

Report Documentation Page

Form Approved
OMB No. 0704-0188

Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

| | | | | | |
|---|------------------------------------|-------------------------------------|----------------------------|---|---------------------------------|
| 1. REPORT DATE 15 JAN 2010 | | 2. REPORT TYPE | | 3. DATES COVERED 00-00-2010 to 00-00-2010 | |
| 4. TITLE AND SUBTITLE CRS Issue Statement on International Law and U.S. Sovereignty | | | | 5a. CONTRACT NUMBER | |
| | | | | 5b. GRANT NUMBER | |
| | | | | 5c. PROGRAM ELEMENT NUMBER | |
| 6. AUTHOR(S) | | | | 5d. PROJECT NUMBER | |
| | | | | 5e. TASK NUMBER | |
| | | | | 5f. WORK UNIT NUMBER | |
| 7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Congressional Research Service, Library of Congress, 101 Independence Ave., SE, Washington, DC, 20540-7500 | | | | 8. PERFORMING ORGANIZATION REPORT NUMBER | |
| 9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) | | | | 10. SPONSOR/MONITOR'S ACRONYM(S) | |
| | | | | 11. SPONSOR/MONITOR'S REPORT NUMBER(S) | |
| 12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited | | | | | |
| 13. SUPPLEMENTARY NOTES | | | | | |
| 14. ABSTRACT | | | | | |
| 15. SUBJECT TERMS | | | | | |
| 16. SECURITY CLASSIFICATION OF: | | | 17. LIMITATION OF ABSTRACT | 18. NUMBER OF PAGES | 19a. NAME OF RESPONSIBLE PERSON |
| a. REPORT unclassified | b. ABSTRACT unclassified | c. THIS PAGE unclassified | | | |



CRS Issue Statement on International Law and U.S. Sovereignty

Jennifer K. Elsea, Coordinator
Legislative Attorney

January 15, 2010

Congressional Research Service

7-5700

www.crs.gov

IS41055

CRS Report for Congress
Prepared for Members and Committees of Congress

R11172008

Rapid technological advances in transportation and communication, among other areas, have led to a level of interconnectedness among societies that would likely have astounded the Framers of our Constitution. While predictions about the demise of sovereignty as a fundamental principle ordering international relations seem premature, the rise of importance of non-state actors, the increased necessity for international cooperation to regulate such matters as environmental protection and the conduct of financial institutions, and the concomitant increase in opportunities for disputes to arise with respect to matters spanning borders and oceans promise to generate new issues of concern for Members of Congress and their constituents.

Under the Constitution, the foreign affairs powers are divided among the three branches of government in ways that overlap considerably, although not without friction. Treaties made under the authority of the United States are indisputably the law of the land, yet the judicial power does not always provide a means to enforce their provisions. State and even local governments have undertaken initiatives or issued decisions that have an impact on the foreign relations of the United States. None of these propositions is new. Will globalization have any impact on the interpretation of our Constitution or cause tectonic shifts in the allocation of federal powers among the branches?

Some international trends of relatively recent provenance are discernible that may raise questions for Congress. Multinational corporations appear to have attained a level of power that could be wielded in ways that interfere more frequently with U.S. and global initiatives. How must international law adapt to provide for effective accountability of such non-state actors, without impeding the flow of international commerce? Increasing accessibility of courts around the world to alien litigants may have given rise to international “forum shopping” that subjects U.S. citizens to foreign judicial systems that are not obligated to recognize rights they would enjoy under the U.S. Constitution. Conversely, U.S. courts are ever more frequently called upon to resolve disputes between U.S. citizens and foreign subjects or governments, or even between foreign parties without significant ties to the United States. How do the actions of our courts in such cases bear on foreign relations, and how can Congress ensure that any impact is positive? In cases where these interests are at odds, are outcomes favorable to U.S. nationals who have been harmed always preferable to results that further international relations? Is the revocation of foreign sovereign immunity for certain countries an effective means of carrying out U.S. policy? What is, or should be, the effect of decision making by international bodies and tribunals on U.S. laws, policies, and practices? Should U.S. courts interpret treaties consistently with other treaty parties’ interpretation?

Topics to be addressed here include constitutional separation of powers and federalism questions that involve foreign policy or the implementation of international law; the relationship between international law and the U.S. legal system; the extraterritorial reach of the U.S. Constitution and federal powers; judicial acceptance of treaty interpretations by foreign and international courts; universal jurisdiction and the exercise of extraterritorial jurisdiction of foreign (or international) courts over U.S. persons; international dispute resolution; and the relationship between sovereign states and non-state actors under international law.

Issue Team Members

Jennifer K. Elsea, Coordinator
Legislative Attorney
jelsea@crs.loc.gov, 7-5466

Michael John Garcia
Legislative Attorney
mgarcia@crs.loc.gov, 7-3873

R. Chuck Mason
Legislative Attorney
rcmason@crs.loc.gov, 7-9294

Charles Doyle
Senior Specialist in American Public Law
cdoyle@crs.loc.gov, 7-6968

Margaret Mikyung Lee
Legislative Attorney
mmlee@crs.loc.gov, 7-2579

Robert Meltz
Legislative Attorney
rmeltz@crs.loc.gov, 7-7891

Marjorie Ann Browne
Specialist in International Relations
mbrowne@crs.loc.gov, 7-7695

Anna C. Henning
Legislative Attorney
ahenning@crs.loc.gov, 7-4067

Todd B. Tatelman
Legislative Attorney
ttatelman@crs.loc.gov, 7-4697

Edward C. Liu
Legislative Attorney
eliu@crs.loc.gov, 7-9166

Brian T. Yeh
Legislative Attorney
byeh@crs.loc.gov, 7-5182

Erika K. Lunder
Legislative Attorney
elunder@crs.loc.gov, 7-4538

Alison M. Smith
Legislative Attorney
amsmith@crs.loc.gov, 7-6054

Emily C. Barbour
Legislative Attorney
ebarbour@crs.loc.gov, 7-5842

Vivian S. Chu
Legislative Attorney
vchu@crs.loc.gov, 7-4576

Rhoda Margesson
Specialist in International Humanitarian Policy
rmargesson@crs.loc.gov, 7-0425

Kennon H. Nakamura
Analyst in Foreign Affairs
knakamura@crs.loc.gov, 7-9514

Jonathan E. Sanford
Specialist in International Trade and Finance
jsanford@crs.loc.gov, 7-7682

Martin A. Weiss
Specialist in International Trade and Finance
mweiss@crs.loc.gov, 7-5407