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SUPREME COURT OF THE UNITED STATES

No. 06–984

JOSE ERNESTO MEDELLIN, PETITIONER *v.* TEXASON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF TEXAS

[March 25, 2008]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The International Court of Justice (ICJ), located in the Hague, is a tribunal established pursuant to the United Nations Charter to adjudicate disputes between member states. In the *Case Concerning Avena and Other Mexican Nationals (Mex. v. U. S.)*, 2004 I. C. J. 12 (Judgment of Mar. 31) (*Avena*), that tribunal considered a claim brought by Mexico against the United States. The ICJ held that, based on violations of the Vienna Convention, 51 named Mexican nationals were entitled to review and reconsideration of their state-court convictions and sentences in the United States. This was so regardless of any forfeiture of the right to raise Vienna Convention claims because of a failure to comply with generally applicable state rules governing challenges to criminal convictions.

In *Sanchez-Llamas v. Oregon*, 548 U. S. 331 (2006)—issued after *Avena* but involving individuals who were not named in the *Avena* judgment—we held that, contrary to the ICJ’s determination, the Vienna Convention did not preclude the application of state default rules. After the *Avena* decision, President George W. Bush determined,

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through a Memorandum to the Attorney General (Feb. 28, 2005), App. to Pet. for Cert. 187a (Memorandum or President’s Memorandum), that the United States would “discharge its international obligations” under *Avena* “by having State courts give effect to the decision.”

Petitioner José Ernesto Medellín, who had been convicted and sentenced in Texas state court for murder, is one of the 51 Mexican nationals named in the *Avena* decision. Relying on the ICJ’s decision and the President’s Memorandum, Medellín filed an application for a writ of habeas corpus in state court. The Texas Court of Criminal Appeals dismissed Medellín’s application as an abuse of the writ under state law, given Medellín’s failure to raise his Vienna Convention claim in a timely manner under state law. We granted certiorari to decide two questions. *First*, is the ICJ’s judgment in *Avena* directly enforceable as domestic law in a state court in the United States? *Second*, does the President’s Memorandum independently require the States to provide review and reconsideration of the claims of the 51 Mexican nationals named in *Avena* without regard to state procedural default rules? We conclude that neither *Avena* nor the President’s Memorandum constitutes directly enforceable federal law that pre-empts state limitations on the filing of successive habeas petitions. We therefore affirm the decision below.

I

A

In 1969, the United States, upon the advice and consent of the Senate, ratified the Vienna Convention on Consular Relations (Vienna Convention or Convention), Apr. 24, 1963, [1970] 21 U. S. T. 77, T. I. A. S. No. 6820, and the Optional Protocol Concerning the Compulsory Settlement of Disputes to the Vienna Convention (Optional Protocol or Protocol), Apr. 24, 1963, [1970] 21 U. S. T. 325, T. I. A. S. No. 6820. The preamble to the Convention provides that

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its purpose is to “contribute to the development of friendly relations among nations.” 21 U. S. T., at 79; *Sanchez-Llamas, supra*, at 337. Toward that end, Article 36 of the Convention was drafted to “facilitat[e] the exercise of consular functions.” Art. 36(1), 21 U. S. T., at 100. It provides that if a person detained by a foreign country “so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State” of such detention, and “inform the [detainee] of his righ[t]” to request assistance from the consul of his own state. Art. 36(1)(b), *id.*, at 101.

The Optional Protocol provides a venue for the resolution of disputes arising out of the interpretation or application of the Vienna Convention. Art. I, 21 U. S. T., at 326. Under the Protocol, such disputes “shall lie within the compulsory jurisdiction of the International Court of Justice” and “may accordingly be brought before the [ICJ] . . . by any party to the dispute being a Party to the present Protocol.” *Ibid.*

The ICJ is “the principal judicial organ of the United Nations.” United Nations Charter, Art. 92, 59 Stat. 1051, T. S. No. 993 (1945). It was established in 1945 pursuant to the United Nations Charter. The ICJ Statute—annexed to the U. N. Charter—provides the organizational framework and governing procedures for cases brought before the ICJ. Statute of the International Court of Justice (ICJ Statute), 59 Stat. 1055, T. S. No. 993 (1945).

Under Article 94(1) of the U. N. Charter, “[e]ach Member of the United Nations undertakes to comply with the decision of the [ICJ] in any case to which it is a party.” 59 Stat. 1051. The ICJ’s jurisdiction in any particular case, however, is dependent upon the consent of the parties. See Art. 36, 59 Stat. 1060. The ICJ Statute delineates two ways in which a nation may consent to ICJ jurisdiction: It may consent generally to jurisdiction on any question arising under a treaty or general international law, Art.

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36(2), *ibid.*, or it may consent specifically to jurisdiction over a particular category of cases or disputes pursuant to a separate treaty, Art. 36(1), *ibid.* The United States originally consented to the general jurisdiction of the ICJ when it filed a declaration recognizing compulsory jurisdiction under Art. 36(2) in 1946. The United States withdrew from general ICJ jurisdiction in 1985. See U. S. Dept. of State Letter and Statement Concerning Termination of Acceptance of ICJ Compulsory Jurisdiction (Oct. 7, 1985), reprinted in 24 I. L. M. 1742 (1985). By ratifying the Optional Protocol to the Vienna Convention, the United States consented to the specific jurisdiction of the ICJ with respect to claims arising out of the Vienna Convention. On March 7, 2005, subsequent to the ICJ's judgment in *Avena*, the United States gave notice of withdrawal from the Optional Protocol to the Vienna Convention. Letter from Condoleezza Rice, Secretary of State, to Kofi A. Annan, Secretary-General of the United Nations.

B

Petitioner José Ernesto Medellín, a Mexican national, has lived in the United States since preschool. A member of the “Black and Whites” gang, Medellín was convicted of capital murder and sentenced to death in Texas for the gang rape and brutal murders of two Houston teenagers.

On June 24, 1993, 14-year-old Jennifer Ertman and 16-year-old Elizabeth Pena were walking home when they encountered Medellín and several fellow gang members. Medellín attempted to engage Elizabeth in conversation. When she tried to run, petitioner threw her to the ground. Jennifer was grabbed by other gang members when she, in response to her friend's cries, ran back to help. The gang members raped both girls for over an hour. Then, to prevent their victims from identifying them, Medellín and his fellow gang members murdered the girls and discarded

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their bodies in a wooded area. Medellín was personally responsible for strangling at least one of the girls with her own shoelace.

Medellín was arrested at approximately 4 a.m. on June 29, 1993. A few hours later, between 5:54 and 7:23 a.m., Medellín was given *Miranda* warnings; he then signed a written waiver and gave a detailed written confession. App. to Brief for Respondent 32–36. Local law enforcement officers did not, however, inform Medellín of his Vienna Convention right to notify the Mexican consulate of his detention. Brief for Petitioner 6–7. Medellín was convicted of capital murder and sentenced to death; his conviction and sentence were affirmed on appeal. *Medellín v. State*, No. 71,997 (Tex. Crim. App., May 16, 1997), App. to Brief for Respondent 2–31.

Medellín first raised his Vienna Convention claim in his first application for state postconviction relief. The state trial court held that the claim was procedurally defaulted because Medellín had failed to raise it at trial or on direct review. The trial court also rejected the Vienna Convention claim on the merits, finding that Medellín had “fail[ed] to show that any non-notification of the Mexican authorities impacted on the validity of his conviction or punishment.” *Id.*, at 62.¹ The Texas Court of Criminal

¹The requirement of Article 36(1)(b) of the Vienna Convention that the detaining state notify the detainee’s consulate “without delay” is satisfied, according to the ICJ, where notice is provided within three working days. *Avena*, 2004 I. C. J. 12, 52, ¶97 (Judgment of Mar. 31). See *Sanchez-Llamas v. Oregon*, 548 U. S. 331, 362 (2006) (GINSBURG, J., concurring in judgment). Here, Medellín confessed within three hours of his arrest—before there could be a violation of his Vienna Convention right to consulate notification. App. to Brief for Respondent 32–36. In a second state habeas application, Medellín sought to expand his claim of prejudice by contending that the State’s noncompliance with the Vienna Convention deprived him of assistance in developing mitigation evidence during the capital phase of his trial. This argument, however, was likely waived: Medellín had the assistance of consulate counsel

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Appeals affirmed. *Id.*, at 64–65.

Medellín then filed a habeas petition in Federal District Court. The District Court denied relief, holding that Medellín’s Vienna Convention claim was procedurally defaulted and that Medellín had failed to show prejudice arising from the Vienna Convention violation. See *Medellín v. Cockrell*, Civ. Action No. H–01–4078 (SD Tex., June 26, 2003), App. to Brief for Respondent 86–92.

While Medellín’s application for a certificate of appealability was pending in the Fifth Circuit, the ICJ issued its decision in *Avena*. The ICJ held that the United States had violated Article 36(1)(b) of the Vienna Convention by failing to inform the 51 named Mexican nationals, including Medellín, of their Vienna Convention rights. 2004 I. C. J., at 53–55. In the ICJ’s determination, the United States was obligated “to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the [affected] Mexican nationals.” *Id.*, at 72. The ICJ indicated that such review was required without regard to state procedural default rules. *Id.*, at 56–57.

The Fifth Circuit denied a certificate of appealability. *Medellín v. Dretke*, 371 F. 3d 270, 281 (2004). The court concluded that the Vienna Convention did not confer individually enforceable rights. *Id.*, at 280. The court further ruled that it was in any event bound by this Court’s decision in *Breard v. Greene*, 523 U. S. 371, 375 (1998) (*per curiam*), which held that Vienna Convention claims are subject to procedural default rules, rather than by the ICJ’s contrary decision in *Avena*. 371 F. 3d, at 280.

during the preparation of his *first* application for state postconviction relief, yet failed to raise this argument at that time. See Application for Writ of Habeas Corpus in *Ex parte Medellín*, No. 675430–A (Tex. Crim. App.), pp. 25–31. In light of our disposition of this case, we need not consider whether Medellín was prejudiced in any way by the violation of his Vienna Convention rights.

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This Court granted certiorari. *Medellín v. Dretke*, 544 U. S. 660, 661 (2005) (*per curiam*) (*Medellín I*). Before we heard oral argument, however, President George W. Bush issued his Memorandum to the United States Attorney General, providing:

I have determined, pursuant to the authority vested in me as President by the Constitution and the laws of the United States of America, that the United States will discharge its international obligations under the decision of the International Court of Justice in [*Avena*], by having State courts give effect to the decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision. App. to Pet. for Cert. 187a.

Medellín, relying on the President’s Memorandum and the ICJ’s decision in *Avena*, filed a second application for habeas relief in state court. *Ex parte Medellín*, 223 S. W. 3d 315, 322–323 (Tex. Crim. App. 2006). Because the state-court proceedings might have provided Medellín with the review and reconsideration he requested, and because his claim for federal relief might otherwise have been barred, we dismissed his petition for certiorari as improvidently granted. *Medellín I, supra*, at 664.

The Texas Court of Criminal Appeals subsequently dismissed Medellín’s second state habeas application as an abuse of the writ. 223 S. W. 3d, at 352. In the court’s view, neither the *Avena* decision nor the President’s Memorandum was “binding federal law” that could displace the State’s limitations on the filing of successive habeas applications. *Ibid.* We again granted certiorari. 550 U. S. ____ (2007).

II

Medellín first contends that the ICJ’s judgment in *Avena* constitutes a “binding” obligation on the state and

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federal courts of the United States. He argues that “by virtue of the Supremacy Clause, the treaties requiring compliance with the *Avena* judgment are *already* the ‘Law of the Land’ by which all state and federal courts in this country are ‘bound.’” Reply Brief for Petitioner 1. Accordingly, Medellín argues, *Avena* is a binding federal rule of decision that pre-empts contrary state limitations on successive habeas petitions.

No one disputes that the *Avena* decision—a decision that flows from the treaties through which the United States submitted to ICJ jurisdiction with respect to Vienna Convention disputes—constitutes an *international* law obligation on the part of the United States. But not all international law obligations automatically constitute binding federal law enforceable in United States courts. The question we confront here is whether the *Avena* judgment has automatic *domestic* legal effect such that the judgment of its own force applies in state and federal courts.

This Court has long recognized the distinction between treaties that automatically have effect as domestic law, and those that—while they constitute international law commitments—do not by themselves function as binding federal law. The distinction was well explained by Chief Justice Marshall’s opinion in *Foster v. Neilson*, 2 Pet. 253, 315 (1829), overruled on other grounds, *United States v. Percheman*, 7 Pet. 51 (1833), which held that a treaty is “equivalent to an act of the legislature,” and hence self-executing, when it “operates of itself without the aid of any legislative provision.” *Foster, supra*, at 314. When, in contrast, “[treaty] stipulations are not self-executing they can only be enforced pursuant to legislation to carry them into effect.” *Whitney v. Robertson*, 124 U. S. 190, 194 (1888). In sum, while treaties “may comprise international commitments . . . they are not domestic law unless Congress has either enacted implementing statutes or the

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treaty itself conveys an intention that it be ‘self-executing’ and is ratified on these terms.” *Igartúa-De La Rosa v. United States*, 417 F.3d 145, 150 (CA1 2005) (en banc) (Boudin, C. J.).²

A treaty is, of course, “primarily a compact between independent nations.” *Head Money Cases*, 112 U. S. 580, 598 (1884). It ordinarily “depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it.” *Ibid.*; see also *The Federalist* No. 33, p. 207 (J. Cooke ed. 1961) (A. Hamilton) (comparing laws that individuals are “bound to observe” as “the supreme law of the land” with “a mere treaty, dependent on the good faith of the parties”). “If these [interests] fail, its infraction becomes the subject of international negotiations and reclamations It is obvious that with all this the judicial courts have nothing to do and can give no redress.” *Head Money Cases*, *supra*, at 598. Only “[i]f the treaty contains stipulations which are self-executing, that is, require no legislation to make them operative, [will] they have the force and effect of a legislative enactment.” *Whitney*, *supra*, at 194.³

²The label “self-executing” has on occasion been used to convey different meanings. What we mean by “self-executing” is that the treaty has automatic domestic effect as federal law upon ratification. Conversely, a “non-self-executing” treaty does not by itself give rise to domestically enforceable federal law. Whether such a treaty has domestic effect depends upon implementing legislation passed by Congress.

³Even when treaties are self-executing in the sense that they create federal law, the background presumption is that “[i]nternational agreements, even those directly benefiting private persons, generally do not create private rights or provide for a private cause of action in domestic courts.” 2 Restatement (Third) of Foreign Relations Law of the United States §907, Comment *a*, p. 395 (1986) (hereinafter Restatement). Accordingly, a number of the Courts of Appeals have presumed that treaties do not create privately enforceable rights in the absence of express language to the contrary. See, e.g., *United States v. Emuegbunam*, 268 F. 3d 377, 389 (CA6 2001); *United States v. Jimenez-*

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Medellín and his *amici* nonetheless contend that the Optional Protocol, United Nations Charter, and ICJ Statute supply the “relevant obligation” to give the *Avena* judgment binding effect in the domestic courts of the United States. Reply Brief for Petitioner 5–6.⁴ Because none of these treaty sources creates binding federal law in the absence of implementing legislation, and because it is uncontested that no such legislation exists, we conclude that the *Avena* judgment is not automatically binding domestic law.

A

The interpretation of a treaty, like the interpretation of a statute, begins with its text. *Air France v. Saks*, 470 U. S. 392, 396–397 (1985). Because a treaty ratified by the United States is “an agreement among sovereign powers,” we have also considered as “aids to its interpretation” the negotiation and drafting history of the treaty as well as “the postratification understanding” of signatory nations. *Zicherman v. Korean Air Lines Co.*, 516 U. S. 217, 226 (1996); see also *United States v. Stuart*, 489 U. S. 353, 365–366 (1989); *Choctaw Nation v. United States*, 318

Nava, 243 F. 3d 192, 195 (CA5 2001); *United States v. Li*, 206 F. 3d 56, 60–61 (CA1 2000) (en banc); *Goldstar (Panama) S. A. v. United States*, 967 F. 2d 965, 968 (CA4 1992); *Canadian Transp. Co. v. United States*, 663 F. 2d 1081, 1092 (CADC 1980); *Mannington Mills, Inc. v. Congoleum Corp.*, 595 F. 2d 1287, 1298 (CA3 1979).

⁴The question is whether the *Avena* judgment has binding effect in domestic courts under the Optional Protocol, ICJ Statute, and U. N. Charter. Consequently, it is unnecessary to resolve whether the Vienna Convention is itself “self-executing” or whether it grants Medellín individually enforceable rights. See Reply Brief for Petitioner 5 (disclaiming reliance on the Vienna Convention). As in *Sanchez-Llamas*, 548 U. S., at 342–343, we thus assume, without deciding, that Article 36 grants foreign nationals “an individually enforceable right to request that their consular officers be notified of their detention, and an accompanying right to be informed by authorities of the availability of consular notification.”

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U. S. 423, 431–432 (1943).

As a signatory to the Optional Protocol, the United States agreed to submit disputes arising out of the Vienna Convention to the ICJ. The Protocol provides: “Disputes arising out of the interpretation or application of the [Vienna] Convention shall lie within the compulsory jurisdiction of the International Court of Justice.” Art. I, 21 U. S. T., at 326. Of course, submitting to jurisdiction and agreeing to be bound are two different things. A party could, for example, agree to compulsory nonbinding arbitration. Such an agreement would require the party to appear before the arbitral tribunal without obligating the party to treat the tribunal’s decision as binding. See, *e.g.*, North American Free Trade Agreement, U. S.-Can.-Mex., Art. 2018(1), Dec. 17, 1992, 32 I. L. M. 605, 697 (1993) (“On receipt of the final report of [the arbitral panel requested by a Party to the agreement], the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations of the panel”).

The most natural reading of the Optional Protocol is as a bare grant of jurisdiction. It provides only that “[d]isputes arising out of the interpretation or application of the [Vienna] Convention shall lie within the compulsory jurisdiction of the International Court of Justice” and “may accordingly be brought before the [ICJ] . . . by any party to the dispute being a Party to the present Protocol.” Art. I, 21 U. S. T., at 326. The Protocol says nothing about the effect of an ICJ decision and does not itself commit signatories to comply with an ICJ judgment. The Protocol is similarly silent as to any enforcement mechanism.

The obligation on the part of signatory nations to comply with ICJ judgments derives not from the Optional Protocol, but rather from Article 94 of the United Nations Charter—the provision that specifically addresses the effect of ICJ decisions. Article 94(1) provides that “[e]ach Member

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of the United Nations *undertakes to comply* with the decision of the [ICJ] in any case to which it is a party.” 59 Stat. 1051 (emphasis added). The Executive Branch contends that the phrase “undertakes to comply” is not “an acknowledgement that an ICJ decision will have immediate legal effect in the courts of U. N. members,” but rather “a *commitment* on the part of U. N. Members to take *future* action through their political branches to comply with an ICJ decision.” Brief for United States as *Amicus Curiae* in *Medellín I*, O. T. 2004, No. 04–5928, p. 34.

We agree with this construction of Article 94. The Article is not a directive to domestic courts. It does not provide that the United States “shall” or “must” comply with an ICJ decision, nor indicate that the Senate that ratified the U. N. Charter intended to vest ICJ decisions with immediate legal effect in domestic courts. Instead, “[t]he words of Article 94 . . . call upon governments to take certain action.” *Committee of United States Citizens Living in Nicaragua v. Reagan*, 859 F. 2d 929, 938 (CA DC 1988) (quoting *Diggs v. Richardson*, 555 F. 2d 848, 851 (CA DC 1976); internal quotation marks omitted). See also *Foster*, 2 Pet., at 314, 315 (holding a treaty non-self-executing because its text—“all . . . grants of land . . . shall be ratified and confirmed”—did not “act directly on the grants” but rather “pledge[d] the faith of the United States to pass acts which shall ratify and confirm them”). In other words, the U. N. Charter reads like “a compact between independent nations” that “depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it.” *Head Money Cases*, 112 U. S., at 598.⁵

⁵We do not read “undertakes” to mean that ““[t]he United States . . . shall be at liberty to make respecting th[e] matter, such laws as they think proper.”” *Post*, at 17–18 (BREYER, J., dissenting) (quoting *Todok v. Union State Bank of Harvard*, 281 U. S. 449, 453, 454 (1930) (holding that a treaty with Norway did *not* “operat[e] to override the law of

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The remainder of Article 94 confirms that the U. N. Charter does not contemplate the automatic enforceability of ICJ decisions in domestic courts.⁶ Article 94(2)—the enforcement provision—provides the sole remedy for noncompliance: referral to the United Nations Security Council by an aggrieved state. 59 Stat. 1051.

The U. N. Charter’s provision of an express diplomatic—that is, nonjudicial—remedy is itself evidence that ICJ judgments were not meant to be enforceable in domestic courts. See *Sanchez-Llamas*, 548 U. S., at 347. And even this “quintessentially *international* remed[y],” *id.*, at 355, is not absolute. First, the Security Council must “dee[m] necessary” the issuance of a recommendation or measure to effectuate the judgment. Art. 94(2), 59 Stat. 1051. Second, as the President and Senate were undoubtedly aware in subscribing to the U. N. Charter and Optional Protocol, the United States retained the unqualified right to exercise its veto of any Security Council resolution.

This was the understanding of the Executive Branch when the President agreed to the U. N. Charter and the declaration accepting general compulsory ICJ jurisdiction.

[Nebraska] as to the disposition of homestead property”). Whether or not the United States “undertakes” to comply with a treaty says nothing about what laws it may enact. The United States is *always* “at liberty to make . . . such laws as [it] think[s] proper.” *Id.*, at 453. Indeed, a later-in-time federal statute supersedes inconsistent treaty provisions. See, e.g., *Cook v. United States*, 288 U. S. 102, 119–120 (1933). Rather, the “undertakes to comply” language confirms that further action to give effect to an ICJ judgment was contemplated, contrary to the dissent’s position that such judgments constitute directly enforceable federal law, without more. See also *post*, at 1–3 (STEVENS, J., concurring in judgment).

⁶Article 94(2) provides in full: “If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.” 59 Stat. 1051.

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See, *e.g.*, The Charter of the United Nations for the Maintenance of International Peace and Security: Hearings before the Senate Committee on Foreign Relations, 79th Cong., 1st Sess., 124–125 (1945) (“[I]f a state fails to perform its obligations under a judgment of the [ICJ], the other party may have recourse to the Security Council”); *id.*, at 286 (statement of Leo Paslovsky, Special Assistant to the Secretary of State for International Organizations and Security Affairs) (“[W]hen the Court has rendered a judgment and one of the parties refuses to accept it, then the dispute becomes political rather than legal. It is as a political dispute that the matter is referred to the Security Council”); A Resolution Proposing Acceptance of Compulsory Jurisdiction of International Court of Justice: Hearings on S. Res. 196 before the Subcommittee of the Senate Committee on Foreign Relations, 79th Cong., 2d Sess., 142 (1946) (statement of Charles Fahy, State Dept. Legal Adviser) (while parties that accept ICJ jurisdiction have “a moral obligation” to comply with ICJ decisions, Article 94(2) provides the exclusive means of enforcement).

If ICJ judgments were instead regarded as automatically enforceable domestic law, they would be immediately and directly binding on state and federal courts pursuant to the Supremacy Clause. Mexico or the ICJ would have no need to proceed to the Security Council to enforce the judgment in this case. Noncompliance with an ICJ judgment through exercise of the Security Council veto—always regarded as an option by the Executive and ratifying Senate during and after consideration of the U. N. Charter, Optional Protocol, and ICJ Statute—would no longer be a viable alternative. There would be nothing to veto. In light of the U. N. Charter’s remedial scheme, there is no reason to believe that the President and Senate signed up for such a result.

In sum, Medellín’s view that ICJ decisions are automatically enforceable as domestic law is fatally under-

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mined by the enforcement structure established by Article 94. His construction would eliminate the option of non-compliance contemplated by Article 94(2), undermining the ability of the political branches to determine whether and how to comply with an ICJ judgment. Those sensitive foreign policy decisions would instead be transferred to state and federal courts charged with applying an ICJ judgment directly as domestic law. And those courts would not be empowered to decide whether to comply with the judgment—again, always regarded as an option by the political branches—any more than courts may consider whether to comply with any other species of domestic law. This result would be particularly anomalous in light of the principle that “[t]he conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative—‘the political’—Departments.” *Oetjen v. Central Leather Co.*, 246 U. S. 297, 302 (1918).

The ICJ Statute, incorporated into the U. N. Charter, provides further evidence that the ICJ’s judgment in *Avena* does not automatically constitute federal law judicially enforceable in United States courts. Art. 59, 59 Stat. 1062. To begin with, the ICJ’s “principal purpose” is said to be to “arbitrate particular disputes between national governments.” *Sanchez-Llamas, supra*, at 355 (citing 59 Stat. 1055). Accordingly, the ICJ can hear disputes only between nations, not individuals. Art. 34(1), 59 Stat. 1059 (“Only states [*i.e.*, countries] may be parties in cases before the [ICJ]”). More important, Article 59 of the statute provides that “[t]he decision of the [ICJ] has *no binding force* except between the parties and in respect of that particular case.” *Id.*, at 1062 (emphasis added).⁷ The

⁷Medellín alters this language in his brief to provide that the ICJ Statute makes the *Avena* judgment binding “in respect of [his] particular case.” Brief for Petitioner 22 (internal quotation marks omitted). Medellín does not and cannot have a case before the ICJ under the terms of the ICJ Statute.

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dissent does not explain how Medellín, an individual, can be a party to the ICJ proceeding.

Medellín argues that because the *Avena* case involves him, it is clear that he—and the 50 other Mexican nationals named in the *Avena* decision—should be regarded as parties to the *Avena* judgment. Brief for Petitioner 21–22. But cases before the ICJ are often precipitated by disputes involving particular persons or entities, disputes that a nation elects to take up as its own. See, e.g., *Case Concerning the Barcelona Traction, Light & Power Co. (Belg. v. Spain)*, 1970 I. C. J. 3 (Judgment of Feb. 5) (claim brought by Belgium on behalf of Belgian nationals and shareholders); *Case Concerning the Protection of French Nationals and Protected Persons in Egypt (Fr. v. Egypt)*, 1950 I. C. J. 59 (Order of Mar. 29) (claim brought by France on behalf of French nationals and protected persons in Egypt); *Anglo-Iranian Oil Co. Case (U. K. v. Iran)*, 1952 I. C. J. 93, 112 (Judgment of July 22) (claim brought by the United Kingdom on behalf of the Anglo-Iranian Oil Company). That has never been understood to alter the express and established rules that only nation-states may be parties before the ICJ, Art. 34, 59 Stat. 1059, and—contrary to the position of the dissent, *post*, at 23—that ICJ judgments are binding only between those parties, Art. 59, *id.*, at 1062.⁸

⁸The dissent concludes that the ICJ judgment is binding federal law based in large part on its belief that the Vienna Convention overrides contrary state procedural rules. See *post*, at 19–20, 20–21, 23. But not even Medellín relies on the Convention. See Reply Brief for Petitioner 5 (disclaiming reliance). For good reason: Such reliance is foreclosed by the decision of this Court in *Sanchez-Llamas*, 548 U. S., at 351 (holding that the Convention does not preclude the application of state procedural bars); see also *id.*, at 363 (GINSBURG, J., concurring in judgment). There is no basis for relitigating the issue. Further, to rely on the Convention would elide the distinction between a treaty—negotiated by the President and signed by Congress—and a judgment rendered pursuant to those treaties.

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It is, moreover, well settled that the United States' interpretation of a treaty "is entitled to great weight." *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U. S. 176, 184–185 (1982); see also *El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U. S. 155, 168 (1999). The Executive Branch has unfailingly adhered to its view that the relevant treaties do not create domestically enforceable federal law. See Brief for United States as *Amicus Curiae* 4, 27–29.⁹

The pertinent international agreements, therefore, do not provide for implementation of ICJ judgments through direct enforcement in domestic courts, and "where a treaty does not provide a particular remedy, either expressly or implicitly, it is not for the federal courts to impose one on the States through lawmaking of their own." *Sanchez-Llamas*, 548 U. S., at 347.

⁹In interpreting our treaty obligations, we also consider the views of the ICJ itself, "giv[ing] respectful consideration to the interpretation of an international treaty rendered by an international court with jurisdiction to interpret [the treaty]." *Breard v. Greene*, 523 U. S. 371, 375 (1998) (*per curiam*); see *Sanchez-Llamas*, *supra*, at 355–356. It is not clear whether that principle would apply when the question is the binding force of ICJ judgments themselves, rather than the substantive scope of a treaty the ICJ must interpret in resolving disputes. Cf. *Phillips Petroleum Co. v. Shutts*, 472 U. S. 797, 805 (1985) ("[A] court adjudicating a dispute may not be able to predetermine the res judicata effect of its own judgment"); 18 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* §4405, p. 82 (2d ed. 2002) ("The first court does not get to dictate to other courts the preclusion consequences of its own judgment"). In any event, nothing suggests that the ICJ views its judgments as automatically enforceable in the domestic courts of signatory nations. The *Avena* judgment itself directs the United States to provide review and reconsideration of the affected convictions and sentences "by means of its own choosing." 2004 I. C. J., at 72 (emphasis added). This language, as well as the ICJ's mere suggestion that the "judicial process" is best suited to provide such review, *id.*, at 65–66, confirm that domestic enforceability in court is not part and parcel of an ICJ judgment.

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B

The dissent faults our analysis because it “looks for the wrong thing (explicit textual expression about self-execution) using the wrong standard (clarity) in the wrong place (the treaty language).” *Post*, at 26. Given our obligation to interpret treaty provisions to determine whether they are self-executing, we have to confess that we do think it rather important to look to the treaty language to see what it has to say about the issue. That is after all what the Senate looks to in deciding whether to approve the treaty.

The interpretive approach employed by the Court today—resorting to the text—is hardly novel. In two early cases involving an 1819 land-grant treaty between Spain and the United States, Chief Justice Marshall found the language of the treaty dispositive. In *Foster*, after distinguishing between self-executing treaties (those “equivalent to an act of the legislature”) and non-self-executing treaties (those “the legislature must execute”), Chief Justice Marshall held that the 1819 treaty was non-self-executing. 2 Pet., at 314. Four years later, the Supreme Court considered another claim under the same treaty, but concluded that the treaty was self-executing. See *Percheman*, 7 Pet., at 87. The reason was not because the treaty was sometimes self-executing and sometimes not, but because “the language of” the Spanish translation (brought to the Court’s attention for the first time) indicated the parties’ intent to ratify and confirm the land-grant “by force of the instrument itself.” *Id.*, at 89.

As against this time-honored textual approach, the dissent proposes a multifactor, judgment-by-judgment analysis that would “jettiso[n] relative predictability for the open-ended rough-and-tumble of factors.” *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U. S. 527, 547 (1995). The dissent’s novel approach to deciding which (or, more accurately, when) treaties give rise to

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directly enforceable federal law is arrestingly indeterminate. Treaty language is barely probative. *Post*, at 12–13 (“[T]he absence or presence of language in a treaty about a provision’s self-execution proves nothing at all”). Determining whether treaties themselves create federal law is sometimes committed to the political branches and sometimes to the judiciary. *Post*, at 13. Of those committed to the judiciary, the courts pick and choose which shall be binding United States law—trumping not only state but other federal law as well—and which shall not. *Post*, at 13–27. They do this on the basis of a multifactor, “context-specific” inquiry. *Post*, at 13. Even then, the same treaty sometimes gives rise to United States law and sometimes does not, again depending on an ad hoc judicial assessment. *Post*, at 13–27.

Our Framers established a careful set of procedures that must be followed before federal law can be created under the Constitution—vesting that decision in the political branches, subject to checks and balances. U. S. Const., Art. I, §7. They also recognized that treaties could create federal law, but again through the political branches, with the President making the treaty and the Senate approving it. Art. II, §2. The dissent’s understanding of the treaty route, depending on an ad hoc judgment of the judiciary without looking to the treaty language—the very language negotiated by the President and approved by the Senate—cannot readily be ascribed to those same Framers.

The dissent’s approach risks the United States’ involvement in international agreements. It is hard to believe that the United States would enter into treaties that are sometimes enforceable and sometimes not. Such a treaty would be the equivalent of writing a blank check to the judiciary. Senators could never be quite sure what the treaties on which they were voting meant. Only a judge could say for sure and only at some future date. This uncertainty could hobble the United States’ efforts to

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negotiate and sign international agreements.

In this case, the dissent—for a grab bag of no less than seven reasons—would tell us that this *particular* ICJ judgment is federal law. *Post*, at 13–27. That is no sort of guidance. Nor is it any answer to say that the federal courts will diligently police international agreements and enforce the decisions of international tribunals only when they *should be* enforced. *Ibid.* The point of a non-self-executing treaty is that it “addresses itself to the political, *not* the judicial department; and the legislature must execute the contract before it can become a rule for the Court.” *Foster, supra*, at 314 (emphasis added); *Whitney*, 124 U. S., at 195. See also *Foster, supra*, at 307 (“The judiciary is not that department of the government, to which the assertion of its interests against foreign powers is confided”). The dissent’s contrary approach would assign to the courts—not the political branches—the primary role in deciding when and how international agreements will be enforced. To read a treaty so that it sometimes has the effect of domestic law and sometimes does not is tantamount to vesting with the judiciary the power not only to interpret but also to create the law.

C

Our conclusion that *Avena* does not by itself constitute binding federal law is confirmed by the “postratification understanding” of signatory nations. See *Zicherman*, 516 U. S., at 226. There are currently 47 nations that are parties to the Optional Protocol and 171 nations that are parties to the Vienna Convention. Yet neither Medellín nor his *amici* have identified a single nation that treats ICJ judgments as binding in domestic courts.¹⁰ In deter-

¹⁰The best that the ICJ experts as *amici curiae* can come up with is the contention that local Moroccan courts have referred to ICJ judgments as “dispositive.” Brief for ICJ Experts as *Amici Curiae* 20, n. 31. Even the ICJ experts do not cite a case so holding, and Moroccan

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mining that the Vienna Convention did not require certain relief in United States courts in *Sanchez-Llamas*, we found it pertinent that the requested relief would not be available under the treaty in any other signatory country. See 548 U. S., at 343–344, and n. 3. So too here the lack of any basis for supposing that any other country would treat ICJ judgments as directly enforceable as a matter of their domestic law strongly suggests that the treaty should not be so viewed in our courts.

Our conclusion is further supported by general principles of interpretation. To begin with, we reiterated in *Sanchez-Llamas* what we held in *Breard*, that “‘absent a clear and express statement to the contrary, the procedural rules of the forum State govern the implementation of the treaty in that State.’” 548 U. S., at 351 (quoting *Breard*, 523 U. S., at 375). Given that ICJ judgments may interfere with state procedural rules, one would expect the ratifying parties to the relevant treaties to have clearly stated their intent to give those judgments domestic effect, if they had so intended. Here there is no statement in the Optional Protocol, the U. N. Charter, or the ICJ Statute that supports the notion that ICJ judgments displace state procedural rules.

Moreover, the consequences of Medellín’s argument give pause. An ICJ judgment, the argument goes, is not only binding domestic law but is also unassailable. As a result, neither Texas nor this Court may look behind a judgment

practice is at best inconsistent, for at least one local Moroccan court has held that ICJ judgments are not binding as a matter of municipal law. See, e.g., *Mackay Radio & Tel. Co. v. Lal-La Fatma Bent si Mohamed el Khadar*, [1954] 21 Int’l L. Rep. 136 (Tangier, Ct. App. Int’l Trib.) (holding that ICJ decisions are not binding on Morocco’s domestic courts); see also “*Socobel*” v. *Greek State*, [1951] 18 Int’l L. Rep. 3 (Belg., Trib. Civ. de Bruxelles) (holding that judgments of the ICJ’s predecessor, the Permanent Court of International Justice, were not domestically enforceable).

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and quarrel with its reasoning or result. (We already know, from *Sanchez-Llamas*, that this Court disagrees with both the reasoning and result in *Avena*.) Medellín’s interpretation would allow ICJ judgments to override otherwise binding state law; there is nothing in his logic that would exempt contrary federal law from the same fate. See, e.g., *Cook v. United States*, 288 U. S. 102, 119 (1933) (later-in-time self-executing treaty supersedes a federal statute if there is a conflict). And there is nothing to prevent the ICJ from ordering state courts to annul criminal convictions and sentences, for any reason deemed sufficient by the ICJ. Indeed, that is precisely the relief Mexico requested. *Avena*, 2004 I. C. J., at 58–59.

Even the dissent flinches at reading the relevant treaties to give rise to self-executing ICJ judgments in all cases. It admits that “Congress is unlikely to authorize automatic judicial enforceability of *all* ICJ judgments, for that could include some politically sensitive judgments and others better suited for enforcement by other branches.” *Post*, at 24. Our point precisely. But the lesson to draw from that insight is hardly that the judiciary should decide which judgments are politically sensitive and which are not.

In short, and as we observed in *Sanchez-Llamas*, “[n]othing in the structure or purpose of the ICJ suggests that its interpretations were intended to be conclusive on our courts.” 548 U. S., at 354. Given that holding, it is difficult to see how that same structure and purpose can establish, as Medellín argues, that *judgments* of the ICJ nonetheless were intended to be conclusive on our courts. A judgment is binding only if there is a rule of law that makes it so. And the question whether ICJ judgments can bind domestic courts depends upon the same analysis undertaken in *Sanchez-Llamas* and set forth above.

Our prior decisions identified by the dissent as holding a number of treaties to be self-executing, see *post*, at 8–9,

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Appendix A, stand only for the unremarkable proposition that some international agreements are self-executing and others are not. It is well settled that the “[i]nterpretation of [a treaty] . . . must, of course, begin with the language of the Treaty itself.” *Sumitomo Shoji America, Inc.*, 457 U. S., at 180. As a result, we have held treaties to be self-executing when the textual provisions indicate that the President and Senate intended for the agreement to have domestic effect.

Medellín and the dissent cite *Comegys v. Vasse*, 1 Pet. 193 (1828), for the proposition that the judgments of international tribunals are automatically binding on domestic courts. See *post*, at 9; Reply Brief for Petitioner 2; Brief for Petitioner 19–20. That case, of course, involved a different treaty than the ones at issue here; it stands only for the modest principle that the terms of a treaty control the outcome of a case.¹¹ We do not suggest that treaties can never afford binding domestic effect to international tribunal judgments—only that the U. N. Charter, the Optional Protocol, and the ICJ Statute do not do so. And whether the treaties underlying a judgment are self-executing so that the judgment is directly enforceable as domestic law in our courts is, of course, a matter for this Court to decide. See *Sanchez-Llamas, supra*, at 353–354.

¹¹The other case Medellín cites for the proposition that the judgments of international courts are binding, *La Abra Silver Mining Co. v. United States*, 175 U. S. 423 (1899), and the cases he cites for the proposition that this Court has routinely enforced treaties under which foreign nationals have asserted rights, similarly stand only for the principle that the terms of a treaty govern its enforcement. See Reply Brief for Petitioner 4, 5, n. 2. In each case, this Court first interpreted the treaty prior to finding it domestically enforceable. See, e.g., *United States v. Rauscher*, 119 U. S. 407, 422–423 (1886) (holding that the treaty required extradition only for specified offenses); *Hopkirk v. Bell*, 3 Cranch 454, 458 (1806) (holding that the treaty of peace between Great Britain and the United States prevented the operation of a state statute of limitations on British debts).

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D

Our holding does not call into question the ordinary enforcement of foreign judgments or international arbitral agreements. Indeed, we agree with Medellín that, as a general matter, “an agreement to abide by the result” of an international adjudication—or what he really means, an agreement to give the result of such adjudication domestic legal effect—can be a treaty obligation like any other, so long as the agreement is consistent with the Constitution. See Brief for Petitioner 20. The point is that the particular treaty obligations on which Medellín relies do not of their own force create domestic law.

The dissent worries that our decision casts doubt on some 70-odd treaties under which the United States has agreed to submit disputes to the ICJ according to “roughly similar” provisions. See *post*, at 4, 16–17. Again, under our established precedent, some treaties are self-executing and some are not, depending on the treaty. That the judgment of an international tribunal might not automatically become domestic law hardly means the underlying treaty is “useless.” See *post*, at 17; cf. *post*, at 11 (describing the British system in which treaties “virtually always requir[e] parliamentary legislation”). Such judgments would still constitute international obligations, the proper subject of political and diplomatic negotiations. See *Head Money Cases*, 112 U. S., at 598. And Congress could elect to give them wholesale effect (rather than the judgment-by-judgment approach hypothesized by the dissent, *post*, at 24) through implementing legislation, as it regularly has. See, e.g., Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, div. G, §2242, 112 Stat. 2681–822, note following 8 U. S. C. §1231 (directing the “appropriate agencies” to “prescribe regulations to implement the obligations of the United States under Article 3” of the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment);

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see also *infra*, at 25–26 (listing examples of legislation implementing international obligations).

Further, that an ICJ judgment may not be automatically enforceable in domestic courts does not mean the particular underlying treaty is not. Indeed, we have held that a number of the “Friendship, Commerce, and Navigation” Treaties cited by the dissent, see *post*, Appendix B, are self-executing—based on “the language of the[se] Treat[ies].” See *Sumitomo Shoji America, Inc.*, *supra*, at 180, 189–190. In *Kolovrat v. Oregon*, 366 U. S. 187, 191, 196 (1961), for example, the Court found that Yugoslavian claimants denied inheritance under Oregon law were entitled to inherit personal property pursuant to an 1881 Treaty of Friendship, Navigation, and Commerce between the United States and Serbia. See also *Clark v. Allen*, 331 U. S. 503, 507–511, 517–518 (1947) (finding that the right to inherit real property granted German aliens under the Treaty of Friendship, Commerce, and Consular Rights with Germany prevailed over California law). Contrary to the dissent’s suggestion, see *post*, at 11, neither our approach nor our cases require that a treaty provide for self-execution in so many talismanic words; that is a caricature of the Court’s opinion. Our cases simply require courts to decide whether a treaty’s terms reflect a determination by the President who negotiated it and the Senate that confirmed it that the treaty has domestic effect.

In addition, Congress is up to the task of implementing non-self-executing treaties, even those involving complex commercial disputes. Cf. *post*, at 24 (BREYER, J., dissenting). The judgments of a number of international tribunals enjoy a different status because of implementing legislation enacted by Congress. See, e.g., 22 U. S. C. §1650a(a) (“An award of an arbitral tribunal rendered pursuant to chapter IV of the [Convention on the Settlement of Investment Disputes] shall create a right arising under a treaty of the United States. The pecuniary obliga-

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tions imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States”); 9 U. S. C. §§201–208 (“The [U. N.] Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter,” §201). Such language demonstrates that Congress knows how to accord domestic effect to international obligations when it desires such a result.¹²

Further, Medellín frames his argument as though giving the *Avena* judgment binding effect in domestic courts simply conforms to the proposition that domestic courts generally give effect to foreign judgments. But Medellín does not ask us to enforce a foreign-court judgment settling a typical commercial or property dispute. See, e.g., *Hilton v. Guyot*, 159 U. S. 113 (1895); *United States v. Arredondo*, 6 Pet. 691 (1832); see also Uniform Foreign Money-Judgments Recognition Act §1(2), 13 U. L. A., pt. 2, p. 44 (2002) (“[F]oreign judgment’ means any judgment of a foreign state granting or denying recovery of a sum of money”). Rather, Medellín argues that the *Avena* judgment has the effect of enjoining the operation of state law. What is more, on Medellín’s view, the judgment would force the State to take action to “review and reconsider[r]”

¹²That this Court has rarely had occasion to find a treaty non-self-executing is not all that surprising. See *post*, at 8 (BREYER, J., dissenting). To begin with, the Courts of Appeals have regularly done so. See, e.g., *Pierre v. Gonzales*, 502 F. 3d 109, 119–120 (CA2 2007) (holding that the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is non-self-executing); *Singh v. Ashcroft*, 398 F. 3d 396, 404, n. 3 (CA6 2005) (same); *Beazley v. Johnson*, 242 F. 3d 248, 267 (CA5 2001) (holding that the International Covenant on Civil and Political Rights is non-self-executing). Further, as noted, Congress has not hesitated to pass implementing legislation for treaties that in its view require such legislation.

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his case. The general rule, however, is that judgments of foreign courts awarding injunctive relief, even as to private parties, let alone sovereign States, “are not generally entitled to enforcement.” See 2 Restatement §481, Comment *b*, at 595.

In sum, while the ICJ’s judgment in *Avena* creates an international law obligation on the part of the United States, it does not of its own force constitute binding federal law that pre-empts state restrictions on the filing of successive habeas petitions. As we noted in *Sanchez-Llamas*, a contrary conclusion would be extraordinary, given that basic rights guaranteed by our own Constitution do not have the effect of displacing state procedural rules. See 548 U. S., at 360. Nothing in the text, background, negotiating and drafting history, or practice among signatory nations suggests that the President or Senate intended the improbable result of giving the judgments of an international tribunal a higher status than that enjoyed by “many of our most fundamental constitutional protections.” *Ibid.*

III

Medellín next argues that the ICJ’s judgment in *Avena* is binding on state courts by virtue of the President’s February 28, 2005 Memorandum. The United States contends that while the *Avena* judgment does not of its own force require domestic courts to set aside ordinary rules of procedural default, that judgment became the law of the land with precisely that effect pursuant to the President’s Memorandum and his power “to establish binding rules of decision that preempt contrary state law.” Brief for United States as *Amicus Curiae* 5. Accordingly, we must decide whether the President’s declaration alters our conclusion that the *Avena* judgment is not a rule of

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domestic law binding in state and federal courts.¹³

A

The United States maintains that the President’s constitutional role “uniquely qualifies” him to resolve the sensitive foreign policy decisions that bear on compliance with an ICJ decision and “to do so expeditiously.” Brief for United States as *Amicus Curiae* 11, 12. We do not question these propositions. See, e.g., *First Nat. City Bank v. Banco Nacional de Cuba*, 406 U. S. 759, 767 (1972) (plurality opinion) (The President has “the lead role . . . in foreign policy”); *American Ins. Assn. v. Garamendi*, 539 U. S. 396, 414 (2003) (Article II of the Constitution places with the President the “vast share of responsibility for the conduct of our foreign relations” (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 610–611 (1952) (Frankfurter, J., concurring)). In this case, the President seeks to vindicate United States interests in ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law. These interests are plainly compelling.

Such considerations, however, do not allow us to set aside first principles. The President’s authority to act, as with the exercise of any governmental power, “must stem either from an act of Congress or from the Constitution itself.” *Youngstown, supra*, at 585; *Dames & Moore v. Regan*, 453 U. S. 654, 668 (1981).

¹³The dissent refrains from deciding the issue, but finds it “difficult to believe that in the exercise of his Article II powers pursuant to a ratified treaty, the President can *never* take action that would result in setting aside state law.” *Post*, at 29. We agree. The questions here are the far more limited ones of whether he may unilaterally create federal law by giving effect to the judgment of this international tribunal pursuant to this non-self-executing treaty, and, if not, whether he may rely on other authority under the Constitution to support the action taken in this particular case. Those are the only questions we decide.

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Justice Jackson’s familiar tripartite scheme provides the accepted framework for evaluating executive action in this area. First, “[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.” *Youngstown*, 343 U. S., at 635 (Jackson, J., concurring). Second, “[w]hen the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain.” *Id.*, at 637. In this circumstance, Presidential authority can derive support from “congressional inertia, indifference or quiescence.” *Ibid.* Finally, “[w]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb,” and the Court can sustain his actions “only by disabling the Congress from acting upon the subject.” *Id.*, at 637–638.

B

The United States marshals two principal arguments in favor of the President’s authority “to establish binding rules of decision that preempt contrary state law.” Brief for United States as *Amicus Curiae* 5. The Solicitor General first argues that the relevant treaties give the President the authority to implement the *Avena* judgment and that Congress has acquiesced in the exercise of such authority. The United States also relies upon an “independent” international dispute-resolution power wholly apart from the asserted authority based on the pertinent treaties. *Medellín* adds the additional argument that the President’s Memorandum is a valid exercise of his power to take care that the laws be faithfully executed.

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1

The United States maintains that the President's Memorandum is authorized by the Optional Protocol and the U. N. Charter. Brief for United States as *Amicus Curiae* 9. That is, because the relevant treaties "create an obligation to comply with *Avena*," they "*implicitly* give the President authority to implement that treaty-based obligation." *Id.*, at 11 (emphasis added). As a result, the President's Memorandum is well grounded in the first category of the *Youngstown* framework.

We disagree. The President has an array of political and diplomatic means available to enforce international obligations, but unilaterally converting a non-self-executing treaty into a self-executing one is not among them. The responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress. *Foster*, 2 Pet., at 315; *Whitney*, 124 U. S., at 194; *Igartúa-De La Rosa*, 417 F. 3d, at 150. As this Court has explained, when treaty stipulations are "not self-executing they can only be enforced pursuant to legislation to carry them into effect." *Whitney*, *supra*, at 194. Moreover, "[u]ntil such act shall be passed, the Court is not at liberty to disregard the existing laws on the subject." *Foster*, *supra*, at 315.

The requirement that Congress, rather than the President, implement a non-self-executing treaty derives from the text of the Constitution, which divides the treaty-making power between the President and the Senate. The Constitution vests the President with the authority to "make" a treaty. Art. II, §2. If the Executive determines that a treaty should have domestic effect of its own force, that determination may be implemented "in mak[ing]" the treaty, by ensuring that it contains language plainly providing for domestic enforceability. If the treaty is to be self-executing in this respect, the Senate must consent to the treaty by the requisite two-thirds vote, *ibid.*, consis-

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tent with all other constitutional restraints.

Once a treaty is ratified without provisions clearly according it domestic effect, however, whether the treaty will ever have such effect is governed by the fundamental constitutional principle that “[t]he power to make the necessary laws is in Congress; the power to execute in the President.” *Hamdan v. Rumsfeld*, 548 U. S. 557, 591 (2006) (quoting *Ex parte Milligan*, 4 Wall. 2, 139 (1866) (opinion of Chase, C. J.)); see U. S. Const., Art. I, §1 (“All legislative Powers herein granted shall be vested in a Congress of the United States”). As already noted, the terms of a non-self-executing treaty can become domestic law only in the same way as any other law—through passage of legislation by both Houses of Congress, combined with either the President’s signature or a congressional override of a Presidential veto. See Art. I, §7. Indeed, “the President’s power to see that the laws are faithfully executed refutes the idea that he is to be a law-maker.” *Youngstown*, 343 U. S., at 587.

A non-self-executing treaty, by definition, is one that was ratified with the understanding that it is not to have domestic effect of its own force. That understanding precludes the assertion that Congress has implicitly authorized the President—acting on his own—to achieve precisely the same result. We therefore conclude, given the absence of congressional legislation, that the non-self-executing treaties at issue here did not “express[ly] or implied[ly]” vest the President with the unilateral authority to make them self-executing. See *id.*, at 635 (Jackson, J., concurring). Accordingly, the President’s Memorandum does not fall within the first category of the *Youngstown* framework.

Indeed, the preceding discussion should make clear that the non-self-executing character of the relevant treaties not only refutes the notion that the ratifying parties vested the President with the authority to unilaterally

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make treaty obligations binding on domestic courts, but also implicitly prohibits him from doing so. When the President asserts the power to “enforce” a non-self-executing treaty by unilaterally creating domestic law, he acts in conflict with the implicit understanding of the ratifying Senate. His assertion of authority, insofar as it is based on the pertinent non-self-executing treaties, is therefore within Justice Jackson’s third category, not the first or even the second. See *id.*, at 637–638.

Each of the two means described above for giving domestic effect to an international treaty obligation under the Constitution—for making law—requires joint action by the Executive and Legislative Branches: The Senate can ratify a self-executing treaty “ma[de]” by the Executive, or, if the ratified treaty is not self-executing, Congress can enact implementing legislation approved by the President. It should not be surprising that our Constitution does not contemplate vesting such power in the Executive alone. As Madison explained in *The Federalist* No. 47, under our constitutional system of checks and balances, “[t]he magistrate in whom the whole executive power resides cannot of himself make a law.” J. Cooke ed., p. 326 (1961). That would, however, seem an apt description of the asserted executive authority unilaterally to give the effect of domestic law to obligations under a non-self-executing treaty.

The United States nonetheless maintains that the President’s Memorandum should be given effect as domestic law because “this case involves a valid Presidential action in the context of Congressional ‘acquiescence.’” Brief for United States as *Amicus Curiae* 11, n. 2. Under the *Youngstown* tripartite framework, congressional acquiescence is pertinent when the President’s action falls within the second category—that is, when he “acts in absence of either a congressional grant or denial of authority.” 343 U. S., at 637 (Jackson, J., concurring). Here,

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however, as we have explained, the President's effort to accord domestic effect to the *Avena* judgment does not meet that prerequisite.

In any event, even if we were persuaded that congressional acquiescence could support the President's asserted authority to create domestic law pursuant to a non-self-executing treaty, such acquiescence does not exist here. The United States first locates congressional acquiescence in Congress's failure to act following the President's resolution of prior ICJ controversies. A review of the Executive's actions in those prior cases, however, cannot support the claim that Congress acquiesced in this particular exercise of Presidential authority, for none of them remotely involved transforming an international obligation into domestic law and thereby displacing state law.¹⁴

¹⁴Rather, in the *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U. S.)*, 1986 I. C. J. 14 (Judgment of June 27), the President determined that the United States would *not* comply with the ICJ's conclusion that the United States owed reparations to Nicaragua. In the *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U. S.)*, 1984 I. C. J. 246 (Judgment of Oct. 12), a federal agency—the National Oceanic and Atmospheric Administration—issued a final rule which complied with the ICJ's boundary determination. The *Case Concerning Rights of Nationals of the United States of America in Morocco (Fr. v. U. S.)*, 1952 I. C. J. 176 (Judgment of Aug. 27), concerned the legal status of United States citizens living in Morocco; it was not enforced in United States courts.

The final two cases arose under the Vienna Convention. In the *LaGrand Case (F. R. G. v. U. S.)*, 2001 I. C. J. 466 (Judgment of June 27), the ICJ ordered the review and reconsideration of convictions and sentences of German nationals denied consular notification. In response, the State Department sent letters to the States "encouraging" them to consider the Vienna Convention in the clemency process. Brief for United States as *Amicus Curiae* 20–21. Such encouragement did not give the ICJ judgment direct effect as domestic law; thus, it cannot serve as precedent for doing so in which Congress might be said to have acquiesced. In the *Case Concerning the Vienna Convention on Consular Relations (Para. v. U. S.)*, 1998 I. C. J. 248 (Judgment of Apr. 9), the

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The United States also directs us to the President’s “related” statutory responsibilities and to his “established role” in litigating foreign policy concerns as support for the President’s asserted authority to give the ICJ’s decision in *Avena* the force of domestic law. Brief for United States as *Amicus Curiae* 16–19. Congress has indeed authorized the President to represent the United States before the United Nations, the ICJ, and the Security Council, 22 U. S. C. §287, but the authority of the President to represent the United States before such bodies speaks to the President’s *international* responsibilities, not any unilateral authority to create domestic law. The authority expressly conferred by Congress in the international realm cannot be said to “invite” the Presidential action at issue here. See *Youngstown, supra*, at 637 (Jackson, J., concurring). At bottom, none of the sources of authority identified by the United States supports the President’s claim that Congress has acquiesced in his asserted power to establish on his own federal law or to override state law.

None of this is to say, however, that the combination of a non-self-executing treaty and the lack of implementing legislation precludes the President from acting to comply with an international treaty obligation. It is only to say that the Executive cannot unilaterally execute a non-self-

ICJ issued a provisional order, directing the United States to “*take all measures at its disposal* to ensure that [Breard] is not executed pending the final decision in [the ICJ’s] proceedings.” *Breard*, 523 U. S., at 374 (internal quotation marks omitted). In response, the Secretary of State sent a letter to the Governor of Virginia requesting that he stay Breard’s execution. *Id.*, at 378. When Paraguay sought a stay of execution from this Court, the United States argued that it had taken every measure at its disposal: because “our federal system imposes limits on the federal government’s ability to interfere with the criminal justice systems of the States,” those measures included “only persuasion,” not “legal compulsion.” Brief for United States as *Amicus Curiae*, O. T. 1997, No. 97–8214, p. 51. This of course is precedent contrary to the proposition asserted by the Solicitor General in this case.

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executing treaty by giving it domestic effect. That is, the non-self-executing character of a treaty constrains the President's ability to comply with treaty commitments by unilaterally making the treaty binding on domestic courts. The President may comply with the treaty's obligations by some other means, so long as they are consistent with the Constitution. But he may not rely upon a non-self-executing treaty to "establish binding rules of decision that preempt contrary state law." Brief for United States as *Amicus Curiae* 5.

2

We thus turn to the United States' claim that— independent of the United States' treaty obligations—the Memorandum is a valid exercise of the President's foreign affairs authority to resolve claims disputes with foreign nations. *Id.*, at 12–16. The United States relies on a series of cases in which this Court has upheld the authority of the President to settle foreign claims pursuant to an executive agreement. See *Garamendi*, 539 U. S., at 415; *Dames & Moore*, 453 U. S., at 679–680; *United States v. Pink*, 315 U. S. 203, 229 (1942); *United States v. Belmont*, 301 U. S. 324, 330 (1937). In these cases this Court has explained that, if pervasive enough, a history of congressional acquiescence can be treated as a "gloss on 'Executive Power' vested in the President by §1 of Art. II." *Dames & Moore*, *supra*, at 686 (some internal quotation marks omitted).

This argument is of a different nature than the one rejected above. Rather than relying on the United States' treaty obligations, the President relies on an independent source of authority in ordering Texas to put aside its procedural bar to successive habeas petitions. Nevertheless, we find that our claims-settlement cases do not support the authority that the President asserts in this case.

The claims-settlement cases involve a narrow set of

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circumstances: the making of executive agreements to settle civil claims between American citizens and foreign governments or foreign nationals. See, *e.g.*, *Belmont, supra*, at 327. They are based on the view that “a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned,” can “raise a presumption that the [action] had been [taken] in pursuance of its consent.” *Dames & Moore, supra*, at 686 (some internal quotation marks omitted). As this Court explained in *Garamendi*,

Making executive agreements to settle claims of American nationals against foreign governments is a particularly longstanding practice Given the fact that the practice goes back over 200 years, and has received congressional acquiescence throughout its history, the conclusion that the President’s control of foreign relations includes the settlement of claims is indisputable. 539 U. S., at 415 (internal quotation marks and brackets omitted).

Even still, the limitations on this source of executive power are clearly set forth and the Court has been careful to note that “[p]ast practice does not, by itself, create power.” *Dames & Moore, supra*, at 686.

The President’s Memorandum is not supported by a “particularly longstanding practice” of congressional acquiescence, see *Garamendi, supra*, at 415, but rather is what the United States itself has described as “unprecedented action,” Brief for United States as *Amicus Curiae* in *Sanchez-Llamas*, O. T. 2005, Nos. 05–51 and 04–10566, pp. 29–30. Indeed, the Government has not identified a single instance in which the President has attempted (or Congress has acquiesced in) a Presidential directive issued to state courts, much less one that reaches deep into the heart of the State’s police powers and compels state courts to reopen final criminal judgments and set aside neutrally

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applicable state laws. Cf. *Brecht v. Abrahamson*, 507 U. S. 619, 635 (1993) (“States possess primary authority for defining and enforcing the criminal law” (quoting *Engle v. Isaac*, 456 U. S. 107, 128 (1982); internal quotation marks omitted). The Executive’s narrow and strictly limited authority to settle international claims disputes pursuant to an executive agreement cannot stretch so far as to support the current Presidential Memorandum.

3

Medellín argues that the President’s Memorandum is a valid exercise of his “Take Care” power. Brief for Petitioner 28. The United States, however, does not rely upon the President’s responsibility to “take Care that the Laws be faithfully executed.” U. S. Const., Art. II, §3. We think this a wise concession. This authority allows the President to execute the laws, not make them. For the reasons we have stated, the *Avena* judgment is not domestic law; accordingly, the President cannot rely on his Take Care powers here.

The judgment of the Texas Court of Criminal Appeals is affirmed.

It is so ordered.