International Law Claims in U.S. Court: The Supreme Court Decides Venezuela v. Helmerich & Payne

Last week, the US Supreme Court issued its decision in *Bolivarian Republic of Venezuela v. Helmerich & Payne International*, deciding the pleading threshold a party must establish for the purposes of the 'expropriation exception' under § 1605(a)(3) of the Foreign Sovereign Immunities Act (FSIA).

We've reported on the case already here and here, and at this stage, there is little more that can be said about the decision that has not already been reported by Amy Howe at SCOTUSBlog and Ted Folkman and Ira Ryk-Lakhman at Letters Blogatory.

In sum, the plaintiff is a U.S. company, and its Venezuelan subsidiary, Helmerich & Payne de Venezuela. Helmerich & Payne de Venezuela started drilling for the state-owned oil company decades ago, but in 2010, then-President Hugo Chavez issued a decree appropriating the subsidiary's drilling rigs, which the state-owned oil company now uses. A little over a year later, the two companies filed a lawsuit in federal court in Washington, D.C., invoking the "expropriation exception" to the FSIA. That exception allows lawsuits against foreign governments to go forward in the United States when "rights in property taken in violation of international law are in issue" and the state or state-owned entity later owns that property and has a commercial connection to the United States. As you can see, the language of the statute shows that the merits of a claim and the jurisdictional inquiries are substantially intertwined

In 2015, the court of appeals held that the claims could go forward so long they met the "exceptionally low bar" of not being "wholly insubstantial or frivolous." In an opinion by Justice Stephen Breyer, the court explained that the bar for such claims is, in fact, a bit higher. To wit, the expropriation exception will apply, and a U.S. court will have jurisdiction, only when the facts "do show (and not just arguably show) a taking of property in violation of international law." Such questions, the Court held, should be decided "as close to the outset" of the case "as is reasonably possible," in order to provide clarity to foreign governments and

minimize the extent to which they are involved in litigation in U.S. courts. This, the court suggested, will in turn reduce the likelihood of friction with other countries and retaliatory litigation against the United States overseas.