CHAPTER 2

THE RELATIONSHIP BETWEEN MUNICIPAL LAW AND INTERNATIONAL LAW

2.1 Introduction

International law is not confined to regulating the relations between states, and the scope of international law is no longer limited to the rules of warfare and the conduct of diplomatic relations. Matters of social concern such as health, education and economics fall within the ambit of international law and a growing body of rules sets down rights and duties for individuals. Even if it were still correct to speak in terms of international law being a system of rules governing the conduct of states, the fact remains that states are abstract entities which can only act through individuals. State actions are performed by individuals and it therefore follows that international rules have to be applied by individuals. Individual conduct within a state is the subject of municipal law and thus it can be seen that there is potential for the rules of international law to come into contact with rules of municipal law.

This chapter is concerned with the relationship that exists between international law and municipal law. That relationship gives rise to two main areas of discussion:

1 The theoretical question as to whether international law and municipal law are part of a universal legal order ('monism') or whether they form two distinct systems of law ('dualism');

2 The practical issue of what rules govern the situation where there appears to be a conflict between the rules of international law and the rules of municipal law: This may occur either:

   (a) before an international court; or

   (b) before a municipal court

2.2 The theoretical issue

Historically there have been two main schools of thought: monism and dualism. Their ideas are outlined here but it should be noted that many modern writers doubt the utility of the monism/dualism dichotomy. Furthermore, courts faced with practical problems involving potential conflicts between the rules of international law and municipal law rarely refer to the theoretical issues. It is, however, instructive when considering actual court decisions to question their theoretical underpinnings.

> The relationship between international law and municipal law has been the subject of much doctrinal dispute. At opposing extremes are the 'dualist' and 'monist' schools of thought. According to the former, international law and the internal law of states are totally separate legal systems. Being separate systems, international law would not as such form part of the internal law of a state: to the extent that in particular instances rules of international law may apply within a state they do so by virtue of their adoption by the internal law of the state, and apply as part of that internal law and not as international law. Such a view avoids any question of the supremacy of the one system of law over the other since they share no common field of application: and each is supreme in its own

sphere.

On the other hand, according to the monistic doctrine, the two systems of law are part of one single legal structure, the various national systems of law being derived by way of delegation from the international legal system. Since international law can thus be seen as essentially part of the same legal order as municipal law, and superior to it,[1] it can be regarded as incorporated in municipal law, giving rise to no difficulty of principle in its application as international law within states.

These differences in doctrine are not resolved by the practice of states or by such rules of international law as apply in this situation. International developments, such as the increasing role of individuals as subjects of international law, the stipulation in treaties of uniform internal laws and the appearance of such legal orders as that of the European Communities, have tended to make the distinction between international law and national law less clear and more complex than was formerly supposed at a time when the field of application of international law could be regarded as solely the relations of states amongst themselves. Moreover, the doctrinal dispute is largely without practical consequences, for the main practical questions which arise – how do states, within the framework of their internal legal order, apply the rules of international law, and how is a conflict between a rule of international law and a national rule of law to be resolved? – are answered not be reference to doctrine but by looking at what the rules of various national laws and of international law prescribe.[2]

2.2.1 Monism

Monism considers international law and municipal law to be both part of the same body of knowledge – law. They both operate in the same sphere of influence and are concerned with the same subject matter and thus can come into conflict. If there is a conflict, it is international law that prevails. Some, like Kelsen, argue that this is because international law is a higher law from which the state derives its authority and thus its ability to make municipal laws:

> Since the basic norms of the national legal orders are determined by a norm of international law, they are basic norms only in a relative sense. It is the basic norm of the international legal order which is the ultimate reason of validity of the national legal orders too.[3]

Others, including Lauterpacht, argue on natural law grounds that international law prevails because it protects individuals, and the state itself is only a collection of individuals. It is supported by the natural law doctrine that authority and legal duty are both subject to the universality of natural law. A recent articulation of this view is to be found in the writing of Philip Allott:

> Every legal power in every society in the world is connected with every other legal power in every other society in the world through the international law of the international society, the society of all societies, from which all law-making

1 There is an alternative theory which, while being monistic, asserts the supremacy not of international but of municipal law.

2 *Oppenheim's International Law*, Vol 1, 9th edn, 1992, London: Longman at pp 53–54.

3 Kelsen, *General Theory of Law and the State*, 1945, Cambridge, Mass: Harvard University Press at pp 367–68.

power is delegated.[4]

2.2.2 *Dualism*

The dualist doctrine developed in the 19th century partly because of the development of theories about the absolute sovereignty of states and partly alongside the development of legal positivism. Dualist doctrine considers international law and municipal law to be two separate legal orders operating and existing independently of one another. International law is the law applicable between sovereign states and is dependent on the common will of states for its authority; municipal law applies within the state regulating the activities of its citizens and has as the source of its authority the will of the state itself. On this basis neither system has the power to create or alter rules of the other. Since both systems may deal with the same subject matter it is possible for conflicts between the two systems to arise. Where there is a conflict between the two systems, a municipal court following the dualist doctrine would apply municipal law. This might lead to a state being in breach of its international obligations, but that would be a matter for an international tribunal.

2.2.3 *A third way?*

Both monism and dualism take the view that international law and municipal law can deal with the same subject matter. A third school of thought can be identified which, while subscribing to the dualist concept of two separate legal orders, argues that the two orders deal with different subject matters. Foremost among the advocates of this doctrine are two former judges at the World Court: Sir Gerald Fitzmaurice and Dionisio Anzilotti. In an opinion given in a case in 1939 Anzilotti stated:

> It is clear that, in the same legal system, there cannot at the same time exist two rules relating to the same facts and attaching to these facts contradictory consequences ... It is for instance impossible that the relations between the two states should be governed at one and the same time by a rule to the effect that, if certain conditions are fulfilled, the Court has jurisdiction and by another rule to the effect that, if certain conditions are fulfilled, the Court has no jurisdiction – by a rule to the effect that in certain circumstances the state concerned may have recourse to the Court and by another to the effect that in the same circumstances the state has no right to do so, etc, etc. In cases of this kind, either the contradiction is only apparent and the two rules are really co-ordinated so that each has its own sphere of application and does not encroach on the sphere of application of the other, or else one prevails over the other, ie, is applicable to the exclusion of the other.[5]

Anzilotti seemed to support the view that the two sets of rules, international law and municipal law, each had its own sphere of application. In an earlier case he had indicated how international tribunals should deal with rules of municipal law:

> From the standpoint of International Law and of the Court which is its organ, municipal laws are merely facts which express the will and constitute the

4 Allott, *Eunomia: New Order for a New World*, 1990, Oxford: Oxford University Press at p 308.

5 *The Electricity Company of Sofia and Bulgaria*, Ser A/B, No 77 (1939).

> activities of states, in the same manner as do legal decisions or administrative measures.[6]

In a lecture to the Hague Academy of International Law, Fitzmaurice made the point even more forcefully:

> The controversy [between monism and dualism] turns on whether international law and internal law are two separate legal orders, existing independently of one another – and, if so, on what basis it can be said that either is superior to one or supreme over the other; or whether they are both part of the same order, one or the other of them being supreme over the other within that order. The first view is the dualist view, the second monist ... A radical view of the whole subject may be propounded to the effect that the entire monist-dualist controversy is unreal, artificial and strictly beside the point, because it assumes something that has to exist for there to be any controversy at all – and which in fact does not exist – namely a common field in which the two legal orders under discussion both simultaneously have their spheres of activity ... In order that there can be controversy about whether the relations between two orders are relations of co-ordination between self-existent independent orders, or relations of subordination of the one to the other, or of the other to the one – or again whether they are part of the same order, but both subordinate to a superior order – it is necessary that they should both be purporting to be, and in fact be, applicable in the same field – that is, to be the same set of relations and transactions. For instance ... it would be idol to start a controversy about whether the English legal system was superior to or supreme over the French or vice versa, because these systems do not pretend to have the same field of application ... There is indeed no basis on which it is even possible to start an argument, because, although these legal systems may in a certain sense come into conflict in particular cases, thus giving rise to problems of what is called Conflict Law, or Private International Law, each country has its own conflict rules whereby it settles such problems arising before its own courts. Ultimately therefore, there can be no conflict between any two systems in the domestic field, for any apparent conflict is automatically settled by the domestic conflict rules of the forum. Any conflict between them in the international field, that is to say on the inter-governmental plane, would fall to be resolved by international law, because in that field international law is not only supreme, but in effect the only system there is. Domestic law does not, as such, apply at all in the international field. But the supremacy of international law in that field exists, not because of any inherent supremacy of international law as a category over national law as a category, but for other reasons. It is, rather, a supremacy of exactly the same order as the supremacy of French law in France, and of English law in England – ie a supremacy not arising from content, but from the field of operation – not because the law is French but because the place, the field, is France. The view here suggested is neither dualist nor monist: it is precisely the view put forward in the following passage from Anzilotti, who is often miscalled a dualist in this respect:
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> > It follows from the same principle that there cannot be conflict between the rules belonging to different juridical orders, and, consequently, in particular between international and internal law. To speak of conflict between international law and internal law is as inaccurate as to speak of the conflict between the laws of different states: in reality the existence of a conflict between norms belonging to different juridical orders cannot be confirmed except from a standpoint outside both the one and the other.

6 *Certain German Interests in Polish Upper Silesia*, Ser A, No 7, p 39 (1926).

The logic of this cannot be contraverted, and in actual fact, the necessity for a common field of operation as the basis of any discussion as to the relations between two legal orders, is recognised by modern protagonists of the monist-dualist controversy. This can be seen from the following sentence in an article by a writer of the monist school, reading: 'Two normative systems with binding force *in the same field* must form part of the same order' – [italics added]. This may be true, or at least it is capable of discussion, if the two orders in question are binding in the same field, but not otherwise. Consider again a sentence such as the following one, taken from one of the most eminent and justly celebrated modern exponents of the positivist-monist view: 'International law and national law cannot be mutually different and mutually independent systems ... if ... both systems are considered to be valid for the same space and at the same time.' Everything here depends of course on the 'if' – which surely assumes the very point that has to be proved. What calls for question is precisely the phrase 'valid for the same space at the same time'. Had this passage said 'valid simultaneously for the same class of relations', it would not have been open to question, though only because international and national law do not in fact govern the same set of relations. To say this is not to deny the validity of the monist view, but only its relevance in this particular connexion. Equally, the relevance of the dualist view is denied. Recognising, as they evidently do, that only relations between legal orders that operate in the same field can usefully and meaningfully be discussed, the protagonists of the monist-dualist controversy seem to be driven to trying to create the necessary common field – though it is more particularly the monists who seek to do this, since the dualists can rest quite content with the existence of two orders, provided they operate in separate fields. The endeavour to create a common field takes the form in effect of denying the existence or reality of the state, or reducing it to the sum total of the individuals composing it. For instance, the same eminent authority, evidently aware of the difficulty that must arise unless there is a common field, has suggested the following solution:

> The mutual independence of international and national law is often substantiated by the alleged fact that the two systems regulate different subject matters. National law, it is said, regulates the behaviour of individuals, international law the behaviour of states. We have already shown that the behaviour of states is reducible to the behaviour of individuals representing the state. Thus the alleged difference in subject matter between international and national law cannot be a difference between the kinds of subjects whose behaviour they regulate ...

Formally, therefore, international and domestic law as systems can never come into conflict. What may occur is something strictly different, namely a conflict of obligations, or an inability for the state on the domestic plane to act in a manner required by international law. The supremacy of international law in the international field does not in these circumstances entail that the judge in the municipal courts of the state must override local law and apply international law. Whether he does or can do this depends on the local law itself, and on what legislative or administrative steps can be or are taken to deal with the matter. The supremacy of international law in the international field simply means that if nothing can be or is done, the state will, on the international plane, have committed a breach of international law obligations, for which it will be internationally responsible, and in respect of which it cannot plead the condition of domestic law by way of absolution. International law does not therefore in any way purport to govern the content of national law in the national field – nor does it need to. It simply says – and this is all it needs to say – that certain things are valid according to international law, and that if a state in the application of its

domestic law acts contrary to international law in these respects, it will commit a breach of its international obligations.[7]

2.3 The practical issue

2.3.1 Municipal law before international tribunal

There is ample judicial and arbitral authority for the rule that a state cannot rely upon the provisions or deficiencies of its municipal law to avoid its obligations under international law. One of the earliest authorities is the decision in the *Alabama Claims Arbitration* (1872).[8] During the American Civil War, a number of ships were built in England for private buyers. The vessels were unarmed when they left England but it was generally known that they were to be fitted out by the Confederates in order to attack Union shipping. They were so fitted and caused considerable damage to American shipping. The US sought to make the UK liable for these losses on the basis that it had breached its international obligations as a neutral during the War. The UK argued that under English law as it stood there was no way in which it could prevent the sailing of the vessels. The arbitrator rejected the UK argument and had no hesitation in upholding the supremacy of international law. Similar rulings were made in the *Serbian Loans Case* (1929). In the Draft Declaration on the Rights and Duties of States 1949 prepared by the International Law Commission, Article 13 states:

> Every state has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.[9]

Similarly, Article 27 of the Vienna Convention on the Law of Treaties 1969 provides:

> A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Although international tribunals will uphold the supremacy of international law over municipal law this should not be taken to mean that municipal law is of no relevance. Municipal law, and in particular domestic legislation, has an important role to play. Very often an international tribunal will have cause to examine domestic legislation closely to discern the practice of states. International tribunals have also looked to municipal law when considering 'the general principles of law' indicated as source of international law in Article 38(1)(c) of the Statute of the International Court of Justice, although it should be pointed out that the court will look at municipal law in general rather than any single system of municipal law.

Barcelona Traction, Light and Power Company Limited Case (Second Phase)[10]

> 38 In this field international law is called upon to recognise institutions of municipal law that have an importance and extensive role in the international

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7 'The General Principles of International Law Considered from the Standpoint of the Rule of Law', 1957, 92 *Hague Recueil* at p 70ff – footnotes omitted.

8 Moore, 1 *Int Arb* 495.

9 *YBILC* 1949 p 286.

10 *Belgium v Spain* [1970] *ICJ Rep* at p 3.

> field. This does not necessarily imply drawing any analogy between its own institutions and those of municipal law, nor does it amount to making rules of international law dependent upon categories of municipal law. All it means is that international law has to recognise the corporate entity as an institution created by states in a domain essentially within their domestic jurisdiction. This in turn requires that, whenever legal issues arise concerning the rights of states with regard to the treatment of companies and shareholders, as to which rights international law has not established its own rules, it has to refer to the relevant rules of municipal law. Consequently, in views of the relevance to the present case of the rights of the corporate entity and its shareholders under municipal law, the Court must devote attention to the nature and interrelation of those rights ...
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> 50 In turning now to the international legal aspects of the case, the Court must, as already indicated, start from the fact that the present case essentially involves factors derived from municipal law – the distinction and the community between the company and the shareholder – which the Parties, however widely their interpretations may differ, each take as the point of departure of their reasoning. If the Court were to decide the case in disregard of the relevant institutions of municipal law it would, without justification, invite serious legal difficulties. It would lose touch with reality, for there are no corresponding institutions of international law to which the Court could resort. Thus the Court has, as indicated, not only to take cognizance of municipal law but also refer to it. It is to rules generally accepted by municipal legal systems which recognise the limited company whose capital is represented by shares, and not to the municipal law of a particular state, that international law refers. In referring to such rules, the Court cannot modify, still less deform them.

Another manner in which municipal law may be of importance in a case before an international tribunal arises from the doctrine of opposability. This doctrine allows one state to invoke against, or 'oppose' to, another state a rule of its own municipal law. As a general principle, provided that the rule of municipal law is not contrary to rules of international law it may be legitimately opposed in order to defeat the international claims of the other state. Thus, in the *Anglo-Norwegian Fisheries* case (1951)[11] the ICJ held that a Norwegian law delimiting an exclusive fishery zone along almost 1,000 miles of coastline was not contrary to international law and therefore could be successfully opposed to defeat British claims to fish in the disputed waters.

2.3.3 International law in municipal courts

2.3.3.1 Transformation and incorporation

Before considering a number of examples of the treatment of international law by municipal courts it is necessary to explain briefly the concepts of transformation and incorporation. If, as the dualist theory maintains, international law and municipal law constitute two distinct legal systems, a practical consequence is that before any rule of international law can have effect within domestic jurisdiction it requires express and specific 'transformation' into municipal law by the use of the appropriate constitutional machinery, such

11 [1951] *ICJ Rep* at p 116.

as a municipal statute. A different view, and one reflecting the monist position, is that rules of international law automatically become part of municipal law as a result of the doctrine of 'incorporation'.

Put at its simplest, transformation doctrine views rules of international law as being excluded from municipal law unless specifically included; the incorporation doctrine holds that rules of international law are included as part of municipal law unless they are specifically excluded.

2.3.3.2 British practice

Customary international law

As far as the rules of customary international law are concerned the English courts have generally adopted the doctrine of incorporation. Provided that they are not inconsistent with Acts of Parliament or prior authoritative judicial decisions, then rules of customary international law automatically form part of English law: customary international law is incorporated into English law. The 18th century lawyer, Blackstone, wrote:

> The law of nations, wherever any question arises which is properly the object of its jurisdiction, is here adopted in its full extent by the common law, and it is held to be a part of the law of the land.[12]

In *Buvot v Barbuit* (1737)[13] Lord Talbot declared that 'the law of nations in its full extent was part of the law of England'. Lord Talbot's statement was followed in a series of 18th and early 19th century cases. Cynics may suggest that the reason for this view was that at the time the international community was small and Britain had a major impact on the formation of customary international law.

Some doubt was thrown on the incorporation doctrine by the decision in *R v Keyn (The Franconia)* (1876).[14] *The Franconia*, a German ship, collided with a British ship in the English Channel three miles off the British coast. The defendant was prosecuted for manslaughter of a passenger on board the English ship who drowned as a result of the collision and was found guilty. However, the question whether an English court had jurisdiction to hear the case was reserved for the Court of Crown Cases Reserved which decided by a seven to six majority that it did not. Cockburn CJ found that under international law, events occurring on board a foreign ship while it was on the high seas were governed by the law of the foreign state. It was only when the foreign ship came into the ports or waters of another state that the ship and those on board become subject to the local law. Unless, therefore, the defendant at the time of the offence was on British territory or on board a British ship, an English Court would have no jurisdiction. The question for the court was whether the collision had occurred in British territory. It found that according to English law, the three mile belt of sea surrounding Great Britain was not British territory. The court could also not find any clear rule of international law stipulating

12 Blackstone, *Commentaries*, IV, Chapter 5.

13 (1737) Cas t Talbot 281.

14 (1876) 2 Ex D 63.

jurisdictional rights over a three mile territorial sea and therefore found that there was no basis for jurisdiction over Keyn. The case led to the passing of the Territorial Waters Jurisdiction Act 1878 which gave the English courts jurisdiction over the territorial sea. Some have argued that the judgment of Lord Cockburn supports the transformation doctrine. In the course of his judgment he discussed what the position would have been had the court been able to discern a clear rule of international law recognising a three mile territorial sea. He argued that even if unanimity could be found among states on the adoption of a three mile territorial sea it would amount to a new law and the courts were not able to usurp the role of Parliament in creating new law. However, other writers have confined the case to its particular facts and argued that the decision was only concerned with the existence or not of any jurisdiction over the territorial sea and did not amount to a rejection of the rule that international law is part of the law of England.

The confusion was not resolved in the case of *West Rand Central Gold Mining Co v R* (1905),[15] Lord Alverstone CJ stated:

> It is quite true that whatever has received the common consent of civilised nations must have received the assent of our country, and that to which we have assented along with other nations in general may properly be called international law, and as such will be acknowledged and applied by our municipal tribunals when legitimate occasion arises for those tribunals to decide questions to which doctrines of international law may be relevant. But any doctrine so invoked must be one really accepted as binding between nations, and the international law sought to be applied must, like anything else, be proved by satisfactory evidence, which must shew either that the particular proposition put forward has been recognised and acted upon by our own country, or that it is of such a nature, and has been so widely and generally accepted, that it can hardly be supposed that any civilised state would repudiate it. The mere opinions of jurists, however eminent or learned, that it ought to be so recognised, are not in themselves sufficient. They must have received the express sanction of international agreement, or gradually have grown to be part of international law by their frequent practical recognition in dealings between various nations ... *Barbuit's Case*, *Torquet v Bath* and *Heathfield v Chilton* are cases in which the Courts of law have recognised and given effect to the privilege of ambassadors as established by international law. But the expressions used by Lord Mansfield when dealing with the particular and recognised rule of international law on this subject, that the law of nations forms part of the law of England, ought not to be construed so as to include as part of the law of England opinions of text-writers upon a question as to which there is no evidence that Great Britain has ever assented, *a fortiori* if they are contrary to the principles of her laws as declared by her Courts. The cases of *Wolff v Oxholm* (1817) and *R v Keyn* are only illustrations of the same rule – namely, that questions of international law may arise, and may have to be considered in connection with the administration of municipal law.

The incorporation doctrine was further qualified by the Privy Council in *Chung Chi Cheung v The King* (1939)[16] where Lord Atkin stated:

15 [1905] 2 KB 391.

16 [1939] AC 160.

> It must always be remembered that, so far, at any rate, as the courts of this country are concerned, international law has no validity save in so far as its principles are accepted and adopted by our own domestic law. There is no external power that imposes its rule upon our own code of substantive law or procedure.
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> The Courts acknowledge the existence of a body or rules which nations accept amongst themselves. On any judicial issue they seek to ascertain what the relevant rule is, and having found it, they will treat it as incorporated into the domestic law, so far as it is not inconsistent with rules enacted by statutes or finally declared by their tribunals.

The issue of the relationship of customary international law to English law was raised again in the important case of *Trendtex Trading Corporation v Central Bank of Nigeria* (1977).[17] The case concerned issues of state immunity which will be further discussed in Chapter 8. In the course of their judgments all three members of the Court of Appeal accepted the incorporation doctrine, Shaw LJ stating, 'What is immutable is the principle of English law that the law of nations ... must be applied in the courts of England'. The case also raised the question of the relationship between the doctrine of precedent and customary international law. The court had to consider whether *stare decisis* applies to rules of United Kingdom law that incorporate rules of customary international law so that a change in international law can only be recognised within the limits of that doctrine. Earlier cases seemed to suggest that the doctrine of precedent prevailed and that the courts could not recognise a change in the rules of customary international law if it conflicted with an earlier decision of the English courts. The majority in *Trendtex* rejected this view, Lord Denning stating:

> ... a decision of this court – as to what was the ruling of international law 50 or 60 years ago – is not binding on this court today. International law knows no rule of *stare decisis*. If this court today is satisfied that the rule of international law on a subject has changed from what it was 50 or 60 years ago, it can give effect to that change – and apply the change in our English law – without waiting for the House of Lords to do it.

The most recent confirmation of the incorporation doctrine applying to customary international law is to be found in the Court of Appeal judgments in *Maclaine Watson v Department of Trade* (1989). Their view was not contradicted in the House of Lords (1990) although their Lordships found that the case concerned the application of treaty rights rather than rules of customary international law.

Taken as a whole, the authorities would seem to support the incorporation doctrine and thus it can be said that customary international law will be applied by the English courts subject to two main conditions:

1 If there is a conflict between customary international law and an Act of Parliament, the Act of Parliament prevails. It should be noted that, as a general rule of statutory interpretation, the courts will try to interpret statutes so as to avoid a conflict with international law. This does not of course apply if the statute is clear and unambiguous.

17 [1977] QB 578.

2 If there is a conflict between customary international law and a binding judicial precedent laying down a rule of English law, the judicial precedent prevails. But following the *Trendtex* case the English courts may now depart from earlier judicial precedent which lays down a rule of international law if the international law has changed in the meantime.

One final point about the incorporation doctrine is that since customary international law is considered to be part of English law it does not need to be proved as fact by expert evidence, unlike the position with regard to rules of foreign municipal law. The British courts will take judicial notice of international rules, and may of their own volition refer to textbooks and other sources for evidence thereof.

Treaties

The British practice regarding treaties is different from that regarding customary law. The main reason for this is that the conclusion and ratification of treaties are matters for the executive, coming as they do under the scope of the prerogative. Parliament has no say in the making of treaties. If they were to have direct effect, the Crown could alter the law without recourse to Parliament: therefore it is established that treaties only become part of English law if an enabling act of Parliament has been passed. This point has been reiterated by the courts in a number of cases and should be familiar to those who have studied the doctrine of Parliamentary supremacy and the effect of British membership of the European Union.

Recent discussion of the place of treaties in English law took place in the House of Lords in *Department of Trade v Maclaine Watson* (1990).[18] The question for the courts was whether a member state of an international organisation could be sued directly for the liabilities of the organisation. As has already been stated the Court of Appeal saw the matter as raising issues of customary international law. The House of Lords viewed the matter differently – they saw it as an issue of treaty rights, and explicitly confirmed that a treaty to which the United Kingdom is a party cannot automatically alter the laws of the UK. Only if a treaty is transformed into UK law by statute can it be enforced by the courts in this country; hence the need for the European Communities Act 1972 to transform the Treaty of Rome.

> A treaty is a contract between the governments of two or more sovereign states. International law regulates the relations between sovereign states and determines the validity, the interpretation and the enforcement of treaties. A treaty to which Her Majesty's government is a party does not alter the laws of the United Kingdom. A treaty may be incorporated into and alter the laws of the United Kingdom by means of legislation. Except to the extent that a treaty becomes incorporated into the laws of the United Kingdom by statute, the courts of the United Kingdom have no power to enforce treaty rights and obligations at the behest of a sovereign government or at the behest of a private individual.[19]

18 [1990] 2 AC 418.

19 *International Tin Council* case [1990] 2 AC 418 *per* Lord Templeman.