SUPREME COURT OF THE UNITED STATES

No. 91–712

UNITED STATES, PETITIONER *v.* HUMBERTO ALVAREZ-MACHAIN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 15, 1992]

THE CHIEF JUSTICE delivered the opinion of the Court.

The issue in this case is whether a criminal defendant, abducted to the United States from a nation with which it has an extradition treaty, thereby acquires a defense to the jurisdiction of this country's courts. We hold that he does not, and that he may be tried in federal district court for violations of the criminal law of the United States.

Respondent, Humberto Alvarez-Machain, is a citizen and resident of Mexico. He was indicted for participating in the kidnap and murder of United States Drug Enforcement Administration (DEA) special agent Enrique Camarena-Salazar and a Mexican pilot working with Camarena, Alfredo Zavala-Avelar.[1] The DEA believes that respondent, a medical doctor, participated in the murder by prolonging

[1]Respondent is charged in a sixth superseding indictment with: conspiracy to commit violent acts in furtherance of racketeering activity (in violation of 18 U. S. C. §§ 371, 1959); committing violent acts in furtherance of racketeering activity (in violation of 18 U. S. C. §1959 (a)(2)); conspiracy to kidnap a federal agent (in violation of 18 U. S. C. §§1201(a)(5), 1201(c)); kidnap of a federal agent (in violation of 18 U. S. C. §1201(a)(5)); and felony murder of a federal agent (in violation of 18 U. S. C. §§ 1111(a), 1114). App. 12–32.

agent Camarena's life so that others could further torture and interrogate him. On April 2, 1990, respondent was

forcibly kidnapped from his medical office in Guadalajara, Mexico, to be flown by private plane to El Paso, Texas, where he was arrested by DEA officials. The District Court concluded that DEA agents were responsible for respondent's abduction, although they were not personally involved in it. *United States* v. *Caro-Quintero*, 745 F. Supp. 599, 602–604, 609 (CD Cal. 1990).[2]

Respondent moved to dismiss the indictment, claiming that his abduction constituted outrageous governmental conduct, and that the District Court lacked jurisdiction to try him because he was abducted in violation of the extradition treaty between the United States and Mexico. Extradition Treaty, May 4, 1978, [1979] United States-United Mexican States, 31 U. S. T. 5059, T. I. A. S. No. 9656 (Extradition Treaty or Treaty). The District Court rejected the outrageous governmental conduct claim, but held that it lacked jurisdiction to try respondent because his abduction violated the Extradition Treaty. The district court discharged respondent and ordered that he be repatriated to Mexico. *Caro-Quintero*, *supra*, at 614.

The Court of Appeals affirmed the dismissal of the indictment and the repatriation of respondent, relying on its decision in *United States* v. *Verdugo-Urquidez*, 939 F. 2d 1341 (CA9 1991), cert. pending, No. 91–670. 946 F. 2d 1466 (1991). In *Verdugo*, the Court of Appeals held that the forcible abduction of a Mexican national with the authorization or participation of the

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[2]Apparently, DEA officials had attempted to gain respondent's presence in the United States through informal negotiations with Mexican officials, but were unsuccessful. DEA officials then, through a contact in Mexico, offered to pay a reward and expenses in return for the delivery of respondent to the United States. *United States* v. *Caro-Quintero*, 745 F. Supp. 599, 602–604 (CD Cal. 1990).

United States violated the Extradition Treaty between the United States and Mexico.[3] Although the Treaty does not expressly prohibit such abductions, the Court of Appeals held that the "purpose" of the Treaty was violated by a forcible abduction, 939 F. 2d, at 1350, which, along with a formal protest by the offended nation, would give a defendant the right to invoke the Treaty violation to defeat jurisdiction of the district court to try him.[4] The Court of Appeals further held that the proper remedy for such a violation would be dismissal of the indictment and repatriation of the defendant to Mexico.

In the instant case, the Court of Appeals affirmed the district court's finding that the United States had authorized the abduction of respondent, and that letters from the Mexican government to the United States government served as an official protest of the Treaty violation. Therefore, the Court of Appeals ordered that the indictment against respondent be dismissed and that respondent be repatriated to Mexico. 946 F. 2d, at 1467. We granted certiorari, 502 U. S. —— (1992), and now reverse.

Although we have never before addressed the precise issue raised in the present case, we have previously considered proceedings in claimed violation of an extradition treaty, and proceedings against a defendant brought before a court by means

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[3]Rene Martin Verdugo-Urquidez was also indicted for the murder of agent Camarena. In an earlier decision, we held that the Fourth Amendment did not apply to a search by United States agents of Verdugo-Urquidez' home in Mexico. *United States* v. *Verdugo-Urquidez*, 494 U. S. 259 (1990).

[4]The Court of Appeals remanded for an evidentiary hearing as to whether Verdugo's abduction had been authorized by authorities in the United States. *United States* v. *Verdugo-Urquidez*, 939 F. 2d 1341, 1362 (CA9 1991).

of a forcible abduction. We addressed the former issue in *United States* v. *Rauscher*, 119 U. S. 407 (1886); more precisely, the issue of whether the Webster-Ashburton Treaty of 1842, 8 Stat. 576, which governed extraditions between England and the United States, prohibited the prosecution of defendant Rauscher for a crime other than the crime for which he had been extradited. Whether this prohibition, known as the doctrine of specialty, was an intended part of the treaty had been disputed between the two nations for some time. *Rauscher*, 119 U.S., at 411. Justice Miller delivered the opinion of the Court, which carefully examined the terms and history of the treaty; the practice of nations in regards to extradition treaties; the case law from the states; and the writings of commentators, and reached the following conclusion:

> "[A] person who has been brought within the jurisdiction of the court *by virtue of proceedings under an extradition treaty*, can only be tried for one of the offences described in that treaty, and for the offence with which he is charged in the proceedings for his extradition, until a reasonable time and opportunity have been given him, after his release or trial upon such charge, to return to the country from whose asylum he had been forcibly taken under those proceedings." *Id.*, at 430 (emphasis added).

In addition, Justice Miller's opinion noted that any doubt as to this interpretation was put to rest by two federal statutes which imposed the doctrine of specialty upon extradition treaties to which the United States was a party. *Id.*, at 423.[5] Unlike the

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[5]Justice Gray, concurring, would have rested the decision on the basis of these acts of Congress alone. *Rauscher,* 119 U. S., at 433. Chief Justice Waite dissented, concluding that the treaty did not forbid trial on a charge other than that on which extradition

case before us today, the defendant in *Rauscher* had been brought to the United States by way of an extradition treaty; there was no issue of a forcible abduction.

In *Ker* v. *Illinois*, 119 U. S. 436 (1886), also written by Justice Miller and decided the same day as *Rauscher*, we addressed the issue of a defendant brought before the court by way of a forcible abduction. Frederick Ker had been tried and convicted in an Illinois court for larceny; his presence before the court was procured by means of forcible abduction from Peru. A messenger was sent to Lima with the proper warrant to demand Ker by virtue of the extradition treaty between Peru and the United States. The messenger, however, disdained reliance on the treaty processes, and instead forcibly kidnapped Ker and brought him to the United States.[6] We distinguished Ker's case from *Rauscher*, on the basis that Ker was not brought into the United States by virtue of the extradition treaty between the United States and Peru, and rejected Ker's argument that he had a right under the extradition treaty to be returned to this country only in accordance with its terms.[7] We

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was granted, and that the acts of Congress did not change the "effect of the treaty." *Id.*, at 436.

[6]Although the opinion does not explain why the messenger failed to present the warrant to the proper authorities, commentators have suggested that the seizure of Ker in the aftermath of a revolution in Peru provided the messenger with no "proper authorities" to whom the warrant could be presented. See Kester, Some Myths of United States Extradition Law, 76 Geo. L. J. 1441, 1451 (1988).

[7]In the words of Justice Miller, the "treaty was not called into operation, was not relied upon, was not made the pretext of arrest, and the facts show that it was a clear case of kidnapping within the dominions of Peru, without any pretence of authority under the

rejected Ker's due process argument more broadly, holding in line with "the highest authorities" that "such forcible abduction is no sufficient reason why the party should not answer when brought within the jurisdiction of the court which has the right to try him for such an offence, and presents no valid objection to his trial in such court." *Ker, supra*, at 444.

In *Frisbie* v. *Collins*, 342 U. S. 519, rehearing denied, 343 U. S. 937 (1952), we applied the rule in *Ker* to a case in which the defendant had been kidnapped in Chicago by Michigan officers and brought to trial in Michigan. We upheld the conviction over objections based on the due process clause and the Federal Kidnapping Act and stated:

> "This Court has never departed from the rule announced in *[Ker]* that the power of a court to try a person for crime is not impaired by the fact

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treaty or from the government of the United States." *Ker* v. *Illinois,* 119 U. S. 430, at 443 (1886).

Two cases decided during the Prohibition Era in this country have dealt with seizures claimed to have been in violation of a treaty entered into between the United States and Great Britain to assist the United States in off-shore enforcement of its prohibition laws, and to allow British passenger ships to carry liquor while in the waters of the United States. 43 Stat. 1761 (1924). The history of the negotiations leading to the treaty is set forth in *Cook* v. *United States*, 288 U. S. 102, 111–118 (1933). In that case we held that the treaty provision for seizure of British vessels operating beyond the three-mile limit was intended to be exclusive, and that therefore liquor seized from a British vessel in violation of the treaty could not form the basis of a conviction.

In *Ford* v. *United States*, 273 U. S. 593 (1927), the argument as to personal jurisdiction was deemed to have been waived.

> that he had been brought within the court's jurisdiction by reason of a `forcible abduction.' No persuasive reasons are now presented to justify overruling this line of cases. They rest on the sound basis that due process of law is satisfied when one present in court is convicted of crime after having been fairly apprized of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will." *Frisbie, supra*, at 522 (citation and footnote omitted).[8]

The only differences between *Ker* and the present case are that *Ker* was decided on the premise that there was no governmental involvement in the abduction, 119 U. S., at 443; and Peru, from which Ker was abducted, did not object to his prosecution.[9] Respondent finds these differences to be dispositive, as did the Court of Appeals in *Verdugo*, 939 F. 2d, at 1346, contending that they show that respondent's prosecution, like the prosecution of Rauscher, violates the implied terms of a valid extradition treaty. The Government, on the other hand, argues that *Rauscher* stands as an "exception" to the rule in *Ker* only when an extradition treaty is invoked, and the terms of the treaty provide that its breach will limit the jurisdiction of a court. Brief for United States 17.

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[8]We have applied *Ker* to numerous cases where the presence of the defendant was obtained by an interstate abduction. See, *e.g.*, *Mahon* v. *Justice*, 127 U. S. 700 (1888); *Cook* v. *Hart*, 146 U. S. 183 (1892); *Pettibone* v. *Nichols*, 203 U. S. 192, 215–216 (1906).

[9]Ker also was not a national of Peru, whereas respondent is a national of the country from which he was abducted. Respondent finds this difference to be immaterial. Tr. of Oral Arg. 26

Therefore, our first inquiry must be whether the abduction of respondent from Mexico violated the extradition treaty between the United States and Mexico. If we conclude that the Treaty does not prohibit respondent's abduction, the rule in *Ker* applies, and the court need not inquire as to how respondent came before it. In construing a treaty, as in construing a statute, we first look to its terms to determine its meaning. *Air France* v. *Saks*, 470 U. S. 392, 397 (1985); *Valentine* v. *United States ex. rel. Neidecker*, 299 U. S. 5, 11 (1936). The Treaty says nothing about the obligations of the United States and Mexico to refrain from forcible abductions of people from the territory of the other nation, or the consequences under the Treaty if such an abduction occurs. Respondent submits that Article 22(1) of the Treaty which states that it "shall apply to offenses specified in Article 2 [including murder] committed before and after this Treaty enters into force," 31 U. S. T., at 5073–5074, evidences an intent to make application of the Treaty mandatory for those offenses. However, the more natural conclusion is that Article 22 was included to ensure that the Treaty was applied to extraditions requested after the Treaty went into force, regardless of when the crime of extradition occurred.[10]

More critical to respondent's argument is Article 9 of the Treaty which provides:

> ``1. Neither Contracting Party shall be bound to deliver up its own nationals, but the executive

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[10]This interpretation is supported by the second clause of Article 22 which provides that ``[r]equests for extradition that are under process on the date of the entry into force of this Treaty, shall be resolved in accordance with the provisions of the Treaty of 22 February, 1899, . . .'' Extradition Treaty, May 4, 1978, [1979] United States–United Mexican States, 31 U. S. T. 5059, 5074, T.I.A.S. No. 9656.

> authority of the requested Party shall, if not prevented by the laws of that Party, have the power to deliver them up if, in its discretion, it be deemed proper to do so.
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> ``2. If extradition is not granted pursuant to paragraph 1 of this Article, the requested Party shall submit the case to its competent authorities for the purpose of prosecution, provided that Party has jurisdiction over the offense.'' *Id.*, at 5065.

According to respondent, Article 9 embodies the terms of the bargain which the United States struck: if the United States wishes to prosecute a Mexican national, it may request that individual's extradition. Upon a request from the United States, Mexico may either extradite the individual, or submit the case to the proper authorities for prosecution in Mexico. In this way, respondent reasons, each nation preserved its right to choose whether its nationals would be tried in its own courts or by the courts of the other nation. This preservation of rights would be frustrated if either nation were free to abduct nationals of the other nation for the purposes of prosecution. More broadly, respondent reasons, as did the Court of Appeals, that all the processes and restrictions on the obligation to extradite established by the Treaty would make no sense if either nation were free to resort to forcible kidnapping to gain the presence of an individual for prosecution in a manner not contemplated by the Treaty. *Verdugo, supra*, at 1350.

We do not read the Treaty in such a fashion. Article 9 does not purport to specify the only way in which one country may gain custody of a national of the other country for the purposes of prosecution. In the absence of an extradition treaty, nations are under no obligation to surrender those in their country to foreign authorities for prosecution. *Rauscher*, 119 U. S., at 411–412; *Factor* v. *Laubenheimer*, 290 U. S.

276, 287 (1933); cf. *Valentine* v. *United States ex. rel. Neidecker, supra*, at 8–9 (United States may not extradite a citizen in the absence of a statute or treaty obligation). Extradition treaties exist so as to impose mutual obligations to surrender individuals in certain defined sets of circumstances, following established procedures. See 1 J. Moore, A Treatise on Extradition and Interstate Rendition, § 72 (1891). The Treaty thus provides a mechanism which would not otherwise exist, requiring, under certain circumstances, the United States and Mexico to extradite individuals to the other country, and establishing the procedures to be followed when the Treaty is invoked.

The history of negotiation and practice under the Treaty also fails to show that abductions outside of the Treaty constitute a violation of the Treaty. As the Solicitor General notes, the Mexican government was made aware, as early as 1906, of the *Ker* doctrine, and the United States' position that it applied to forcible abductions made outside of the terms of the United States-Mexico extradition treaty.[11]

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[11]In correspondence between the United States and Mexico growing out of the 1905 Martinez incident, in which a Mexican national was abducted from Mexico and brought to the United States for trial, the Mexican chargé wrote to the Secretary of State protesting that as Martinez' arrest was made outside of the procedures established in the extradition treaty, "the action pending against the man can not rest [on] any legal foundation." Letter of Balbino Davalos to Secretary of State reprinted in Papers Relating to the Foreign Relations of the United States, H.R. Doc. No. 1, 59th Cong., 2d Sess., pt. 2, p.1121 (1906). The Secretary of State responded that the exact issue raised by the Martinez incident had been decided by *Ker*, and that the remedy open to the Mexican government, namely a request to the United States for extradition of Martinez' abductor had been

Nonetheless, the current version of the Treaty, signed in 1978, does not attempt to establish a rule that would in any way curtail the effect of *Ker*.[12] Moreover, although language which would grant individuals exactly the right sought by respondent had been considered and drafted as early as 1935 by a prominent group of legal scholars sponsored by the faculty of Harvard Law School, no such clause appears in the current treaty.[13]

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granted by the United States. Letter of Robert Bacon to Mexican Charge, reprinted in Papers Relating to the Foreign Relations of the United States, H.R. Doc. No. 1, 59th Cong., 2d Sess., pt. 2, at 1121–1122 (1906).

Respondent and the Court of Appeals stress a statement made in 1881 by Secretary of State James Blaine to the governor of Texas to the effect that the extradition treaty in its form at that time did not authorize unconsented to abductions from Mexico. *Verdugo*, 939 F. 2d, at 1354; Brief for Respondent 14. This misses the mark, however, for the Government's argument is not that the Treaty authorizes the abduction of respondent; but that the Treaty does not prohibit the abduction.

[12]The parties did expressly include the doctrine of specialty in Article 17 of the Treaty, notwithstanding the judicial recognition of it in *Rauscher*. 31 U. S. T., at 5071–5072.

[13]In Article 16 of the Draft Convention on Jurisdiction with Respect to Crime, the Advisory Committee of the Research in International Law proposed:

> "In exercising jurisdiction under this Convention, no State shall prosecute or punish any person who has been brought within its territory or a place subject to its authority by recourse to measures in violation of international law or international convention without first obtaining the consent of the State or States whose rights have been violated by such measures." Harvard Research in International Law,

Thus, the language of the Treaty, in the context of its history, does not support the proposition that the Treaty prohibits abductions outside of its terms. The remaining question, therefore, is whether the Treaty should be interpreted so as to include an implied term prohibiting prosecution where the defendant's presence is obtained by means other than those established by the Treaty. See *Valentine*, 299 U. S., at 17 ("Strictly the question is not whether there had been a uniform practical construction denying the power, but whether the power had been so clearly recognized that the grant should be implied").

Respondent contends that the Treaty must be interpreted against the backdrop of customary international law, and that international abductions are "so clearly prohibited in international law" that there was no reason to include such a clause in the Treaty itself. Brief for Respondent 11. The international censure of international abductions is further evidenced, according to respondent, by the United Nations Charter and the Charter of the Organization of American States. *Id.,* at 17. Respondent does not argue that these sources of international law provide an independent basis for the right respondent asserts not to be tried in the United States, but rather that they should inform the interpretation of the Treaty terms.

The Court of Appeals deemed it essential, in order for the individual defendant to assert a right under the Treaty, that the affected foreign government had registered a protest. *Verdugo*, 939 F. 2d, at 1357 ("in the kidnapping case there must be a formal protest from the offended government after the kidnapping"). Respondent agrees that the right exercised by the individual is derivative of the nation's right under the Treaty, since nations are authorized, notwithstanding the terms of an extradition treaty, to voluntarily

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29 Am. J. Int'l L. 442 (Supp. 1935).

render an individual to the other country on terms completely outside of those provided in the Treaty. The formal protest, therefore, ensures that the "offended" nation actually objects to the abduction and has not in some way voluntarily rendered the individual for prosecution. Thus the Extradition Treaty only prohibits gaining the defendant's presence by means other than those set forth in the Treaty when the nation from which the defendant was abducted objects.

This argument seems to us inconsistent with the remainder of respondent's argument. The Extradition Treaty has the force of law, and if, as respondent asserts, it is self-executing, it would appear that a court must enforce it on behalf of an individual regardless of the offensiveness of the practice of one nation to the other nation. In *Rauscher*, the Court noted that Great Britain had taken the position in other cases that the Webster-Ashburton Treaty included the doctrine of specialty, but no importance was attached to whether or not Great Britain had protested the prosecution of Rauscher for the crime of cruel and unusual punishment as opposed to murder.

More fundamentally, the difficulty with the support respondent garners from international law is that none of it relates to the practice of nations in relation to extradition treaties. In *Rauscher*, we implied a term in the Webster-Ashburton Treaty because of the practice of nations with regard to extradition treaties. In the instant case, respondent would imply terms in the extradition treaty from the practice of nations with regards to international law more generally.[14]

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[14]Similarly, the Court of Appeals in *Verdugo* reasoned that international abductions violate the "purpose" of the Treaty, stating that "[t]he requirements extradition treaties impose constitute a means of safeguarding the sovereignty of the signatory

Respondent would have us find that the Treaty acts as a prohibition against a violation of the general principle of international law that one government may not "exercise its police power in the territory of another state." Brief for Respondent 16. There are many actions which could be taken by a nation that would violate this principle, including waging war, but it cannot seriously be contended an invasion of the United States by Mexico would violate the terms of the extradition treaty between the two nations.[15]

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nations, as well as ensuring the fair treatment of individuals." 939 F. 2d, at 1350. The ambitious purpose ascribed to the Treaty by the Court of Appeals, we believe, places a greater burden on its language and history than they can logically bear. In a broad sense, most international agreements have the common purpose of safeguarding the sovereignty of signatory nations, in that they seek to further peaceful relations between nations. This, however, does not mean that the violation of any principle of international law constitutes a violation of this particular treaty.

[15]In the same category are the examples cited by respondent in which, after a forcible international abduction, the offended nation protested the abduction, and the abducting nation then returned the individual to the protesting nation. Brief for Respondent 18, citing, *inter alia*, 1 Bassiouni, International Extradition: United States Law and Practice, §5.4, pp. 235–237 (2d rev. ed. 1987). These may show the practice of nations under customary international law, but they are of little aid in construing the terms of an extradition treaty, or the authority of a court to later try an individual who has been so abducted. More to the point for our purposes are cases such as *The Ship Richmond*, 9 Cranch 102 (1815), and *The Merino*, 9 Wheat. 391 (1824), both of which hold that a seizure of a vessel in violation of

In sum, to infer from this Treaty and its terms that it prohibits all means of gaining the presence of an individual outside of its terms goes beyond established precedent and practice. In *Rauscher*, the implication of a doctrine of specialty into the terms of the Webster-Ashburton treaty which, by its terms, required the presentation of evidence establishing probable cause of the crime of extradition before extradition was required, was a small step to take. By contrast, to imply from the terms of this Treaty that it prohibits obtaining the presence of an individual by means outside of the procedures the Treaty establishes requires a much larger inferential leap, with only the most general of international law principles to support it. The general principles cited by respondent simply fail to persuade us that we should imply in the United States-Mexico Extradition Treaty a term prohibiting international abductions.

Respondent and his *amici* may be correct that respondent's abduction was "shocking," Tr. of Oral Arg. 40, and that it may be in violation of general international law principles. Mexico has protested the abduction of respondent through diplomatic notes, App. 33–38, and the decision of whether respondent should be returned to Mexico, as a matter outside of the Treaty, is a matter for the Executive Branch.[16] We

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international law does not affect the jurisdiction of a United States court to adjudicate rights in connection with the vessel. These cases are discussed, and distinguished, in *Cook* v. *United States*, 288 U. S., at 122.

[16]The Mexican government has also requested from the United States the extradition of two individuals it suspects of having abducted respondent in Mexico, on charges of kidnapping. App. 39–66.

The advantage of the diplomatic approach to the resolution of difficulties between two sovereign nations, as opposed to unilateral action by the courts

conclude, however, that respondent's abduction was not in violation of the Extradition Treaty between the United States and Mexico, and therefore the rule of *Ker* v. *Illinois* is fully applicable to this case. The fact of respondent's forcible abduction does not therefore prohibit his trial in a court in the United States for violations of the criminal laws of the United States.

The judgment of the Court of Appeals is therefore reversed, and the case is remanded for further

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of one nation, is illustrated by the history of the negotiations leading to the treaty discussed in *Cook* v. *United States*, *supra*. The United States was interested in being able to search British vessels which hovered beyond the 3-mile limit and served as supply ships for motor launches which took intoxicating liquor from them into ports for further distribution in violation of prohibition laws. The United States initially proposed that both nations agree to searches of the other's vessels beyond the 3-mile limit; Great Britain rejected such an approach, since it had no prohibition laws and therefore no problem with United States vessels hovering just beyond its territorial waters. The parties appeared to be at loggerheads; then this Court decided *Cunard Steamship Co.* v. *Mellon*, 262 U. S. 100 (1923), holding that our prohibition laws applied to foreign merchant vessels as well as domestic within the territorial waters of the United States, and that therefore the carrying of intoxicating liquors by foreign passenger ships violated those laws. A treaty was then successfully negotiated giving the United States the right to seizure beyond the 3-mile limit (which it desired), and giving British passenger ships the right to bring liquor into United States waters so long as the liquor supply was sealed while in those waters (which Great Britain desired). *Cook* v. *United States*, *supra*.

proceedings consistent with this opinion.

So ordered.