the ICCPR and ratified the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313.

454. The constitution provides that “[r]ules provided for in international conventions, treaties and agreements duly approved and ratified . . . shall be binding in the São Toméan legal order.” CONSTITUIÇÃO DA REPÚBLICA DEMOCRÁTICA DE SÃO TOMÉ E PRÍNCIPE [CONSTITUTION] Nov. 5, 1975, art. 13(1)–(3) (São Tomé & Príncipe). São Tomé and Príncipe has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* CONSTITUIÇÃO DA REPÚBLICA DEMOCRÁTICA DE SÃO TOMÉ E PRÍNCIPE Nov. 5, 1975, art. 18(1) (constitutional rights do not exclude rights in international laws).

455. Hum. Rts. Comm., Fourth Periodic Reports of States Parties Due in 1995: Addendum: Senegal, ¶¶ 53–54, U.N. Doc. CCPR/C/103/Add.1 (1996) (citing CODE OF CRIMINAL PROCEDURE art. 55 (Sen.)). The constitution provides that “treaties . . . regularly ratified . . . have, on their publication, an authority superior to that of the laws.” CONSTITUTION OF THE REPUBLIC OF SENEGAL Jan. 7, 2001, art. 98. Senegal has also ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310. *See generally* CONSTITUTION OF THE REPUBLIC OF SENEGAL 2001, pmbl. (affirming its adhesion to international instruments adopted by the U.N.).

456. CONSTITUTION OF THE REPUBLIC OF SERBIA Nov. 8, 2006, arts. 27, 33. The constitution provides that “generally accepted rules of international law and ratified international treaties shall be an integrated part of the legal system.” *Id.* art. 16. Serbia has also succeeded to



the ICCPR and ratified the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313.

457. CONSTITUTION OF THE REPUBLIC OF SEYCHELLES June 21, 1993, arts. 18(3), 19(2)(b). The constitution provides that “[it] shall be interpreted in such a way so as not to be inconsistent with any international obligations.” *Id.* art. 48. Seychelles has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

458. CONSTITUTION OF SIERRA LEONE Oct. 1, 1991, arts. 17(2)(a), 23(5)(a). The constitution provides that “respect for international law and treaty obligations” is part of its foreign policy objectives. *Id.* art. 10(d). Sierra Leone has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* CONSTITUTION OF SIERRA LEONE Oct. 1, 1991, art. 40(3) (President ensures respect for treaties and international agreements); Hum. Rts. Comm., Initial Reports of States Parties Due in November 1997: Sierra Leone, ¶ 6, U.N. Doc. CCPR/C/SLE/1 (2013) (“Parliament has yet to take necessary action by way of enactment or the passing of a resolution . . . [notwithstanding,] the country continues to abide by the provisions of the ICCPR”).

459. CONSTITUTION OF THE REPUBLIC OF SINGAPORE Aug. 9, 1965, art. 9(3).

460. ÚSTAVA SLOVENSKEJ REPUBLIKY [CONSTITUTION] Oct. 1, 1992, as amended in 2017, art. 17(3) (Slovk.). The constitution provides that “international agreements on human rights and freedoms which were ratified . . . take precedence over its laws whenever they guarantee a wider scope.” *Id.* art. 11. Slovak Republic succeeded to the ICCPR and ratified the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313; *see also* Hum. Rts. Comm., Second Periodic Report of States Parties Due on 31 December 2001: Slovakia, ¶¶ 3–5, U.N. Doc. CCPR/C/SVK/2003/2 (2002) (Slovakia stating ICCPR is part of the legal order in Slovakia after dissolution of Czechoslovak Socialist Republic).

461. USTAVA REPUBLIKE SLOVENIJE [CONSTITUTION] Dec. 23, 1991, art. 19 (Slovn.). The constitution provides that “ratified and published treaties shall be applied directly.” *Id.* art. 8. Slovenia has also succeeded to the ICCPR and ratified the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313. *See generally* USTAVA REPUBLIKE SLOVENIJE Dec. 23, 1991, art. 153 (“Laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly”).

462. CONSTITUTION OF THE SOLOMON ISLANDS July 7, 1978, arts. 5(2), 10(2)(b). The ICCPR has a territorial application on the Solomon Islands. *See Status of Treaties: ICCPR, supra* note 310.

463. DASTUURKA JAMHUURIYADDA FEDERAALKA SOOMAALIYA [CONSTITUTION] Aug. 1, 2012, art. 35(2), (3) (Som.). The constitution provides that “[i]n interpreting [fundamental] rights, the court may consider the . . . international law.” *Id.* art. 40(2). Somalia has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* DASTUURKA JAMHUURIYADDA FEDERAALKA SOOMAALIYA Aug. 1, 2012, art. 3(4) (promotion of human rights and general standards of international law).

464. S. AFR. CONST., 1996, art. 35(1)(e), (2)(a), 3(a). The constitution provides that “[w]hen interpreting the Bill of Rights, a court . . . must consider international law.” *Id.* art. 39(1)(b). South Africa has also ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

465. TRANSITIONAL CONSTITUTION OF THE REPUBLIC OF SOUTH SUDAN 2011, art. 19(2). After its separation from Sudan, the Transitional National Legislative Assembly of South Sudan ratified the ICCPR in 2019 but it has not reached accession status. *Compare Press Briefing Note on South Sudan*, UN OFF. HIGH COMM'R HUM. RTS. (June 7, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24683&LangID=E> [<https://perma.cc/A7GE-Z27L>] with OHCHR, *Ratification Status for South Sudan*, UN HUM. RTS. TREATY BODIES, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=215&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=215&Lang=en) [<https://perma.cc/8VNX-BTJK>].

466. CONSTITUCIÓN ESPAÑOLA [C.E.], B.O.E. n. 311, Dec. 29, 1978, arts. 17(3), 24(2) (Spain). The constitution provides that “validly concluded international treaties, once officially published . . . shall form part of the internal legal order.” *Id.* art. 96(1). Spain has also ratified the ICCPR and the ECHR. *Status of Treaties: ICCPR*, *supra* note 310; *Signatures and Ratifications of European Convention on Human Rights*, *supra* note 313; *see also* Int'l Hum. Rts. Instruments, Core Document Forming an Integral Part of the Reports of States Parties: Spain, ¶ 33, U.N. Doc. HRI/CORE/1/Add.2/Rev.2 (1995) (“Covenant has been fully incorporated into internal legislation in Spain,” with reference to article 96(1)).

467. ŚRĪ LANKĀ ĀNDUKRAMA VYAVASTHĀVA [CONSTITUTION] Sept. 7, 1978, art. 13(1) (Sri Lanka). The constitution provides that “[t]he State . . . shall endeavour to foster respect for international law and treaty obligations in dealings among nations.” *Id.* art. 27(15). Sri Lanka has also acceded to the ICCPR. *Status of Treaties: ICCPR*, *supra* note 310.

468. DUSTUR ALSUWDAN [CONSTITUTION] Aug. 4, 2019, art. 51(2) (Sudan). The constitution provides that “[a]ll rights and freedoms contained in international human rights agreements . . . ratified . . . shall be considered an integral part of this document.” *Id.* art. 41(2). Sudan has also acceded to the ICCPR. *Status of Treaties: ICCPR*, *supra* note 310; *see also* Hum. Rts. Comm., Third Periodic Reports of States Parties Due in 2001: Sudan, ¶ 121, U.N. Doc. CCPR/C/SDN/3 (2007) (Sudan stating all articles of ICCPR became binding and enforceable constitutional articles under 2005 Interim National Constitution, article 27(3)).

469. The constitution provides that “provisions of the agreements [based on international law] . . . shall become effective upon promulgation.” GRONDWET VAN SURINAME [CONSTITUTION] Sept. 30, 1987, art. 105 (Surin.). Suriname has acceded to the ICCPR and the ACHR. *Status of Treaties: ICCPR*, *supra* note 310; *Signatories and Ratifications of American Convention on Human Rights*, *supra* note 316. *See generally* GRONDWET VAN SURINAME Sept. 30, 1987, art. 103 (agreements shall not enter into force without proper adherence to process involving political bodies).

470. CONSTITUTION OF THE KINGDOM OF SWAZILAND, 2005, art. 16(2), (6)(a). The constitution provides that “an international agreement . . . shall be subject to ratification and become binding on the government” and “[u]nless it is self-executing, an international agreement becomes law . . . only when enacted into law by Parliament.” *Id.* art. 238(2), (4). Swaziland has also acceded to the ICCPR. *Status of Treaties: ICCPR*, *supra* note 310.

471. Sweden ratified the ICCPR, and Constitution incorporates by reference the ECHR to which Sweden is a party. *Status of Treaties: ICCPR*, *supra* note 310; *Signatures and Ratifications of European Convention on Human Rights*, *supra* note 313; *see* REGERINGSFORMEN [RF] [CONSTITUTION] 2:19 (Swed.); *see also* Hum. Rts. Comm., Initial Reports of States Parties Due in 1977: Addendum: Sweden, ¶¶ 1, 2(ii), U.N. Doc. CCPR/C/1/Add.9 (1977) (Sweden stating Covenant entered into force but did not require enactment of new legislation).

472. BUNDESVERFASSUNG [BV] [CONSTITUTION] Apr. 18, 1999, SR 101, art. 31, ¶ 2 (Switz.); *id.* art. 32, ¶ 2. The constitution provides that “[t]he Confederation and the Cantons shall respect international law.” *Id.* art. 5, ¶ 4. Switzerland has also acceded to the ICCPR and ratified the ECHR. *Status of Treaties: ICCPR*, *supra* note 310; *Signatures and Ratifications of European Convention on Human Rights*, *supra* note 313; *see also* BUNDESVERFASSUNG [BV] Apr. 18, 1999, SR 101, art. 190 (judicial authorities apply international law).

473. DUSTUR ALJUMHURIAT ALEARABIAT ALSUWRIA [CONSTITUTION] Feb. 27, 2012, art. 53(3) (Syria). Syria also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR*, *supra* note 310. *But see* Hum. Rts. Comm., Second Periodic Reports of States Parties Due in 1984: Syrian Arab Republic, ¶ 4, U.N. Doc. CCPR/C/SYR/2000/2 (2000) (Syria referring to its accession to the ICCPR under Legislative Decree No. 3 and “Covenant became part of its domestic legislation”).

474. MINGUO XIANFA [CONSTITUTION] art. 8 (1947) (Taiwan).

475. Hum. Rts. Comm., Third Periodic Report Submitted by Tajikistan Under Article 40 of the Covenant, due in 2017, ¶ 56, U.N. Doc. CCPR/C/TJK/3 (2017) (citing the 2016 amendment of the CODE OF CRIMINAL PROCEDURE, providing that a defendant’s family be immediately notified of arrest). The constitution provides that “[i]nternational legal documents recognized by Tajikistan shall be a component part of the legal system of the republic . . . [and] come into force after their official publication.” KONSTITUTSIJAI ÇUMHURII TOÇIKISTON [CONSTITUTION] Nov. 6, 1994, art. 10 (Taj.). *Cf.* Hum. Rts. Comm., Third Periodic Report Submitted by Tajikistan Under Article 40 of the Covenant, Due in 2017, ¶¶ 12–13, U.N. Doc. CCPR/C/TJK/3 (2017) (Tajikistan referring to a Supreme Court decision that holds international instruments are of direct and immediate effect). Tajikistan has also acceded to the ICCPR. *Status of Treaties: ICCPR*, *supra* note 310.

476. THE CRIMINAL PROCEDURES ACT Nov. 1, 1985, § 23(1) (Tanz.). Tanzania has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR*, *supra* note 310. *Cf.* Hum. Rts. Comm., Initial Reports of States Parties Due in 1977: United Republic of Tanzania, at 4, U.N. Doc. CCPR/C/1/Add.48 (1979) (Tanzania stating no internal laws needed to enforce Covenant because rights are adequately protected by the Constitution).

477. Hum. Rts. Comm., Second Periodic Reports of States Parties Due in 2009: Thailand, ¶ 107(b), U.N. Doc. CCPR/C/THA/2 (2015) (citing CRIMINAL PROCEDURE CODE §§ 83(2), 84(1) (Thai.)). Thailand has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR*, *supra* note 310. *Cf.* Hum. Rts. Comm., Second Periodic Reports of States Parties Due in 2009: Thailand, ¶ 7, U.N. Doc. CCPR/C/THA/2 (2015) (Thailand stating articles of Covenant already found in Thai Laws). Thailand’s Constitution previously had an explicit provision for right to notice, but the most recent version guarantees due process generally. *Compare* RATTHATHAMMANUN HAENG RATCHA-ANACHAK THAI [CONSTITUTION] Oct. 11, 1997, § 237 (explicit right to notice) *with* RATTHATHAMMANUN HAENG RATCHA-ANACHAK THAI [CONSTITUTION] Apr. 6, 2017, §§ 28–29. It is likely that the newer, broader due process provisions encompass the older, more explicit right.

478. CONSTITUIÇÃO DA REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE [CONSTITUTION] May 20, 2002, § 30(3) (Timor-Leste).

479. CONSTITUTION TOGOLAISE DE LA QUATRIÈME REPUBLIQUE [CONSTITUTION] Oct. 14, 1992, art. 17 (Togo). The constitution incorporates by reference the ICCPR, to which Togo is a party. *Id.* at pmb.; *Status of Treaties: ICCPR, supra* note 310. *See also* CONSTITUTION TOGOLAISE DE LA QUATRIÈME REPUBLIQUE Oct. 14, 1992, arts. 138, 140 (treaties relative to status of persons and rights of Man take effect after ratification and are superior to domestic laws). *Cf.* Int'l Hum. Rts. Instruments, Core Document Forming Part of State Party Reports: Togo, ¶ 69, U.N. Doc. HRI/CORE/1/Add.38/Rev.1 (1996).

480. CONSTITUTION OF TONGA Jan. 26, 2014, art. 11.

481. CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO Aug. 1, 1976, art. 2(c)(i). Trinidad and Tobago has also acceded to the ICCPR and ratified the ACHR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316; *see* Hum. Rts. Comm., Third and Fourth Periodic Reports of States Parties Due in 1990 and 1995 Respectively: Addendum: Trinidad and Tobago, ¶ 81, U.N. Doc. CCPR/C/TTO/99/3 (2000) (Trinidad and Tobago stating international law provisions need to be “expressly transformed by Act of Parliament”).

482. DUSTUR TUNIS [CONSTITUTION] Jan. 26, 2014, art. 29 (Tunis.). The constitution provides that “[i]nternational agreements approved . . . have a status superior to that of laws and inferior to that of the Constitution.” *Id.* art. 20. Tunisia has also ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* Hum. Rts. Comm., Fifth Periodic Report: Tunisia, at 2, U.N. Doc. CCPR/C/TUN/5 (2007) (Act No. 68-30 of Nov. 29, 1968 approved accession to ICCPR).

483. TÜRKIYE CUMHURİYETİ ANAYASASI [CONSTITUTION] Nov. 7, 1982, art. 19 (Turk.). The constitution provides that “[i]nternational agreements duly put into effect have the force of law.” *Id.* at 90. Turkey has also ratified the ICCPR and the ECHR. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313; *see also* Hum. Rts. Comm., Initial Reports of States Parties: Turkey, ¶ 2, U.N. Doc. CCPR/C/TUR/1 (2011) (confirming that the Covenant has direct effect in Turkish law).

484. Hum. Rts. Comm., Second Periodic Report of States Parties Due in 2015: Turkmenistan, ¶ 147, U.N. Doc. CCPR/CTKM/2 (2015) (citing CODE OF CRIMINAL PROCEDURE art. 13 (Turkm.)). The constitution provides that “[r]ights and freedoms of a person . . . shall be recognized in accordance with the universally recognized norms of international law.” TÜRKMENİSTANYŇ KONSTITUSIÝASY [CONSTITUTION] May 18, 1992, art. 25 (Turkm.). Turkmenistan has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

485. CONSTITUTION OF TUVALU Oct. 1, 1986, arts. 17(3), 22(3)(b).

486. CONSTITUTION OF THE REPUBLIC OF UGANDA Sept. 22, 1995, arts. 23(3), 28(3)(b). The constitution provides that “[t]he foreign policy of Uganda shall be based on the principles of respect for international law and treaty obligations.” *Id.* at § XXVIII(i)(b). Uganda has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* Hum. Rts. Comm., Initial Report: Uganda, ¶¶ 52–54, U.N. Doc. CCPR/C/UGA/2003/1 (2003) (once Cabinet approves and Minister of Foreign Affairs ratifies a Covenant, the provisions are incorporated into domestic law unless review of Constitution necessary).

487. KONSTYTUTSIYA UKRAYINY [CONSTITUTION] June 28, 1996, art. 29 (Ukr.). The constitution provides that “[i]nternational treaties that are in force, agreed to be binding . . . are part of the national legislation of Ukraine.” *Id.* art. 9. Ukraine has also ratified the ICCPR

and the ECHR. *Status of Treaties: ICCPR*, *supra* note 310; *Signatures and Ratifications of European Convention on Human Rights*, *supra* note 313.

488. See Hum. Rts. Comm., Initial Reports of States Parties Due in 1977: Addendum: United Kingdom of Great Britain and Northern Ireland, at 7, U.N. Doc. CCPR/C/1/Add.17 (1977) (UK stating in general, an arrested person must be informed on ground of arrest without reference to specific law). The United Kingdom has also ratified the ICCPR and the ECHR. *Status of Treaties: ICCPR*, *supra* note 310; *Signatures and Ratifications of European Convention on Human Rights*, *supra* note 313; see Hum. Rts. Comm., Fifth Periodic Report of States Parties in 1999: United Kingdom of Great Britain and Northern Ireland, ¶ 2, U.N. Doc. CCPR/C/UK/99/5 (2000) (referring to Human Rights Act 1998 which incorporates ECHR into UK law); see discussion on Act's level of authority *supra*, note 25.

489. See U.S. CONST. amends. V, XIV. The constitution provides that "Treaties made . . . shall be the supreme Law of the Land." U.S. CONST. art. VI, cl. 2. The United States has also ratified the ICCPR, is only a signatory to the ACHR. *Status of Treaties: ICCPR*, *supra* note 310; *Signatories and Ratifications of American Convention on Human Rights*, *supra* note 316. *But see* International Covenant on Civil and Political Rights, Oct. 5, 1977, S. TREATY DOC. No. 95-20, §§ II(5), III(2) (1992) (Covenant articles 1–27 are not self-executing but implemented through legislative and judicial means).

490. CÓDIGO DEL PROCESO PENAL [CODE OF PENAL PROCEDURE] art. 65(a), (f) (Uru.). Uruguay ratified the ICCPR and the ACHR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR*, *supra* note 310; *Signatories and Ratifications of American Convention on Human Rights*, *supra* note 316. *But see* Hum. Rts. Comm., Sixth Periodic Report Submitted by Uruguay Under Article 40 of the Covenant Pursuant to the Optional Reporting Procedure, Due in 2019, ¶ 16, U.N. Doc. CCPR/C/URY/6 (2019) (Uruguay stating that the ACHR is part of country's legal order).

491. CODE OF CRIMINAL PROCEDURE art. 46 (Uzb.). The constitution provides that "recognizes priority of the generally accepted norms of the international law." O'ZBEKISTON RESPUBLIKASI KONSTITUTSIYASI [CONSTITUTION] Dec. 8, 1992, pmbl. (Uzb.). Uzbekistan has also acceded to the ICCPR. *Status of Treaties: ICCPR*, *supra* note 310; see also Hum. Rts. Comm., Second Periodic Report: Uzbekistan, ¶ 16, U.N. Doc. CCPR/C/UZB/2004/2 (2004) (Uzbekistan stating rights in ICCPR "reflected in the Constitution and other laws"). See generally Hum. Rts. Comm., Third Periodic Reports of States Parties: Uzbekistan, ¶ 132, U.N. Doc. CCPR/C/UZB/3 (2008) (Uzbekistan commenting on an "analysis of the domestic legislation underpinning and giving effect to the primacy of international law over national law"); *id.* ¶ 138 (referencing International Treaties Act of 25 December 1995 that subject its treaties to direct and mandatory application).

492. CONSTITUTION OF VANUATU July 30, 1980, art. 5(2)(c). Vanuatu has also ratified the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR*, *supra* note 310.

493. Vatican City acknowledges its application of "the general regulations and local regulations of the province and government of Rome" in the context of judicial work. Stephen Young and Alison Shea, *Separating State from Church: A Research Guide to the Law of the Vatican City State*, 99 L. LIBR. J. 589, 594 (2007) (citing Vatican City's Law of the Sources of the Law 2002, art. 3). *Cf.* World Factbook: Holy See (Vatican City), CENTRAL INTELLIGENCE AGENCY, [https://www.cia.gov/the-world-factbook/countries/holy-see-vatican-](https://www.cia.gov/the-world-factbook/countries/holy-see-vatican)

city/ [https://perma.cc/HXR4-HNTP] (most criminal matters handled by Republic of Italy courts).

494. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA Dec. 15, 1999, art. 49(1). The constitution provides that “treaties . . . relating human rights which have been executed and ratified by Venezuela have a constitutional rank, and prevail over internal legislation . . . [and] shall be immediately and directly applied by the courts and other organs.” *Id.* art. 23. Venezuela has also ratified the ICCPR and the ACHR. *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316; *see also* Hum. Rts. Comm., Third Periodic Reports of States Parties Due in 1993: Addendum: Venezuela, ¶¶ 12–15, 52, U.N. Doc. CCPR/C/VEN/98/3 (1998) (ICCPR and other international human rights instruments are self-executing).

495. Vietnam “conforms to the . . . international treaties in which [it] is a member.” HIẾN PHÁP NƯỚC CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM [CONSTITUTION] Jan. 1, 2014, art. 12. Vietnam acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* Hum. Rts. Comm., Third Periodic Report Submitted by Vietnam Under Article 40 of the Covenant, Due in 2004, ¶ 18, U.N. Doc. CCPR/C/VNM/3 (2018) (treaties prevail over domestic legislation, except for the Constitution).

496. DUSTUR ALYAMAN [CONSTITUTION] May 16, 1991, art. 48(c) (Yemen). Yemen “confirms its adherence to the . . . Principles of international Law which are generally recognized.” *Id.* art. 6. Yemen has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* Hum. Rts. Comm., Fourth Periodic Report: Yemen, ¶ 22, U.N. Doc. CCPR/C/YEM/2004/4 (2004) (citing article 6 of Yemen’s constitution to confirm that ICCPR is part of its legal system).

497. CONST. OF ZAMBIA (1996) § 13(2). Zambia also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310; *see* Hum. Rts. Comm., Third Periodic Report of States Parties Due in 1998: Zambia, ¶ 7, U.N. Doc. CCPR/C/ZMB/3 (2005) (“[The] rights contained in the Covenant accrue to every person in Zambia as . . . recognized in Article 11 of the Constitution.”).

498. CONSTITUTION OF ZIMBABWE Mar. 6, 2013, arts. 50(1)(a), (4)(d), (5)(a), 70(1)(b). The constitution provides that “[w]hen interpreting legislation, every court . . . must adopt any reasonable interpretation . . . consistent with customary international law applicable in Zimbabwe” and that “[c]ustomary international law is part of the law of Zimbabwe.” *Id.* art. 326. Zimbabwe has also acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310; *see also* CONSTITUTION OF ZIMBABWE Mar. 6, 2013 art. 46(1)(c), (e) (court must take into account international law and all treaties party to when interpreting declaration of rights).

499. In particular, the following seven states do not guarantee the right to notice: Bhutan, Brunei Darussalem, China, Comoros, Myanmar, Saudi Arabia, and United Arab Emirates.

500. QĀNŪN-I ASAŠĪ-I AFGHĀNISTĀN Jan. 26, 2004, arts. 27, 31 (Afg.). Afghanistan acceded to and observes the ICCPR, with relevant provision in article 14, paragraph 3(a). *See id.* art. 7; *Status of Treaties: ICCPR, supra* note 310.

501. KUSHTETUTA E REPUBLIKËS SË SHQIPËRISË Nov. 28, 1998, arts. 33, 42 (Alb.). Albania has also acceded to the ICCPR, implemented through Law No. 7510, and acknowledges ratified international agreements as binding and effective. *Id.* arts. 5, 116(1)(b); Hum. Rts. Comm., Second Periodic Reports of States Parties: Albania, ¶ 1, U.N. Doc. CCPR/C/ALB/2 (2011); *Status of Treaties: ICCPR, supra* note 310.

502. Algeria has ratified the ICCPR and treats ratified international treaties superior to domestic law. *Status of Treaties: ICCPR, supra* note 310; DUSTUR ALJAZAYIR Feb. 23, 1989, arts. 56, 169 (Alg.).

503. CONSTITUCIÓ DEL PRINCIPAT D'ANDORRA Apr. 28, 1993, art. 10 (Andorra).

504. CONSTITUIÇÃO DE ANGOLA Jan. 21, 2010, art. 72.

505. CONSTITUTION OF ANTIGUA AND BARBUDA Oct. 31, 1981 art. 15(8).

506. Art. 18, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

507. HAYASTANI HANRAPETUTYAN SAHMANADRUTYUN June 16, 2015, arts. 50, 63 (Arm.).

508. HUMAN RIGHTS ACT 2019 § 31(1) (Act No. 5/2019) (Austl.). Australia ratified the ICCPR and notes that ICCPR's application influences domestic law without having to incorporate it through legislation or a constitutional provision. *See* Hum. Rts. Comm., Sixth Periodic Reports of States Parties Due in 2013: Australia, ¶ 28, U.N. Doc. CCPR/C/AUS/6 (2016); *Status of Treaties: ICCPR, supra* note 310.

509. BUNDESVERFASSUNGSGESETZ ÜBER DEN SCHUTZ DER PERSÖNLICHEN FREIHEIT [THE FEDERAL CONSTITUTIONAL ACT ON THE PROTECTION OF PERSONAL LIBERTY] No. 684/1988, as amended, arts. 3, 4, 6, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000950> (Austria).

510. HAYASTANI HANRAPETUTYAN SAHMANADRUTYUN Nov. 12, 1995, arts. 60, 67(2), 127(II) (Azer.).

511. CONSTITUTION OF THE COMMONWEALTH OF THE BAHAMAS Jul. 9th, 1973, art. 20(1). The Bahamas has also ratified the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

512. HAYASTANI HANRAPETUTYAN SAHMANADRUTYUN Feb. 14, 2002, art. 20(c) (Bahr.). Bahrain has also acceded to the ICCPR through Act No. 56 of 2006, which was published in the Official Gazette on Aug. 16, 2006, giving it force of law. Hum. Rts. Comm., *supra* note 322, ¶ 1; *Status of Treaties: ICCPR, supra* note 310.

513. GAṄAPRAJĀTANTRĪ BĀNLĀDĒŚĒRA SAMBIDHĀNA Nov. 4, 1972, art. 35(3) (Bangl.). Bangladesh has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310; *see* Hum. Rts. Comm., *supra* note 323, ¶ 8, U.N. Doc. CCPR/C/BGD/1 (2015) (explaining the need to pass a statute to make a treaty effective but does not mention a corresponding statute for the ICCPR).

514. CONSTITUTION OF BARBADOS Nov. 26, 1966, art. 18(1). Barbados has also acceded to the ICCPR and ACHR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316.

515. Hum. Rts. Comm., Fifth Periodic Report Submitted by Belarus Under Article 40 of the Covenant Pursuant to the Optional Reporting Procedure, Due in 2016, ¶¶ 266–79, U.N. Doc. CCPR/BLR/5 (2017). Belarus has also ratified the ICCPR and ensures that its laws comply. *Status of Treaties: ICCPR, supra* note 310; *see* KANSTYTUCYJA RESPUBLIKI BIELARUŚ May 9, 1994, arts. 8, 25, 26 (Belr.).

516. Belgium has ratified the ICCPR and ECHR, both of which are in effect. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313; see 1994 CONST. art. 167, §§ 2, 12, 13, 14 (Belg.).

517. BELIZE CONSTITUTION Sept. 21, 1981, art. 6(2). Belize has acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

518. Benin references common law cases as evidence of the right to hearing in its legal system. Hum. Rts. Comm., *supra* note 328, ¶ 67(c), U.N. Doc. CCPR/C/BEN/2004/1/Add.1 (2004) (citing decision DCC 97-011 of 6 March 1997, in the case of Jean-Marie Houmenou, Recueil 1997, pp. 49–51; decision DCC 98-059 of 4 June 1999, in the case of Vincent Ekpagouda, Recueil 1999, pp. 291–293; decision DCC 00-041 of 29 June 2000, in the case of Raymond Issa Ali, Kpara Recueil 2000, pp. 151–53). Benin has also acceded to the ICCPR and holds international instruments superior to domestic law. *Status of Treaties: ICCPR, supra* note 310; CONSTITUTION DE LA RÉPUBLIQUE DU BÉNIN Dec. 11, 1990, arts. 17, 147.

519. THE CIVIL AND CRIMINAL PROCEDURE CODE OF BHUTAN Nov. 26, 2004, § 4. ‘DRUK-GI CHA-THRIMS-CHEN-MO Jul. 18, 2008, art. 7 ¶ 16, art. 21 ¶ 1 (Bhutan).

520. CONSTITUCIÓN POLÍTICA DEL ESTADO Feb. 7, 2009, arts. 115, 120 (Bol.).

521. CRIMINAL PROCEDURE CODE OF BOSNIA AND HERZEGOVINA arts. 7, 13 (Bosn. & Herz.). Bosnia and Herzegovina is also a party to the ICCPR through succession and has ratified the ECHR; it holds the ECHR priority over all other law and specifically names ICCPR as applicable in the State. USTAV BOSNE I HERZEGOVINE Dec. 14, 1995, arts. 2(2), 3(e) 4(3)(b), ann. I, ¶ 7 (Bosn. & Herz.); *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313.

522. CONSTITUTION OF BOTSWANA Sept. 30, 1966, art. 10(1). Botswana has also ratified the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

523. CONSTITUIÇÃO FEDERAL [C.F.] Oct. 5, 1988, art. 5(LV). (Braz.)

524. CRIMINAL PROCEDURE CODE Oct. 1, 2001, § 1 (Brunei). MAGISTRATES’ RULES (CIVIL PROCEDURE) RULES Jan. 31, 2001, § 42 (Brunei).

525. KONSTITUTSIA NA REPUBLIKA BALGARIA July 13, 1991, art. 31(4), 121(1) (Bulg.). Bulgaria has also ratified the ICCPR and incorporates it into domestic law. See *id.* art. 5(4); *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313; see also Hum. Rts. Comm., *supra* note 333, ¶ 255, (citing RULES ON APPLICATION OF THE LAW ON MINISTRY OF INTERIOR art. 63 (Bulg.)).

526. Burkina Faso has acceded to the ICCPR and holds treaties superior to domestic law. *Status of Treaties: ICCPR, supra* note 310; CONSTITUTION DU BURKINA FASO June 2, 1991, art. 151.

527. Burundi has acceded to the ICCPR which is in effect. *Status of Treaties: ICCPR, supra* note 310; see CONSTITUTION DE LA RÉPUBLIQUE DU BURUNDI June 7, 2018, arts. 19, 38, 39.

528. Hum. Rts. Comm., Second Periodic Reports of States Parties Due in July 2002: Cambodia, ¶ 132, U.N. Doc. CCPR/C/KHM/2 (2013); *Id.* ¶ 132 (stating that the principle of fair trial provides the accused with the right to be tried publicly through a protection and guarantee of fundamental right); RODTHATHOMMONOUNH NH NEI PRAHREACHEANEACHAKR KAMPOUCHEA Sept. 21, 1993, arts. 38(8), 128(2), 129 (Cambodia). Cambodia has also



acceded to the ICCPR and recognizes and respects human rights in international covenants. *Status of Treaties: ICCPR, supra* note 310; RODTHATHOMMONOUNHNIH NEI PREAHREACHEANEACHAKR KAMPOUCHEA, art. 31.

529. CRIMINAL PROCEDURE CODE § 8(2) (Cameroon). Cameroon has also acceded to the ICCPR and holds treaties superior to domestic law. *Status of Treaties: ICCPR, supra* note 310; CONSTITUTION DE LA RÉPUBLIQUE DU CAMEROUN, June 2, 1972, art. 45 (Cameroon).

530. CONSTITUTION ACT, 1982, *being* Schedule B to the Canada Act, 1982, c 11 (U.K.) art. 11(b), (d). Canada has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310.

531. CONSTITUIÇÃO DA REPÚBLICA DA CABO VERDE Sept. 28, 1992, arts. 19(a), 20(1). Cape Verde has also acceded to and published the ICCPR through Law 75/IV/92 and holds ratified international law superior to domestic law. *Id.* art. 11(1)–(4); *Status of Treaties: ICCPR, supra* note 310; Human Rights Comm, *supra* note 341, ¶ 141.

532. CONSTITUTION DE LA RÉPUBLIQUE CENTRAFRICAINE March 27, 2016, art. 4 (Cent. Afr. Rep.). Central African Republic has acceded to the ICCPR and adheres to ratified conventions. *See id.* pmbl.; *Status of Treaties: ICCPR, supra* note 310.

533. CONSTITUTION DE LA RÉPUBLIQUE DU TCHAD March 31, 1996, arts. 24, 25 (Chad). Chad has also acceded to the ICCPR and holds treaties superior to domestic law. *See id.* art. 225; *Status of Treaties: ICCPR, supra* note 310. Hum. Rts. Comm., *supra* note 341, ¶ 328, U.N. Doc. CCPR/C/TCD/2 (2012) (stating that laws on the justice system and procedural laws contain many provisions guaranteeing a fair hearing).

534. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE art. 19(3). Chile has also ratified the ICCPR, promulgated through Decree No. 778 of the Ministry of Foreign Affairs in 1976 and published and given full force of law in 1989, and the ACHR. *See id.* art. 5; *Status of Treaties: ICCPR, supra* note 310.

535. XIANFA art. 130 (1982) (China). China is a signatory to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

536. Colombia has ratified the ICCPR and holds treaties superior to domestic law. *Status of Treaties: ICCPR, supra* note 310; CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] arts. 93–94. *Id.* art. 29 (due process of law).

537. CONSTITUTION DE LA UNION DES COMORES Jul. 30, 2016, art. 15 (Comoros).

538. CONSTITUTION DE LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO Feb. 18, 2006, arts. 19–21 (Dem. Rep. Congo). Democratic Republic of the Congo has also acceded to the ICCPR and holds treaties superior to domestic law. *Id.* art. 215; *Status of Treaties: ICCPR, supra* note 310.

539. CONSTITUTION DE LA RÉPUBLIQUE DU CONGO Nov. 6, 2015, art. 9 (Congo). Republic of the Congo has also acceded to the ICCPR and holds treaties superior to domestic law. *Id.* art. 223; *Status of Treaties: ICCPR, supra* note 310.

540. CODE OF CRIMINAL PROCEDURE art. 4 (Costa Rica). CONSTITUCIÓN POLÍTICA DE COSTA RICA, Nov. 7, 1949, arts. 39, 41. Costa Rica has also ratified the ICCPR and ACHR and holds treaties superior to domestic law. *See id.* art. 7; *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316.

541. CONSTITUTION IVOIRIENNE Nov. 8, 2017, art. 7 (Côte d'Ivoire). Côte d'Ivoire has also acceded to the ICCPR and holds treaties superior to domestic law. *Id.* at pmb., art. 123; *Status of Treaties: ICCPR, supra* note 310.

542. USTAV REPUBLIKE HRVATSKE Dec. 22, 1990, arts. 25, 29 (Croat.). Croatia is also party to the ICCPR through succession and holds treaties superior to domestic law. *Id.* art. 134; *Status of Treaties: ICCPR, supra* note 310.

543. CONSTITUCIÓN DE LA REPÚBLICA DE CUBA April 10, 2019, art. 92, 93, 94(d)–(e).

544. ΣΥΝΤΑΓΜΑ ΤΗΣ ΚΥΠΡΙΑΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ Aug. 16, 1960, art. 12(5)(c) (Cyprus). Cyprus has also ratified the ICCPR and holds treaties superior to domestic law. *Id.* art. 169(2)–(3); *Status of Treaties: ICCPR, supra* note 310.

545. LISTINA ZÁKLADNÍCH PRÁV A SVOBOD [CHARTER OF FUNDAMENTAL RIGHTS AND BASIC FREEDOMS] art. 36(1) (Czech); Ústavní zákon č 1/1993 Sb., Ústava České Republiky [Constitution of the Czech Republic] art. 3. Czech Republic is also party to the ICCPR through succession and holds treaties superior to domestic law. *See id.* art. 10; *Status of Treaties: ICCPR, supra* note 310; *see also* Hum. Rts. Comm., *supra* note 351, ¶ 2.

546. THE CONSTITUTIONAL ACT OF DENMARK, June 5, 1953, art. 71(3).

547. CONSTITUTION DE LA RÉPUBLIQUE DE DJIBOUTI Sept. 15, 1992, art. 10(5) (Djib.). Djibouti acceded to the ICCPR and holds treaties superior to domestic law. *See id.* art. 70; *Status of Treaties: ICCPR, supra* note 310.

548. THE CONSTITUTION OF THE COMMONWEALTH OF DOMINICA Nov. 3, 1978, § 8(1). Dominica has also acceded to the ICCPR and the ACHR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316.

549. CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA June 13, 2015, art. 69(2) (Dom. Rep.). Dominican Republic has acceded to the ICCPR and ratified the ACHR. *See id.* art. 26(2); *Status of Treaties: ICCPR, supra* note 310; *Signatories and Ratifications of American Convention on Human Rights, supra* note 316. *See also* Hum. Rts. Comm., *supra* note 355, ¶ 4.

550. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR Oct. 20, 2008, arts. 75, 76, 169. Ecuador has acceded to the ICCPR and adheres to ratified conventions. *See id.* art. 417; *Status of Treaties: ICCPR, supra* note 310.

551. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT Jan. 14, 2014, arts. 96, 97, 98. Hum. Rts. Comm., *supra* note 357, ¶ 402. Egypt has acceded to the ICCPR and does not have any constitutional provisions explaining the effect of international treaties. *Status of Treaties: ICCPR, supra* note 310.

552. CONSTITUCIÓN DE LA REPÚBLICA DE EL SALVADOR Dec. 20, 1983, arts. 11–12 (El Salv.). El Salvador has acceded to the ICCPR and ACHR but there are no constitutional provisions explaining the effect of international treaties. Hum. Rts. Comm., Seventh Periodic Reports of States Parties Due in 2016: El Salvador, ¶ 1(5), U.N. Doc. CCPR/C/SLV/7 (2016) (stating that court cases citing international treaties reinforce the right to a defense/trial); *see also Status of Treaties: ICCPR, supra* note 310.

553. CONSTITUCIÓN DE GUINEA ECUATORIAL Aug. 15, 1982, art. 13(1)(j) (Eq. Guinea). Equatorial Guinea has acceded to the ICCPR and the African Charter of Human and People's Rights (African Charter). *Status of Treaties: ICCPR, supra* note 310.

554. K'IWAMI ĒRITIRA May 23, 1997, art. 17(6) (Eri.). *See also id.* art. 26(3) (express provisions protected from derogation. The provisions protecting the right to notice and the right to a fair hearing are not protected from derogation). Eritrea has acceded to the ICCPR and the African Charter. *Status of Treaties: ICCPR, supra* note 310.

555. EESTI VABARIIGI PÕHISEADUS Jun. 28, 1992, art. 15 (Est.). Estonia has acceded to the ICCPR and international treaties that conflict with laws or other domestic legislation take precedence. *See id.* art. 123; *Status of Treaties: ICCPR, supra* note 310.

556. YE'ITTYOP'ITYA FĒDĒRALAWĪ DĪMOKIRASIYAWĪ RĪPEBILĪKI HĪGE MENIGĪSITI Aug. 08, 1994, art. 20(1) (Eth.). The constitution provides that international treaties are an integral part of the fundamental law. *See id.* art. 9(4). Ethiopia has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310. Ethiopia has also enacted measures giving effect to the ICCPR. Hum. Rts. Comm., First Periodic Report of States Parties: Ethiopia, ¶ 15(d), U.N. Doc. CCPR/C/ETH/1 (2009) (citing ¶¶ 173–88 of the Common Core Document).

557. CONSTITUTION OF THE REPUBLIC OF FIJI Sept. 6, 2013, art. 14(2)(f). Fiji has acceded to the ICCPR and international treaties are given effect only after ratification by parliament. *See id.* § 51; *Status of Treaties: ICCPR, supra* note 310.

558. SUOMEN PERUSTUSLAKI Jun 11, 1999, § 21 (Fin.). Finland has ratified the ICCPR and ECHR, both of which are in effect. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313. International treaties “shall not endanger the democratic foundation of Finland.” *See* SUOMEN PERUSTUSLAKI, § 94.

559. France has ratified the ICCPR and ECHR, both of which are in effect. *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313. International treaties take precedence over Acts of Parliament. 1958 CONST., art. 55 (Fr.).

560. CONSTITUTION DE LA RÉPUBLIQUE GABONAISE Mar. 26, 1991, art. 1(4) (Gabon). Gabon has acceded to the ICCPR and adheres to international conventions after ratification by the legislature. *See id.* art. 133; *Status of Treaties: ICCPR, supra* note 310.

561. THE CONSTITUTION OF THE REPUBLIC OF GAMBIA 1997, Jan. 16, 1997, art. 24(1)(b). The constitution provides that international treaties will guide the state in pursuing its social objectives. *See id.* art. 216(3). Gambia has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

562. SAKARTVELOS K'ONSTITUTSIA Aug. 24, 1995, arts. 18(1), 31(1) (Geor.). Article 18(1) outlines an administrative right to a hearing and article 31(1) outlines a judicial right to a fair hearing. *Id.* Georgia has acceded to the ICCPR and international treaties hold precedence over domestic laws. *See id.* art. 4(5); *Status of Treaties: ICCPR, supra* note 310.

563. GRUNDGESETZ [GG] [BASIC LAW], translation at [http://www.gesetze-im-internet.de/englisch\\_gg/index.html](http://www.gesetze-im-internet.de/englisch_gg/index.html), art. 103(1). The constitution provides that international treaties take precedence over domestic laws. *Id.* art. 25. Germany has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310. The Federal Constitutional Court has also deemed the right to a fair trial to be a fundamental right (citing *BVerfGE* (Official collection of decisions of the Federal Constitutional Court) 57, 250, 274 et seq., *BVerfGE* 66, 313, 318, *BVerfGE* 89, 120, 129 in conjunction with arts. 2(1) and 20(3) of the Basic Law). Hum. Rts. Comm., Sixth Periodic Report: Germany, ¶ 6, U.N. Doc. CCPR/C/DEU/6 (2011).

564. CONSTITUTION OF THE REPUBLIC OF GHANA Apr. 28, 1992, art. 19(1). The constitution provides that Ghana follows the principles of international law. *See id.* art. 73. Ghana is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

565. 2001 SYNTAGMA [SYN] 2 arts. 6, 8, 20(2) (Greece). Greece has acceded to the ICCPR and international treaties have the force of the law after ratification by Parliament. *See id.* art. 36(3); *Status of Treaties: ICCPR, supra* note 310. Greek Law 4055/2012 aims to simplify the judicial process and ensures the access to justice. Hum. Rts. Comm., Second Periodic Reports of States Parties Due in 2009: Greece, ¶ 131, U.N. Doc. CCPR/C/GRC/2 (2014).

566. CONSTITUTION OF GRENADA Dec. 19, 1973, art. 8(1). Grenada has acceded to the ICCPR but does not have any provisions explaining the effect of international treaties. *Status of Treaties: ICCPR, supra* note 310.

567. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA May 31, 1985, art. 12(1). Guatemala has acceded to the ICCPR and follows the principles of international law. *See id.* art. 149; *Status of Treaties: ICCPR, supra* note 310.

568. CONSTITUTION DE LA GUINÉE May 7, 2010, art. 9(4) (Guinea). The constitution provides that international treaties are superior to domestic law. *See id.* art. 151. Guinea is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

569. CONSTITUIÇÃO DA REPÚBLICA DA GUINÉ-BISSAU May 16, 1984, art. 42(1) (Guinea-Bissau). The constitution provides that international treaties shape the interpretation of fundamental rights. *See id.* art. 29. Guinea-Bissau is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

570. CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA ACT Oct. 6, 1980, arts. 144(1), 144(8). The constitution provides that international treaties shall guide domestic legislation. *See id.* art. 39(2). Guyana is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

571. Hum. Rts. Comm., Initial Reports of States Parties: Haiti, ¶¶ 72–73, U.N. Doc. CCPR/C/HTI/1 (2013). *See also* CONSTITUTION D'HAÏTI May 9, 2011, arts. 24, 24.1, 24.3, 181 (Haiti); *id.* art. 276 (international treaties abrogate any constitutional provision inconsistent with the terms of the international treaty). Haiti has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

572. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE HONDURAS Jan. 11, 1982, art. 90. The constitution provides that international treaties have the force of domestic laws once ratified. *See id.* art. 16. Honduras is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

573. MAGYARORSZÁG ALAPTÖRVÉNYE [THE FUNDAMENTAL LAW OF HUNGARY], ALAPTÖRVÉNY, art. XXVIII(1). The constitution provides that international laws will have the same force as domestic laws while domestic law will conform to international norms. *See id.* art. Q(2)–(3). Hungary is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

574. STJÓRNARSKRÁ LÝÐVELDISINS ÍSLANDS Jun. 17, 1944, art. 70 (Ice.). Iceland is a signatory to and has ratified the ICCPR but has no constitutional provisions explaining the effect of international treaties. *Status of Treaties: ICCPR, supra* note 310.

575. India Const. art. 21. The constitution holds international treaties to the same status as domestic laws. *See id.* art. 253. India has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

576. Hum. Rts. Comm., *supra* note 382, ¶ 206. *See also* REPUBLIC OF INDONESIA LEGISLATION NUMBER 39 OF 1999 CONCERNING HUMAN RIGHTS, art. 17 (outlining a right to a hearing). Indonesia has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310. The constitution subjects international treaties to future regulation by domestic law. UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA TAHUN Aug. 18, 1945, art. 11(3) (Indon.).

577. ISLAHAT VA TAQYRATI VA TATMIMAH QANUNI ASSASSI [AMENDMENT TO THE CONSTITUTION] 1989, art. 34. The constitution provides that international treaties must be approved by the legislature before going into effect. *See id.* art. 77. Iran is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

578. Articles 19(3), 19(4), 19(5) Dustūr Jumh. ūrīyat al-'Irāq [The Constitution of the Republic of Iraq] of 2005. The constitution respects the obligations outlined in international treaties. *Id.* art. 8. Iraq is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310. .

579. CONSTITUTION OF IRELAND 1937, arts. 38(1), 40. The constitution provides that international treaties must be ratified before they go into effect. *See id.* art. 29(6). Ireland is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

580. §62(A), Criminal Procedure Law, *supra* note 386. Israel is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

581. Art. 24 COSTITUZIONE [COST.] (It.). The constitution conforms to recognized principles of international law. *Id.* art. 10(1). Italy is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

582. CONSTITUTION OF JAMAICA July 25, 1962, art. 16(1). Jamaica is a signatory to and has ratified the ICCPR and does not have any provisions explaining the effect of international treaties. *Status of Treaties: ICCPR, supra* note 310.

583. NIHONKOKU KENPŌ [KENPŌ], arts. 31, 32, 37 (Japan). The constitution provides that the country shall faithfully observe international treaties. *See id.* art. 98(2). Japan is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

584. DUSTUR ALMAMLAKAT AL'URDUNIYAT ALHASHMY Jan. 11, 1952, art. 101. The constitution provides that treaties need to be ratified before coming into force. *See id.* art. 33(2). Jordan is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

585. QAZAQSTAN RESPÝBLIKASYNYŇ KONSTITÝTSIASY Aug. 30, 1995, arts. 13, 77 (Kaz.). The constitution provides that international instruments superior to domestic law. *See id.* art. 4(3). Kazakhstan is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

586. CONSTITUTION OF KENYA Aug. 27, 2010, art. 50(1) (Kenya). The constitution incorporates international treaties into its domestic law. *See id.* art. 21(4). Kenya has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

587. CONSTITUTION OF KIRIBATI Jul. 12, 1979, art. 10(1).

588. CHOSŌN MINJUJUŪI INMIN KONGHWAGUK SAHOEJUŪI HŌNBŌP [CONSTITUTION] Dec. 27, 1972, art. 164 (guaranteeing the right to a defense) (N. Kor.). North Korea acceded to the ICCPR but later attempted to withdraw. *Status of Treaties: ICCPR, supra* note 310 n.8.

589. DAEHANMINKUK HUNBEOB [HUNBEOB] art. 27(3) (S. Kor.). The constitution provides that international treaties have the same force as domestic laws. *See id.* art. 6. The Republic of Korea has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

590. KUSHTETUTA E KOSOVËS Apr. 9, 2008, art. 31 (Kos.). Kosovo is not a party to the ICCPR or the ECHR but its constitution guarantees the rights enshrined in such instruments and gives international instruments priority over domestic law. *Id.* art. 22.

591. AD-DISTÛR AL-KUWAYTI Nov. 11, 1962, art. 34 (Kuwait). Kuwait has acceded to the ICCPR and the constitution does not affect international treaties or agreements to which Kuwait is a party. *Status of Treaties: ICCPR, supra* note 310.

592. KIRGIZ RESPUBLIKASININ KONSTITUTSIYASI Jun. 27, 2010, art. 40(1) (Kyrg). The constitution provides that international treaties hold the same force as domestic laws. *See id.* art. 6(3). Kyrgyzstan has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

593. LAW ON THE CRIMINAL PROCEDURE (Eng.) (Laos), Jan. 08, 2012, art. 14. LADTHATHAMMANUN [CONSTITUTION] Aug. 22, 1991, art. 96 (Laos). Laos is a signatory to and has ratified the ICCPR but does not have a constitutional provision explaining the effect of international treaties. *Status of Treaties: ICCPR, supra* note 310.

594. LATVIJAS REPUBLIKAS SATVERSME Feb. 15, 1922, art. 92 (Lat.). The constitution recognizes the rights enshrined in international instruments. *Id.* art. 89. *See also* Hum. Rts. Comm., Third Periodic Reports of States Parties: Latvia, ¶¶ 375–76, U.N. Doc. CCPR/C/LVA/3 (2012) (citing CRIMINAL PROCEDURE LAW OF THE REPUBLIC OF LATVIA, Jun. 20, 2018, art. 15; CIVIL PROCEDURE LAW (Latvia), Dec. 14, 2006, art. 1). Latvia has acceded to the ICCPR and recognizes the rights enshrined in international instruments. *Status of Treaties: ICCPR, supra* note 310.

595. Hum. Rts. Comm., Third Periodic Reports of States Parties Due in 1999: Lebanon, ¶¶ 91–93, U.N. Doc. CCPR/C/LBN/3 (2016) (citing CODE OF CIVIL PROCEDURE, Sept. 16, 1983, art. 7 (Leb.)). The State Shura Council enshrined the right to a fair trial in its Decision of 1 April 2014 (revoking decision that prevented lawyers from attending own client’s interrogation). *Id.* ¶ 93. The constitution provides that international treaties must be ratified before entering into force. DUSTUR LUBNAN [CONSTITUTION], May 26, 1928, art. 52 (Leb.). Lebanon has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

596. CONSTITUTION OF LESOTHO Apr. 2, 1993, art. 12(1). Lesotho has acceded to the ICCPR but has no provisions explaining the effect of international instruments. *Status of Treaties: ICCPR, supra* note 310.

597. CONSTITUTION OF THE REPUBLIC OF LIBERIA Jan 6, 1986, art. 20(1). Liberia holds the constitution as the supreme law of the land and treaties inconsistent with the constitution has no legal effect. *See id.* art. 2. Liberia is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

598. AL’HIELAN ALDSTWRY ALMUAQAT ALLIYBII Feb. 7, 2011, art. 31 (Libya). The constitution respects international instruments protecting human rights. *See id.* art. 7. Libya has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

599. VERFASSUNG DES FÜRSTENTUMS LIECHTENSTEIN Oct. 5, 1921, art. 33(3). The constitution provides that the government make measures to put international treaties into effect. *See id.* art. 92(2). Liechtenstein has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

600. LIETUVOS RESPUBLIKOS KONSTITUCIJA Oct. 25, 1992, art. 31(2) (Lith.). The constitution provides that international treaties ratified are a constituent part of the law of the land. *Id.* art. 138(2). Lithuania has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

601. LÉTZEBUERGER KONSTITUTION Oct. 17, 1868, arts. 88, 89 (Lux.) The constitution provides that any derogations of fundamental rights must be in conformity with international treaties. *Id.* art. 32(4). Luxembourg is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

602. CONSTITUTION DE LA QUATRIEME REPUBLIQUE Dec. 11, 2010, art. 13(6) (Madag.). The constitution provides that international instruments are superior to domestic laws. *See id.* art. 137(4). Madagascar is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

603. REPUBLIC OF MALAWI (CONSTITUTION) ACT May 18, 1994, arts. 42(2)(f), 43(1). The constitution provides that international instruments are part of the law of the land. *See id.* art. 211. Malawi has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

604. PERLEMBAGAAN PERSEKUTUAN MALAYSIA Sept. 16, 1963, art. 5(1), art. 8(1). *See also* *Goi Ching Ang v. Public Prosecutor*, [1999] 1 MLJ 507 (later approved by *Francis Antony v. PP*, [2005] 2 CLJ 481, emphasizing the need for a fair trial to ensure fairness and the importance of a fair procedure).

605. DHIVEHI RAAJJEYGE JUMHOORIYYAAGE QAANOON ASAASEE Aug. 7, 2008, art. 42(a) (Maldives). The constitution provides that international treaties are taken into consideration in court decisions. *See id.* art. 68. Maldives has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

606. CONSTITUTION DU REPUBLIQUE DU MALI Feb. 25, 1992, art. 9(4). The constitution provides that international instruments are superior to domestic law. *See id.* art. 116. Mali has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

607. Hum. Rts. Comm., Second Periodic Reports of States Parties: Malta, ¶ 213, U.N. Doc. CCPR/C/MLT/2 (2012) (citing *COSTITUZIONE DI MALTA* Sept. 21, 1964, art. 39(1)–(2)). The constitution provides that the legislature can enact laws that are in accordance with accepted international principles. *See id.* art. 65(1). Malta has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

608. CONSTITUTION OF THE REPUBLIC OF MARSHALL ISLANDS May 1, 1979, art. II § 4. The constitution provides that treaties entered after the effective date of the constitution shall not, of itself, have the force of law. *See id.* art. V § 1(4). The Marshall Islands has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

609. Hum. Rts. Comm., Initial Reports of States Parties: Mauritania, ¶¶ 147–48, U.N. Doc. CCPR/C/MRT/1 (2012) (citing *DUSTUR JUMHURIAT MURITANIA AL’IISLAMIA* Jul. 20, 1991, art. 13(2) (Mauritania); *CRIMINAL PROCEDURE CODE* art. 642 (Mauritania)). The constitution provides that international instruments are superior to domestic law. *See* *DUSTUR JUMHURIAT MURITANIA AL’IISLAMIA* Jul. 20, 1991, art. 80 (Mauritania); *Status of Treaties: ICCPR, supra* note 310.

610. LA CONSTITUTION DE MAURICE Mar. 12, 1968, arts. 10(1), 10(8) (Mauritius). Mauritius has acceded to the ICCPR but has no provisions explaining the effect of international instruments. *Status of Treaties: ICCPR, supra* note 310.

611. Hum. Rts. Comm., Fifth Periodic Report: Mexico, ¶¶ 568–69, U.N. Doc. CCPR/C/MEX/5 (2008) (citing *FEDERAL CODE OF CRIMINAL PROCEDURE*, arts. 86, 90 (Mex.)). *See also* *Constitución Política de los Estados Unidos Mexicanos*, CP, arts. 17(2), 20, *Diario Oficial de la Federación [DOF]* 05-02-1917, últimas reformas *DOF* 10-02-2014 (Mex.). The constitution provides that human rights interpretation will give the greatest possible

protection. *See id.* art. 1. Mexico has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

612. CONSTITUTION OF THE FEDERATED STATES OF MICRONESIA Oct. 1, 1978, art. IV §§ 3, 5.

613. CONSTITUȚIA REPUBLICII MOLDOVA Aug. 27, 1994, arts. 20, 26 (Article 20 details access to justice and article 26 details a right to a defense). The constitution gives priority to international instruments whenever there is a disagreement between domestic and international law. *See id.* art. 4(2). Moldova has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

614. CONSTITUTION DE LA PRINCIPAUTÉ DE MONACO Dec. 17, 1962, art. 19. Hum. Rts. Comm., *supra* note 420, ¶ 449, U.N. Doc. CCPR/C/MCO/2 (2007). The constitution provides that international treaties have the force of law after ratification. *Id.* art. 14. Monaco is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

615. MONGOL ULSYN ÜNDSÉN KHUULI Jan. 13, 1992, arts. 13, 14, 16(14) (Mong.). The constitution provides that international treaties have the force of law after they are ratified. *See id.* art. 10(3). Mongolia is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

616. USTAV CRNE GORE Oct. 19, 2007, art. 32 (Montenegro). The constitution provides that international instruments are superior to domestic legislation. *See id.* art. 9. Montenegro has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

617. DUSTUR ALMAMLAKAT ALMAGHRIBIA Jul. 29, 2011, arts. 118, 120 (Morocco). The constitution provides that Morocco complies with ratified conventions. *See id.* pmbl. Morocco is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

618. CONSTITUIÇÃO DA REPÚBLICA DE MOÇAMBIQUE Jun. 11, 2004, arts. 62(1), 65(1) (Mozam.). The constitution provides that ratified international instruments have the same force as domestic laws. *See id.* art. 18(2). Mozambique has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

619. PYIHTAUNGHCUSAMMATAMYANMARNINENGANTAW HPWALHCAEEPONEAAHKYAYHKANUPADAY [CONSTITUTION] May 9, 2008, art. 375 (Myan.).

620. CONSTITUTION OF THE REPUBLIC OF NAMIBIA Feb. 9, 1990, art. 12(1)(a). The constitution provides that international instruments have the force of the law of the land. *See id.* art. 144. Namibia has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

621. CONSTITUTION OF NAURU May 17, 1968, arts. 10(2), 10(9). Nauru is a signatory to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties. *Status of Treaties: ICCPR, supra* note 310.

622. EPĀLAKO SAMVIDHĀNA Sept. 20, 2015, art. 20(9) (Nepal). Nepal is committed to implementing principles of international law. *See id.* pmbl. Nepal has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

623. Gw. [CONSTITUTION], art. 17. The constitution provides that international instrument prevail in the case of conflict with domestic statutory law. *See id.* art. 94. The Netherlands is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

624. BILL OF RIGHTS ACT 1990, arts. 25(a), 27(3) (N.Z.). New Zealand is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

625. CONSTITUCIÓN POLITICA DE LA REPUBLICA DE NICARAGUA [Cn.] tit. IV, ch. I, art. 34(1), (2), LA GACETA, DIARIO OFICIAL [L.G.] 9 January 1987, as amended by Ley No. 854,



Feb. 8, 2014, Reforma Parcial a la Constitución Política de la República de Nicaragua, L.G. Feb. 18, 2014. The constitution promotes rights enshrined in international instruments. *See id.* art. 46. Nicaragua has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

626. CONSTITUTION DE LA RÉPUBLIQUE DU NIGER Nov. 25, 2010, art. 20. Niger has acceded to the ICCPR and hold international treaties are superior to domestic law. *See id.* art. 171; *Status of Treaties: ICCPR, supra* note 310.

627. CONSTITUTION OF NIGERIA May 5, 1999, arts. 36(1), 36(4). The constitution respects international treaty obligations. *See id.* art. 19(d). Nigeria has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

628. CODE OF CRIMINAL PROCEDURE FOR THE REPUBLIC OF NORTH MACEDONIA Nov. 18, 2010, art. 5. USTAV NA REPUBLIKA MAKEDONIJA Nov. 17, 1991, arts. 12, 13 (N. Maced.). The constitution provides that ratified international agreements form an integral part of the law of North Macedonia. *Id.* art. 122. North Macedonia is a party to the ICCPR by virtue of being a successor state of the former Republic of Yugoslavia. *Status of Treaties: ICCPR, supra* note 310.

629. KONGERIKET NORGES GRUNNLOV May 17, 1814, art. 95 (Nor.). Norway is a signatory to and has ratified the ICCPR and respects international treaties and treaties are not binding until ratification. *See id.* arts. 26, 92; *Status of Treaties: ICCPR, supra* note 310.

630. ALNIZAM AL'ASASII LILDAWLA [CONSTITUTION] Nov. 06, 1996, arts. 22, 25 (Oman).

631. Hum. Rts. Comm., Initial Reports of States Parties Due in 2011: Pakistan, ¶¶ 124–25, U.N. Doc. CCPR/C/PAK/1 (2015) (citing case law reaffirming the right to a fair trial: *Barkat Ali v. Additional Commissioner*, (2004) MLD 1633 (Pak.); *Muhammad Asghar Khan v. Mirza Aslam Baig*, (2013) PLD 1 (SC)). PAKISTAN CONST. art. 10A. Pakistan is a signatory to and has ratified the ICCPR but does not have any constitutional provisions explaining the effect of international treaties. *Status of Treaties: ICCPR, supra* note 310.

632. UCHETEMEL A LLACHER A BELUER A BELAU Apr. 02, 1999, art. IV § 7 (Palau). Palau is a signatory to the ICCPR but has no explicit constitutional provisions explaining the effect of international treaties. *Status of Treaties: ICCPR, supra* note 310.

633. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE PANAMÁ Oct. 11, 1972, arts. 22(b), 32. Panama is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

634. CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA Aug. 15, 1975, arts. 37(3), 37(11). Papua New Guinea has acceded to the ICCPR and courts can look to international treaties when determining the existence of rights. *See id.* arts. 39(3)(d), 39(3)(e); *Status of Treaties: ICCPR, supra* note 310.

635. CONSTITUCIÓN DE LA REPÚBLICA DEL PARAGUAY Jun. 20, 1992, arts. 16, 17(2). Paraguay has acceded to the ICCPR but holds the constitution superior to international treaties. *See id.* art. 137(1); *Status of Treaties: ICCPR, supra* note 310.

636. CONSTITUCIÓN POLÍTICA DEL PERÚ Oct. 31, 1993, arts. 139(3), 139(10) (Peru). Peru is a signatory to and has ratified the ICCPR and international treaties are part of the national law once they are in force. *See id.* art. 55; *Status of Treaties: ICCPR, supra* note 310.

637. CONST. (1987), art. III §§ 1, 16 (Phil.). PHILIPPINES' REVISED RULES OF CRIMINAL PROCEDURE, r. 115 § 1(h). The Philippines is a signatory to and has ratified the ICCPR and adopts the generally accepted principles of international law as part of the law of the land. *Status of Treaties: ICCPR, supra* note 310; CONST. (1987), art. II § 2.

638. Hum. Rts. Comm., Fifth Periodic Report: Poland, ¶¶ 264, 268, U.N. Doc. CCPR/C/POL/2004/5 (2004) (citing constitutional provisions guaranteeing a right to a fair trial in individual cases). CONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ Jul. 16, 1997, art. 45(1) (Pol.). Poland is a signatory to and has ratified the ICCPR and its constitution provides that international instruments are superior to domestic laws when reconciliation is not possible. *See id.* art. 91(2); *Status of Treaties: ICCPR, supra* note 310.

639. CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA Apr. 02, 1976, arts. 20(1), 32 (Port.). Portugal is a signatory to and has ratified the ICCPR and international treaties form an integral part of Portugal's law. *See id.* art. 8(1); *Status of Treaties: ICCPR, supra* note 310.

640. LAW NO. 10 OF 2003 PROMULGATING THE LAW ON JUDICIAL AUTHORITY, ch. 3, art. 15 (right to public trial in accordance with international fair trial standards). DASTÜR QATAR Jun. 4, 2004, art. 39 (Qatar). Qatar has acceded to the ICCPR and respects international charters and obligations. *Id.* art. 6; *Status of Treaties: ICCPR, supra* note 310.

641. CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ROMANIA Jul. 1, 2010, art. 8. CONSTITUȚIA ROMÂNIEI Dec. 08, 1991, arts. 21(3), 23, 24(1) (Rom.). Romania is a signatory to and has ratified the ICCPR and international treaties form part of the domestic law. *See id.* art. 11(2); *Status of Treaties: ICCPR, supra* note 310.

642. CRIMINAL PROCEDURE CODE OF THE RUSSIAN FEDERATION Dec. 18, 2001, art. 11(1). KONSTITUTSIJA ROSSIJSKOI FEDERATSII [KONST. RF] arts. 47, 48, 49 (Russ.). Russia is a signatory to and has ratified the ICCPR and international norms apply if there is a conflict with domestic law. *Id.* art. 15(4); *Status of Treaties: ICCPR, supra* note 310.

643. ITEGEKO NSHINGA RYA REPUBULIKA Y'U RWANDA May 26, 2003, art. 29. Rwanda has acceded to the ICCPR and holds the constitution as the supreme law of the land. *See id.* art. 95; *Status of Treaties: ICCPR, supra* note 310.

644. CONSTITUTION OF SAINT CHRISTOPHER AND NEVIS 1983, Jun. 22, 1983, arts. 10(1), 10(8).

645. CONSTITUTION OF SAINT LUCIA 1978, Dec. 20, 1978, arts. 8(1), 8(8). Saint Lucia is a signatory to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

646. CONSTITUTION OF SAINT VINCENT AND THE GRENADINES 1979, Jul. 26, 1979, arts. 8(1), 8(8). Saint Vincent and the Grenadines has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

647. O LE FAAVAE O LE MALO TUTOATASI O SAMOA Oct. 28, 1960, art. 9(1). Samoa has acceded to the ICCPR but has no provisions relating to the status of international treaties. *Status of Treaties: ICCPR, supra* note 310.

648. Hum. Rts. Comm., *supra* note 453, ¶ 122, U.N. Doc. CCPR/C/SMR/2 (2007) (citing DICHIARAZIONE DEI DIRITTI DEI CITTADINI E DEI PRINCIPI FONDAMENTALI DELL'ORDINAMENTO SAMMARINESE Jul. 8, 1974, arts. 9, 15 (San Marino)). San Marino has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

649. CONSTITUIÇÃO DA REPÚBLICA DEMOCRÁTICA DE SÃO TOMÉ E PRÍNCIPE Nov. 5, 1975, art. 20. São Tome and Príncipe is a signatory to and has ratified the ICCPR and holds international instruments are superior to domestic legislation. *Id.* art. 13(3); *Status of Treaties: ICCPR, supra* note 310.

650. LAW OF CRIMINAL PROCEDURES (SAUDI ARABIA) Oct. 16, 2001, art. 3.

651. CONSTITUTION DE LA RÉPUBLIQUE DU SÉNÉGAL Jan. 22, 2001, art. 9(4) (Sen.). Senegal is a signatory to and has ratified the ICCPR and holds international instruments are superior to domestic law. *See id.* art. 98; *Status of Treaties: ICCPR, supra* note 310.

652. USTAV REPUBLIKE SRBIJE Sept. 30, 2006, arts. 32(1), 33(6) (Serb.). Serbia succeeded the former Yugoslav Republic as a party to the ICCPR and international law shall form an integral part of the Serbian legal system. *See id.* art. 16(2); *Status of Treaties: ICCPR, supra* note 310.

653. CONSTITUTION OF THE REPUBLIC OF SEYCHELLES Jun. 21, 1993, arts. 19(1), 19(7). Seychelles has acceded to the ICCPR and interpretation of fundamental rights takes judicial notice of international instruments. *See id.* art. 48(a); *Status of Treaties: ICCPR, supra* note 310.

654. THE CONSTITUTION OF SIERRA LEONE Oct. 1, 1991, arts. 23(1), 23(2). Sierra Leone has acceded to the ICCPR but has no constitutional provisions relating to the status of international treaties. *Status of Treaties: ICCPR, supra* note 310.

655. CONSTITUTION OF THE REPUBLIC OF SINGAPORE Aug. 9, 1965, art. 9(1). The Singapore courts have recognised that the word “law” includes fundamental rules of natural justice.: Ong Ah Chuan v. Public Prosecutor (1979–1980) SLR(R) 710.

656. ÚSTAVA SLOVENSKEJ REPUBLIKY Sept. 1, 1992, arts. 46(1), 46(2) (Slovk.). The Slovak Republic succeeded the former Yugoslav Republic as a party to the ICCPR and holds international instruments are superior to domestic laws. *See id.* art. 11; *Status of Treaties: ICCPR, supra* note 310.

657. Hum. Rts. Comm., Initial Reports of States Parties Due in 1992: Addendum: Slovenia, ¶¶ 41–42, U.N. Doc. CCPR/C/74/Add.1 (1993) (listing constitutional provisions implementing the right to a fair trial). USTAVA REPUBLIKE SLOVENIJE Dec. 23, 1991, arts. 22, 23, 24, 25 (Slovn.). Slovenia succeeded the former Yugoslav Republic as a party to the ICCPR and domestic law must be in conformity with international law. *See id.* art. 8; *Status of Treaties: ICCPR, supra* note 310.

658. CONSTITUTION OF THE SOLOMON ISLANDS May 31, 1978, arts. 10(1), 10(8).

659. DASTUURKA JAMHURIYADDA FEDERAALKA SOOMAALIYA Aug. 1, 2012, arts. 33–34. Somalia has acceded to the ICCPR and is bound by international treaty obligations. *See id.* art. 140; *Status of Treaties: ICCPR, supra* note 310.

660. S. AFR. CONST., 1996, arts. 33–34. South Africa is a signatory to and has ratified the ICCPR and its constitution provides that international instruments are binding unless they are inconsistent with the constitution. *See id.* art. 202; *Status of Treaties: ICCPR, supra* note 310.

661. TRANSNATIONAL CONSTITUTION OF THE REPUBLIC OF SOUTH SUDAN 2011 Jul. 9, 2011, arts. 19(3), 20.

662. C.E. B.O.E. n. 311, Dec. 29, 1978, art. 24 (Spain). Spain is a signatory to and has ratified the ICCPR and its constitution provides that ratified treaties form an integral part of the law. *See id.* art. 96(1); *Status of Treaties: ICCPR, supra* note 310.

663. ŚRĪ LANKĀ ĀNDUKRAMA VYAVASTHĀVA Sept. 7, 1978, § 13(3) (Sri Lanka). Sri Lanka acceded to the ICCPR and its constitution provides that no action shall be made in contravention of such international instruments. *See id.* § 157; *Status of Treaties: ICCPR, supra* note 310.

664. DUSTUR ALSUWDAN Aug. 17, 2019, art. 51(3) (Sudan). Sudan has acceded to the ICCPR and its constitution provides that fundamental rights enshrined in international

instruments are an integral part of the land. *See id.* art. 41(2); *Status of Treaties: ICCPR, supra* note 310.

665. GRONDWET VAN SURINAME March 30, 1987, art. 10. Suriname has acceded to the ICCPR but its constitution provides that international agreements must be approved by the National Assembly before entering into force. *See id.* art. 103; *Status of Treaties: ICCPR, supra* note 310.

666. CONSTITUTION OF THE KINGDOM OF SWAZILAND Jul. 25, 2005, art. 21(1), (10). Swaziland has acceded to the ICCPR and treaties enter into force after an enactment by Parliament. *See id.* art. 238; *Status of Treaties: ICCPR, supra* note 310.

667. REGERINGSFORMEN [RF] 2:9–11 (Swed.). Sweden is a signatory to and has ratified the ICCPR and no domestic law can contravene Sweden's international treaty obligations and guarantees. *See id.* 2:23; *Status of Treaties: ICCPR, supra* note 310.

668. BUNDESVERFASSUNG [BV] Apr. 18, 1999, SR 101, arts. 29, 29a, 30(1) (Switz.). Switzerland has acceded to the ICCPR and its constitution provides that mandatory provisions of international law may not be violated. *See id.* arts. 193(4), 194(2); *Status of Treaties: ICCPR, supra* note 310.

669. DUSTUR ALJUMHURIAT ALEARABIAT ALSUWRIA Feb. 15, 2012, art. 51(2). The Syrian Arab Republic has acceded to the ICCPR but has no constitutional provisions regarding the hierarchy laws. *Status of Treaties: ICCPR, supra* note 310.

670. MINGUO XIANFA, art. 8 (1947) (Taiwan).

671. KONSTITUTSIJAI ĆUMHURII TOĆIKISTON Nov. 06, 1994, arts. 19, 21 (Taj.). Tajikistan incorporates the ICCPR by reference and has acceded to the ICCPR. *See id.* art. 10; *Status of Treaties: ICCPR, supra* note 310.

672. CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA Apr. 25, 1977, art. 13(6)(a). Tanzania has acceded to the ICCPR and incorporates it by reference. *Id.* art. 63(3)(e); *Status of Treaties: ICCPR, supra* note 310.

673. RATTHATHAMMANUN HAENG RATCHA-ANACHAK THAI Apr. 6, 2017, art. 25 (Thai.); *see also* THE CRIMINAL PROCEDURE CODE [THAILAND] Mar. 7, 1934, § 8(1). Thailand is a party to the ICCPR and incorporates it by reference. *Status of Treaties: ICCPR, supra* note 310.

674. CONSTITUIÇÃO DA REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE Mar. 22, 2002, §§ 26, 34(3). The constitution incorporates by reference the ICCPR to which Timor-Leste has acceded to as a party. *See id.* § 9; *Status of Treaties: ICCPR, supra* note 310.

675. CONSTITUTION TOGOLAISE DE LA QUATRIÈME REPUBLIQUE Sept. 27, 1992, art. 19(1) (Togo). The constitution provides that international instruments hold superiority over domestic laws. *See id.* art. 140. Togo has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

676. CONSTITUTION OF TONGA Nov. 4, 1875, art. 10, 14. Tonga has acceded to the ICCPR and incorporates the ICCPR by reference. *See id.* art. 39; *Status of Treaties: ICCPR, supra* note 310.

677. THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO Aug. 1, 1976, §§ 5(2)(e), 5(2)(f)(ii). Trinidad and Tobago has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

678. DUSTUR TUNIS Jan. 26, 2014, arts. 29, 108 (Tunis.). The constitution provides that international instruments are superior to laws and are inferior to constitution. *See id.* art. 20. Tunisia has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

679. TÜRKİYE CUMHURİYETİ ANAYASASI Nov. 7, 1982, arts. 36, 37 (Turk.). The constitution provides that international instruments prevail over laws. *See id.* art. 90. Turkey has acceded to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

680. TÜRKMENİSTANYŇ KONSTITUSIÝASY May 18, 1992, art. 34 (Turkm.). The constitution incorporates by reference the ICCPR to which Turkmenistan is a party. *See id.* art. 9; *Status of Treaties: ICCPR, supra* note 310.

681. THE CONSTITUTION OF TUVALU May 1, 1986, art. 22(2). The ICCPR applies to Tuvalu by virtue of its being a territory of The United Kingdom of Great Britain and Northern Ireland. *Status of Treaties: ICCPR, supra* note 310.

682. CONSTITUTION OF THE REPUBLIC OF UGANDA Sept. 22, 1995, art. 28(1). The constitution incorporates by reference the ICCPR to which Uganda is a party. *Id.* art. XXVIII(b). *Status of Treaties: ICCPR, supra* note 310. Article 44 of the constitution sets out sets out prohibitions on derogations of certain rights which includes the protections granted by the right to a fair hearing. CONSTITUTION OF THE REPUBLIC OF UGANDA Sept. 22, 1995, art. 44.

683. KONSTYTUTSIYA UKRAYINY Jun. 28, 1996, arts. 55, 129 (Ukr). The constitution incorporates by reference the ICCPR, to which Ukraine is a signatory to and has ratified. *See id.* art. 9; *Status of Treaties: ICCPR, supra* note 310.

684. DASTÜR DAWLAT AL-İMARĀT AL-‘ARABĪYA AL-MUTTAHĪDA Jul. 18, 1971, art. 28 (U.A.E.)

685. Human Rights Act c. 42 (U.K.) sch. 1, art. 6, ¶ 1. The United Kingdom is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

686. U.S. CONST. amends. V, VI. The United States is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

687. CONSTITUCIÓN DE LA REPÚBLICA ORIENTAL DEL URUGUAY Nov. 27, 1966, art. 12. Uruguay is a signatory to and has ratified the ICCPR and its constitution provides that the country combats social evils through international conventions. *See id.* art. 46; *Status of Treaties: ICCPR, supra* note 310.

688. O‘ZBEKISTON RESPUBLIKASI KONSTITUSIYASI Dec. 8, 1992, arts. 26, 44 (Uzb.). The constitution “recogniz[es] [the] priority of the generally accepted norms of the international law. *Id.* pmbl. Uzbekistan is a party to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

689. CONSTITUTION OF THE REPUBLIC OF VANUATU Jul. 30, 1980, art. 5(2)(a). Vanuatu is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

690. ACTA APOSTOLICAE SEDIS SUPPLEMENTO PER LE LEGGI E DISPOSIZIONI DELLO STATO DELLA CITTA’ DEL VATICANO Oct. 1, 2008, art. 3. (Vatican).

691. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA Dec. 15, 1999, arts. 49(3), 257 (Venez.). The constitution provides that treaties have constitutional rank and prevail over domestic legislation relating to human rights. *Id.* art. 23. Venezuela is a signatory to and has ratified the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

692. HIẾN PHÁP NƯỚC CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM Nov. 28, 2013, art. 31(2) (Viet.). Vietnam is a party to the ICCPR. *Status of Treaties: ICCPR, supra* note 310.

693. Hum. Rts. Comm., Fifth Periodic Report of States Parties: Yemen, ¶ 182, U.N. Doc. CCPR/C/YEM/5 (2009) (citing DUSTUR ALYAMAN May 16, 2001, arts. 49, 51 (Yemen)). The constitution incorporates by reference the ICCPR, to which Yemen acceded. *Status of Treaties: ICCPR*, *supra* note 310; DUSTUR ALYAMAN MAY 16, 2001, art. 6.

694. CONSTITUTION OF ZAMBIA Aug. 08, 1991, arts. 18(1), 18(9). The constitution incorporates by reference the ICCPR, to which Zambia is a party. *See id.* art. 14; *Status of Treaties: ICCPR*, *supra* note 310.

695. CONSTITUTION OF ZIMBABWE May 22, 2013, arts. 68(1), 69(1), 69(2), 70. Zimbabwe has acceded to the ICCPR. *Status of Treaties: ICCPR*, *supra* note 310.

696. QĀNŪN-I ASĀSĪ-I AFGHĀNISTĀN Jan. 26, 2004, arts. 22, 116, 125 (Afg.).

697. KUSHITETUTA E REPUBLIKËS SË SHQIPËRISË Nov. 28, 1998, arts. 18(1), 42(2), 145(1), 147(1) (Alb.).

698. DUSTUR ALJAZAYIR Feb. 23, 1989, arts. 156, 158, 165–66, 168 (Alg.).

699. CONSTITUCIÓ DEL PRINCIPAT D'ANDORRA Apr. 28, 1993, arts. 6(1), 10(1), 85(1)–(2), 89(1).

700. CONSTITUIÇÃO DE ANGOLA Jan. 21, 2010, arts. 175, 179(1).

701. CONSTITUTION OF ANTIGUA AND BARBUDA Nov. 1, 1981, art. 15(1), (8).

702. Arts. 16, 114, ¶ 6, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

703. HAYASTANI HANRAPETUTYAN SAHMANADRUTYUN July 5, 1995, arts. 28, 63(1), 164(1) (Arm.).

704. *Australian Constitution* s 72, ¶¶ 1–2; *see also N. Australian Aboriginal Legal Aid Serv. Inc. v Bradley* (2004) 218 CLR 146, 159–61 (Austl.).

705. BUNDES-VERFASSUNGSGESETZ [B-VG] [CONSTITUTION] BGBl No. 1/1930, as last amended by Bundesverfassungsgesetz [BVG] BGBl | No. 102/2014, arts. 83, 87–88, 94(1), <https://www.ris.bka.gv.at/Geltendefassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138> (Austria); BUNDESVERFASSUNGSGESETZ ÜBER DEN SCHUTZ DER PERSÖNLICHEN FREIHEIT [THE FEDERAL CONSTITUTIONAL ACT ON THE PROTECTION OF PERSONAL LIBERTY] BUNDESGESETZBLATT [BGBl] No. 684/1988, as amended, art. 6(1) (Austria).

706. AZERBAJCAN RESPUBLIKASININ KONSTITUSIYASI Nov. 12, 1995, arts. 7(III)–(IV), 8(IV), 25(I), 127, cls(I)–(IV) (Azer.).

707. CONSTITUTION OF THE COMMONWEALTH OF THE BAHAMAS July 10, 1973, art. 20, (1), (8).

708. DUSTUR MAMLAKAT AL-BAHRAIN July 10, 1973, arts. 18, 104, (a)–(b) (Bahr.).

709. GAÑAPRAJĀTANTRĪ BĀNLĀDĒSĒRA SAMBIDHĀNA Nov. 4, 1972, arts. 27, 35(3), 94(4), 116A (Bangl.).

710. CONSTITUTION OF BARBADOS Nov. 22, 1966, art. 13(1), (8).

711. KANSTYTUCYJA RESPUBLIKI BIELARUSĪ May 9, 1994, arts. 6, 22, 60(1), 110, 115(1) (Belr.).

712. 1994 CONST. (Belg.) arts. 10, 12, 146, 149, 15(1), 152.

713. CONSTITUTION OF BELIZE Sept. 21, 1981, art. 6(1), (7).

714. CONSTITUTION DE LA RÉPUBLIQUE DU BÉNIN Dec. 11, 1990, arts. 26, 125–27.

715. ‘DRUK-GI CHA-THRIMS-CHEN-MO July 18, 2008, arts. 7(15), 9(5), 21(1), (15) (Bhutan).
716. CONSTITUCIÓN POLÍTICA DEL ESTADO Feb. 7, 2009, arts. 12(1), 120(1), 178(1)–(2), 180(1), (3) (Bol.).
717. USTAV BOSNE I HERTCEGOVINE Dec. 14, 1995, ann. I(7) (Bosn. & Herz.) (incorporating by reference the ICCPR).
718. CONSTITUTION OF BOTSWANA Sept. 30, 1966, art. 10, §§ 1, 9.
719. CONSTITUIÇÃO FEDERAL [C.F.] arts. 2, 5(1)(XXXV), (XXXVII) (Braz.).
720. Supreme Court Act, 1963 (S 154/1963) c. 5, §§ 8(2), 10, 33(1) (Brunei); *see* Brunei Darussalam v. Bolkiah, Civil Suit No. 31 of 2001 (Brunei) (citing *Locabail Ltd v Bayfield Props. Ltd* [2000] QB 451 (Eng.) (adopting common law principles regarding recusal of judges)).
721. KONSTITUTSIA NA REPUBLIKA BALKARIA July 13, 1991, arts. 6(2), 117(2) (Bulg.).
722. CONSTITUTION DU BURKINA FASO June 2, 1991, arts. 4, 129–30.
723. CONSTITUTION DE LA RÉPUBLIQUE DU BURUNDI June 7, 2018, arts. 23, 38, 214.
724. RODTHATHOMMONOUNH NH NEI PREAHREACHEANEACHAKR KAMPOUCHEA Sept. 21, 1993, arts. 31, 128–29 (Cambodia).
725. CONSTITUTION DE LA RÉPUBLIQUE DU CAMEROUN June 2, 1972, art. 37, §§ 2–3 (Cameroon).
726. Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11, § 11(d) (U.K.).
727. CONSTITUIÇÃO DA REPÚBLICA DA CABO VERDE Sept. 28, 1992, arts. 22, 221(3) (Cape Verde).
728. CONSTITUTION DE LA RÉPUBLIQUE CENTRAFRICAINE Mar. 27, 2016, arts. 6, 107–08 (Cent. Afr. Rep.).
729. CONSTITUTION DE LA RÉPUBLIQUE DU TCHAD Mar. 31, 1996, arts. 14, 146, 150, 155 (Chad).
730. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] arts. 19(3)(1), (5), 76, 79.
731. XIANFA arts. 33, 126 (1982) (China).
732. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] arts. 13, 228, 230.
733. CONSTITUTION DE LA UNION DES COMORES July 30, 2018, arts. 2, 94–95 (Comoros).
734. CONSTITUTION DE LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO Feb. 18, 2006, arts. 12, 149 (Dem. Rep. Congo).
735. CONSTITUTION DE LA RÉPUBLIQUE DU CONGO Nov. 6, 2015, arts. 15, 168–69, 171 (Congo).
736. CONSTITUCIÓN POLÍTICA DE COSTA RICA Nov. 7, 1949, arts. 9, 33, 35, 42.
737. CONSTITUTION IVOIRIENNE Nov. 8, 2017, arts. 139–41 (Côte d’Ivoire).
738. USTAV REPUBLIKE HRVATSKE Dec. 22, 1990, arts. 14, 26, 29, ¶ 1, 115 (Croat.).
739. CONSTITUCIÓN DE LA REPÚBLICA DE CUBA Apr. 10, 2019, arts. 42, 94(d), 148, 150.
740. SYNTAGMA TIS KYPRIAKÍS DIMOKRATÍAS Aug. 16, 1960, art. 28(1), 30(2) (Cyprus).

741. Ústavní zákon č. 1/1993 Sb., Ústava České Republiky [Constitution of the Czech Republic], arts. 81, 82(1), 95(1).
742. DANMARKS RIGES GRUNDLOV June 5, 1953, §§ 62, 64 (Den.).
743. CONSTITUTION DE LA RÉPUBLIQUE DE DJIBOUTI Sept. 15, 1992, arts. 10(1), 71–73.
744. CONSTITUTION OF THE COMMONWEALTH OF DOMINICA Nov. 3, 1978, §§ 8(1), (8).
745. CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA June 13, 2015, arts. 39, 69(2), 151 (Dom. Rep.).
746. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR Oct. 20, 2008, arts. 11(2), 75, 76(7)(k), 168(1), 172.
747. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, arts. 53, 94.
748. CONSTITUCIÓN DE LA REPÚBLICA DE EL SALVADOR Dec. 20, 1983, arts. 3, 16, 172.
749. CONSTITUCIÓN DE GUINEA ECUATORIAL Feb. 26, 2012, arts. 13(1)(c), 89, 91–93 (Eq. Guinea).
750. K'IWAMI ĒRITIRA May 23, 1997, arts. 14(1), 48(2)–(4) (Eri.).
751. EESTI VABARIIGI PÕHISEADUS July 3, 1992, arts. 12, 146 (Est.).
752. YE'ĪTIYOP'ĪYA FĒDĒRALAWĪ DĪMOKIRASIYAWĪ RĪPEBILĪKI HĪGE MENIGĪSITI Aug. 21, 1995, arts. 17(1), 25, 78(1), 79(2)–(3) (Eth.).
753. CONSTITUTION OF THE REPUBLIC OF FIJI Sept. 6, 2013, arts. 1(c), 15(1), 26, 97(3)–(4).
754. SUOMEN PERUSTUSLAKI June 11, 1999, §§ 3, 6, 103 (Fin.).
755. 1958 CONST., arts. 1, 64 (Fr.).
756. CONSTITUTION DE LA RÉPUBLIQUE GABONAISE Mar. 3, 1991, arts. 89, 90, 93 (Gabon).
757. CONSTITUTION OF THE REPUBLIC OF THE GAMBIA Jan. 16, 1997, arts. 24(1), 33, 120, (3)–(4).
758. SAKARTVELOS K'ONSTITUTSIA Oct. 17, 1995 arts. 11(1), 59(1), 63(1) (Geor.).
759. GRUNDGESETZ [GG] [BASIC LAW], translation at [http://www.gesetze-im-internet.de/englisch\\_gg/index.html](http://www.gesetze-im-internet.de/englisch_gg/index.html), arts. 3(1), 20(3), 97(1), 101(1).
760. CONSTITUTION OF THE REPUBLIC OF GHANA Jan. 7, 1993, arts. 17(1), 19(13), 127(1).
761. 2001 SYNTAGMA [SYN.] arts. 4(1), 87(1)–(2) (Greece).
762. CONSTITUTION OF GRENADA Dec. 19, 1973, art. 8(1), (8).
763. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA Jan. 14, 1986, arts. 4, 203, 205, 207 (Guat.).
764. CONSTITUTION DE LA GUINÉE Apr. 19, 2010, arts. 1, 8, 107, 109–10 (Guinea).
765. CONSTITUIÇÃO DA REPÚBLICA DA GUINÉ-BISSAU May 16, 1984, arts. 24, 120, 123 (Guinea-Bissau).
766. CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA ACT Oct. 6, 1980, arts. 122A, 144, ¶¶ 1, 8, art. 149D(1).
767. CONSTITUTION D'HAÏTI Mar. 10, 1987, arts. 18, 60, 187 (Haiti).
768. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE HONDURAS Jan. 11, 1982, arts. 4, 60–61, 90, 303 (Hond.).



769. MAGYARORSZÁG ALAPTÖRVÉNYE [THE FUNDAMENTAL LAW OF HUNGARY], ALAPTÖRVÉNY Jan. 1, 2012, arts. Q, § 26, art. XV, § 1, art. XXIV, § 1, XXVIII, § 1.
770. STJÓRNARSKRÁ LÝÐVELDISINS ÍSLANDS June 17, 1944, arts. 61, 65, 70, ¶ 1 (Ice.).
771. India Const. Jan. 26, 1950, arts. 14, 50.
772. UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA TAHUN Aug. 18, 1945, arts. 24(1), 24B, 27(1), 28D(1) (Indon.).
773. ISLAHAT VA TAQYYRATI VA TATMIMAH QANUNI ASSASSI [AMENDMENT TO THE CONSTITUTION] 1989, arts. 19, 156, 166.
774. Arts. 19, 87–88, Dustūr Jumh. ūrīyat al-'Irāq [The Constitution of the Republic of Iraq] of 2005.
775. CONSTITUTION OF IRELAND 1937 arts. 35(2), 40(1).
776. §§ 2, 6, 11, Basic Law: The Judiciary, 5748–1984, LSI 38 101 (1983–84), as amended (Isr.).
777. Arts. 3, 101, 104, 111(2) COSTITUZIONE [COST.] (It.).
778. CONSTITUTION OF JAMAICA July 25, 1962, §§ 3(g), 16(1)–(2), 97, 103.
779. NIHONKOKU KENPŌ [KENPŌ], arts. 14(1), 37(1), 76(3) (Japan).
780. DUSTUR ALMAMLAKAT AL'URDUNIYAT ALHASHMY Jan. 1, 1952, arts. 6, 97–98, 101 (Jordan).
781. QAZAQSTAN RESPÝBLIKASYNÝN KONSTITÝTSIASY Aug. 30, 1995, arts. 14(1), 77(1), 79(1) (Kaz.).
782. CONSTITUTION OF KENYA Aug. 27, 2010, arts. 27(1), 50(1), 160(1).
783. CONSTITUTION OF KIRIBATI Jul. 12, 1979, arts. 10(1), (8).
784. CHOSŌN MINJUJUŪI INMIN KONGHWAGUK SAHOEJUŪI HŌNBŌP Dec. 27, 1972, arts. 65, 160 (N. Kor.).
785. DAEHANMINKUK HUNBEOB [HUNBEOB] arts. 103, 106 (S. Kor.).
786. KUSHETUTA E KOSOVĒS Sept. 7, 1990, arts. 3(2), 31(2), 102(2)–(4), 104(6), 106(2), 107(1) (Kos.).
787. AD-DISTŪR AL-KUWAYTI Nov. 11, 1962, arts. 29, 162–63 (Kuwait).
788. KIRGIZ RESPUBLIKASININ KONSTITUTSIYASI June 27, 2010, arts. 16, 94 (Kyrg).
789. LADTHATHAMMANUN Aug. 14, 1991, arts. 35, 82 (Laos).
790. LATVIJAS REPUBLIKAS SATVERSME Feb. 15, 1922, arts. 83, 91 (Lat.).
791. DUSTUR LUBNAN May 23, 1926, arts. 7, 20 (Leb.).
792. CONSTITUTION OF LESOTHO Apr. 2, 1993, arts. 6(1), (8), 19, 118.
793. CONSTITUTION OF THE REPUBLIC OF LIBERIA Jan. 6, 1986, arts. 11(c), 70.
794. AL'IIELAN ALDSTWRY ALMUAQAT ALLIYBII Feb. 8, 2011, arts. 6, 32, (Libya).
795. LANDESVERFASSUNG [LV] Oct. 5, 1921, arts. 31(1), 95, (Liech.).
796. LIETUVOS RESPUBLIKOS KONSTITUCIJA Oct. 25, 1992, arts. 29, 31, ¶ 2, art. 109 (Lith.).
797. LĒTZEBUERGER KONSTITUTION Oct. 17, 1868, arts. 10(1), 86, 91, 93, 110(2) (Lux.).
798. CONSTITUTION DE LA QUATRIEME REPUBLIQUE Dec. 11, 2010, arts. 6, 108 (Madag.).

799. CONSTITUTION OF THE REPUBLIC OF MALAWI May 18, 1994, arts. 42(2)(f)(i), 45(2)(g), 103(1).
800. PERLEMBAGAAN PERSEKUTUAN MALAYSIA Sept. 16, 1963, arts. 8(1), 122B, 125(3), (7).
801. DHIVEHI RAAJJEYGE JUMHOORIYYAAGE QAANOON ASAASEE Aug. 7, 2008, arts. 20, 42(a)–(b), 141–42 (Maldives).
802. CONSTITUTION DU REPUBLIQUE DU MALI Jan. 12, 1992, arts. 2, 81 .
803. COSTITUZIONE DI MALTA Sept. 21, 1964, arts. 39(1)–(2).
804. CONSTITUTION OF THE REPUBLIC OF THE MARSHALL ISLANDS May 1, 1979, arts. II, § 12, art. VI, § 1. The Marshall Islands has also acceded to the ICCPR but does not have any constitutional provisions explaining the effect of international treaties on its legal system. *See Status of Treaties: ICCPR, supra* note 310.
805. DUSTUR JUMHURIAT MURITANIA AL’IISLAMIA July 12, 1991, arts. 1, 89–90 (Mauritania).
806. LA CONSTITUTION DE MAURICE Mar. 12, 1968, arts. 3(a), 10(1) (Mauritius).
807. Constitución Política de los Estados Unidos Mexicanos, CP, arts. 17(1), (6), 49, 100(7), Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014 (Mex.).
808. CONSTITUTION OF THE FEDERATED STATES OF MICRONESIA May 10, 1979, arts. IV, §§ 3–4, art. XI, §§ 5, 11.
809. CONSTITUȚIA REPUBLICII MOLDOVA July 29, 1994, arts. 16, 116 (Mold.).
810. CONSTITUTION DE LA PRINCIPAUTÉ DE MONACO Dec. 17, 1962, arts. 6, 17, 88, ¶ 3.
811. MONGOL ULSYN ÜNDSEN KHUULI Feb. 12, 1992, arts. 14(1), 47(2), 49(1) (Mong.).
812. USTAV CRNE GORE Oct. 22, 2007, arts. 32, 118, ¶¶ 1–2 (Montenegro).
813. DUSTUR ALMAMLAKAT ALMAGHRIBIA July 29, 2011, arts. 107–11 (Morocco).
814. CONSTITUIÇÃO DA REPÚBLICA DE MOÇAMBIQUE Dec. 21, 2004, arts. 217 (Mozam.).
815. PYIHTAUNGHCUSAMMATAMYANMARNINENGANTAW HPWALHCAEEPONEAAHKYAYHKANUPADAY May 29, 2008, arts. 19, 21, cl. a, art. 347 (Myan.).
816. CONSTITUTION OF THE REPUBLIC OF NAMIBIA Mar. 21, 1990, arts. 10(1), 12(1)(a), 78(2)–(3).
817. CONSTITUTION OF THE REPUBLIC OF NAURU Jan. 31, 1968, arts. 10(2), (9).
818. NEPĀLAKO SAṂVIDHĀNA Jan. 22, 2015, arts. 18(1), 20(9) (Nepal).
819. Gw. arts. 1, 117 (Neth.). The Netherlands has also ratified the ICCPR and the ECHR, the provisions of which are binding on the Netherlands. *See id.* art. 93 (incorporating international law); *Status of Treaties: ICCPR, supra* note 310; *Signatures and Ratifications of European Convention on Human Rights, supra* note 313.
820. Bill of Rights Act 1990, art. 25(a) (N.Z.).
821. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE NICARAGUA [CN.] tit. IV, ch. I, arts. 27, 34(8), tit. VIII, ch. I, art. 129, ch. V, art. 166, LA GACETA, DIARIO OFICIAL [L.G.] 9 January 1987, as amended by Ley No. 854, Feb. 8, 2014, Reforma Parcial a la Constitución Política de la República de Nicaragua, L.G. Feb. 18, 2014.
822. CONSTITUTION DE LA RÉPUBLIQUE DU NIGER Nov. 25, 2010, arts. 10, 116, 118.

823. CONSTITUTION OF NIGERIA (1999), §§ 17(2)(a), (e), 36(1), 292.
824. USTAV NA REPUBLIKA MAKEDONIJA Nov. 17, 1991, arts. 98 (N. Maced.).
825. KONGERIKET NORGES GRUNNLOV [Const.] May 17, 1814, arts. 95, 98, ¶ 1 (Nor.).
826. ALNIZAM AL'ASASII LILDAWLA Nov. 6, 1996, art. 17, 59–61 (Oman).
827. PAKISTAN CONST. art. 25, 175, 207, 209(7).
828. UCHETEMEL A LLACH ER A BELUU ER A BELAU [CONST.] Jan. 1, 1981, arts. IV(5), X(14) (Palau); Republic of Palau Code of Judicial Conduct Mar. 1, 2011, pmbL., § 2.
829. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE PANAMÁ Oct. 11, 1972, arts. 208, 210–12.
830. CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA Sept. 16, 1975, arts. 37(3), 55, 157.
831. CONSTITUCIÓN DE LA REPÚBLICA DEL PARAGUAY June 20, 1992, arts. 16, 47(2), 248, 252–55, 256(2).
832. CONSTITUCIÓN POLÍTICA DEL PERÚ Dec. 29, 1993, arts. 2(2), 139(2), 146, 150.
833. CONST. (1987), arts. III, § 14(2), art. VIII, §§ 3, 7(3) (Phil.).
834. KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ Oct. 17, 1997, arts. 32, 45(1), 173, 178(1), 180–81 (Pol.).
835. CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA Apr. 25, 1976, arts. 13, 203, 216 (Port.).
836. DASTŪR QATAR Apr. 29, 2003, arts. 35, 129–31.
837. CONSTITUȚIA ROMÂNIEI Oct. 29, 2003, arts. 16(1), 124, 133(1) (Rom.).
838. KONSTITUTSIJA ROSSIJSKOI FEDERATSII [KONST. RF] arts. 19(1), 123(3), 124 (Russ.).
839. ITEGEKO NSHINGA RYA REPUBULIKA Y'U RWANDA Dec. 24, 2015, arts. 15, 16, 150, 151(5).
840. CONSTITUTION OF SAINT CHRISTOPHER AND NEVIS June 23, 1983, arts. 3, 10(1), (8) (St. Kitts & Nevis).
841. CONSTITUTION OF SAINT LUCIA Dec. 20, 1978, arts. 1, 8(1), (8).
842. CONSTITUTION OF SAINT VINCENT AND THE GRENADINES Oct. 27, 1979, art. 8(1), (8).
843. O LE FAAVAE O LE MALO TUTOATASI O SAMOA Oct. 28, 1960, arts. 9(1), 15(1).
844. DICHIARAZIONE DEI DIRITTI DEI CITTADINI E DEI PRINCIPI FONDAMENTALI DELL'ORDINAMENTO SAMMARINESE July 8, 1974, arts. 4(1), 15(3) (San Marino).
845. CONSTITUIÇÃO DA REPÚBLICA DEMOCRÁTICA DE SÃO TOMÉ E PRÍNCIPE Nov. 5, 1975, arts. 15(1), 121, 122(1) (São Tomé & Príncipe).
846. AL NIZAM AL ASASII LIL HUKM Jan. 31, 1992, arts. 8, 36, 46 (Saudi Arabia).
847. CONSTITUTION DE LA RÉPUBLIQUE DU SÉNÉGAL Jan. 22, 2001, pmbL., arts. 1, 88.
848. USTAV REPUBLIKE SRBIJE Nov. 8, 2006, art. 32(1) (Serb.).
849. CONSTITUTION OF THE REPUBLIC OF SEYCHELLES June 18, 1993, arts. 27(1), 19(1), (7).
850. CONSTITUTION OF SIERRA LEONE Oct. 1, 1991, art. 23, (1)–(2).
851. CONSTITUTION OF THE REPUBLIC OF SINGAPORE Aug. 9, 1965, arts. 12, (1)–(2), art. 93, 95(3), 98.

852. ÚSTAVA SLOVENSKEJ REPUBLIKY Oct. 1, 1992, arts. 46(1), 47(3), 48(1) (Slovk.).
853. USTAVA REPUBLIKE SLOVENIJE Dec. 23, 1991, arts. 14(2), 23, (Slovn.).
854. CONSTITUTION OF SOLOMON ISLANDS July 7, 1978, arts. 10(1), (8), art. 14,(4), art. 16(8)(c).
855. DASTUURKA JAMHUURIYADDA FEDERAALKA SOOMAALIYA Aug. 1, 2012, arts. 3(4), 34(2) (Som.).
856. S. AFR. CONST., 1996, arts. 34, 165(2), (4).
857. TRANSITIONAL CONSTITUTION OF THE REPUBLIC OF SOUTH SUDAN July 9, 2011 arts. 124, 133, (1)–(2).
858. C.E. B.O.E. n. 311, Dec. 29, 1978, art. 117(1) (Spain).
859. ŚRĪ LAṂKĀ ĀNDUKRAMA VYAVASTHĀVA Sept. 7, 1978, arts. 12(1), 107–08, 110, 111A–111C (Sri Lanka).
860. DUSTUR ALSUWDAN Aug. 4, 2019 arts. 4, 8(5), 30(2) (Sudan).
861. GRONDWET VAN SURINAME Sept. 30, 1987, art. 10.
862. CONSTITUTION OF THE KINGDOM OF SWAZILAND July 26, 2005, arts. 14(1)(a), 23(1), 10, 38(d).
863. REGERINGSFORMEN [RF] 1:9, 11:1, 11:3–4, 11:6–7 (Swed.).
864. BUNDESVERFASSUNG [BV] Apr. 18, 1999, SR 101, arts. 29(1), 30(1), 191c (Switz.).
865. DUSTUR ALJUMHURIAT ALEARABIAT ALSUWRĪA Feb. 15, 2012, arts. 132, 133(2), 134 (Syria).
866. MINGUO XIANFA arts. 80–81 (1947) (Taiwan).
867. KONSTITUTSIJAI ĆUMHURII TOĆIKISTON Nov. 6, 1994, arts. 19, 87 (Taj.).
868. CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA Apr. 25, 1977, art. 107A(2)(a), 107B.
869. RATTHATHAMMANUN HAENG RATCHA-ANACHAK THAI Apr. 6, 2017, § 188(2) (Thai.).
870. CONSTITUIĆÃO DA REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE May 20, 2002, §§ 119, 121(2), (4) (Timor-Leste).
871. CONSTITUTION TOGOLAISE DE LA QUATRIÈME REPUBLIQUE Oct. 14, 1992 arts. 18, 19(1) (Togo).
872. CONSTITUTION OF TONGA Nov. 4, 1875, art. 15.
873. CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO Aug. 1, 1976, arts. 4(b), 5(2)(f)(ii).
874. DUSTUR TUNIS Jan. 26, 2014, arts. 102, 108(1), art. 109 (Tunis.).
875. TÜRKIYE CUMHURİYETİ ANAYASASI Nov. 7, 1982, arts. 9–10, 138–40 (Turk.).
876. TÜRKMENİSTANYŇ KONSTITUSIÝASY May 18, 1992, arts. 6, 98, 103(2) (Turkm.).
877. CONSTITUTION OF TUVALU Oct. 1, 1986, art. 22(2), (11)(b).
878. CONSTITUTION OF THE REPUBLIC OF UGANDA Oct. 8, 1995, art. 28(1).
879. KONSTYTUTSIYA UKRAYINY June 28, 1996, art. 129 (Ukr.).
880. DASTŪR DAWLAT AL-ĪMARĀT AL-ʿARABĪYA AL-MUTTAĤĪDA Dec. 2, 1971, art. 94 (U.A.E.).

881. Human Rights Act 1998, c. 42 (UK) sch. 1, art. 6, ¶ 1
882. U.S. CONST. arts. II, § 4, III, § 1, amend. V, XIV, § 1.
883. CONSTITUCIÓN DE LA REPÚBLICA ORIENTAL DEL URUGUAY June 28, 1830, arts. 233, 243, 246, 251–52.
884. O'ZBEKISTON RESPUBLIKASI KONSTITUTSIYASI Dec. 8, 1992, arts. 106, 108(5), 112 (Uzb.).
885. CONSTITUTION OF VANUATU July 30, 1980, art. 5(1)(k), (2)(a).
886. LEGGE 16 MARZO 2020, N. CCCLI SULL'ORDINAMENTO GIUDIZIARIO DELLO STATO DELLA CITTÀ DEL VATICANO, arts. 1, 2, 3(2) (Vatican).
887. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA Dec. 15, 1999, art. 49(3) (Venez.).
888. HIẾN PHÁP NƯỚC CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM Jan. 1, 2014, arts. 31(2), 103(2) (Viet.).
889. DUSTUR ALYAMAN May 16, 1991, arts. 149–51 (Yemen).
890. CONST. OF ZAMBIA (1996) arts. 18(1), (9), 26(1)(c), 122–23.
891. CONSTITUTION OF ZIMBABWE Mar. 16, 2013, art. 69(1)–(2).