

**AMERICAN SOCIETY OF INTERNATIONAL LAW AND  
AMERICAN BAR ASSOCIATION-SECTION OF INTERNATIONAL LAW**

**JOINT TASK FORCE ON TREATIES IN US LAW**

On March 25, 2008, the Supreme Court held in *Medellin v. Texas* that the International Court of Justice's March 31, 2004, Judgment in the *Case Concerning Avena and Other Mexican Nationals*, while creating an international legal obligation applicable to the United States, does not create binding federal law enforceable in U.S. courts and that the President does not have the constitutional authority to mandate that a state comply. *Medellin* appears to merge the question of whether a treaty is enforceable in federal court with the question of whether that treaty is binding federal law, stating that non-self-executing treaties are neither. This raises the question not only of whether treaty obligations that are non-self-executing can be valid authority in U.S. courts for any purpose, but also of whether even the executive branch is bound to act in accordance with these obligations. Moreover, while appearing to recognize that a treaty can be self-executing by implication, *Medellin* suggests that if it cannot be clearly determined that Congress understood the treaty in question to be self-executing when providing advice and consent to ratification, the treaty will be considered non-self-executing and will not be treated as U.S. domestic law. This could call into question the status not only of treaties with binding ICJ dispute settlement clauses, but also of many other existing bilateral and multilateral treaties for which there is neither domestic implementing legislation nor a clear record that they are self-executing. The task force will review past treaties to determine whether, under the standards set out in *Medellin*, their domestic U.S. legal status is now in doubt and will consider actions that the executive and legislative branches could take both to clarify their status and to reassure foreign treaty partners that the United States will honor its treaty obligations. With respect to future treaties, the task force will consider actions that the executive and legislative branches could take, both during negotiations as well as at the stage when such treaties are submitted to the Senate for advice and consent to ratification, to remove the uncertainties as to the treaty's status under U.S. domestic law and about whether the U.S. will comply.

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