contrary to the ordinary meaning of a provision in context and in the light of its object and purpose. The Russian ruling should not be seen as a protest, and there were ways—falling short of amendment to the Russian Constitution—whereby compliance with the ECtHR decision might be achieved.

Russian courts interpret treaties in accordance with the Vienna Convention on the Law of Treaties, but may apply for assistance from the Ministry of Foreign Affairs or the Ministry of Justice.[35]

E. THE USA

Under Article II s 2 of the Constitution of the USA, adopted in 1787 when the original confederal system was replaced by a fully federal system, the President:

> shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur . . .

It is clear that 'Advice and Consent' was intended to require consultation of the Senate during negotiations, but following one unhappy experience, the first President, George Washington, limited consultation to approval of treaties before ratification. The independent power of the Senate to reject or delay approval of treaties submitted by the executive is substantial.

Article VI s 2 further provides that:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the Land, and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

International law was accepted as part of the law of the individual States, and following the formation of the USA it was also accepted as part of federal law without the need for incorporation by Congress or by the President—thought this has recently been questioned. International law is, however, regarded as subject to the Constitution and thus, at national level, to 'repeal' by later US law. Wherever possible a US statute is construed so as not to conflict with international law.[36]

International law and international agreements binding the USA may be interpreted and enforced by US courts. According to the Third Restatement of the Foreign Relations Law of the United States:

> (2) Cases arising under international law or international agreements of the United States are within the Judicial Power of the United States and, subject to Constitutional and statutory limitations and requirements of justiciability, are within the jurisdiction of the federal courts.
>
> (3) Courts in the United States are bound to give effect to international law and to international agreements of the United States, except that a 'non-self-executing' agreement will not be given effect as law in the absence of necessary implementation.[37]

Determinations of international law by the Supreme Court, including review of State laws on grounds of inconsistency with international law, are binding on the States and on State

[35] Shelton, 2011, p 523.

[36] In *Al Bihani* v *Obama*, US Court of Appeals No 09–5051, (2010), however, the Court found that Congress did not intend the international laws of war to constrain the President's war powers as defined under statute.

[37] Chapter 2 Status of International Law and Agreements in United States Law, s 111.

courts. There are complex rules of constitutional law and practice determining whether an agreement is 'self-executing' in the USA, and these have little regard to international rules of treaty interpretation. They were applied by the Supreme Court in the case of *Medellin* v *Texas*, described in Section II A (n 14) of this chapter, where the majority held that a judgment of the International Court of Justice did not constitute a self-executing obligation in the USA.[38] In response, a Joint Task Force of the American Bar Association and the American Society of International law on Implementing Treaties under US Law studied *Medellin* and in its Report recommended expedited legislation where there was imminent risk of treaty-breach by the USA and, for future treaties, better identification by the executive and the Senate of self-executing provisions and delay in bringing a treaty into force until other provisions were implemented by legislation.[39]

On ratifying the International Covenant on Civil and Political Rights in 1992, the US government attached a declaration stating that Articles 1 through 27 of the Covenant were not self-executing, and there has been no implementing legislation. The US Senate, in giving 'advice and consent' to a treaty, now states which of its provisions are self-executing. Where an agreement is given effect in US law, it is the implementing legislation, not the agreement, which is regarded as US law.[40]

Under US judicial practice, great weight is given to views on questions of international law expressed by the US government, whether by way of *amicus curiae* briefs, interventions as a party, or 'executive suggestions', mainly so that the USA should speak with one voice on such questions.

The receptiveness of the USA to international law has, however, been challenged both at federal and at State level by a series of bills which would prohibit use of international and foreign law. A typical example was the Oklahoma 'Save our State' resolution which would have prohibited the State courts from considering international law. Most of these bills have been struck down as unconstitutional, but they betray ignorance of their practical implications and send a damaging message abroad.[41]

F. THE UK

Under the unwritten constitution of the UK, Parliament has the supreme power to establish and to change the law of the UK. The conduct of foreign affairs, including the conclusion and termination of treaties, remains under the royal prerogative—which means that it is carried out by the government of the day, who are broadly accountable to Parliament.

Customary international law has long been regarded as part of the law of England and of Scotland without any need for specific incorporation, and this rule has also applied in Commonwealth States as part of the common law.[42] The modern approach states rather that 'international law is not a part of, but is one of the sources of the common law'.[43] Treaties, however, are not regarded as a source of rights or obligations in domestic law. The reason is that otherwise it would be open to the executive to alter national law by a treaty instead of through the enactment of legislation and thus to bypass the supremacy of Parliament. It is in theory open to the executive to assume international legal

[38] See nn 14 and 15.

[39] Report at http://www.americanbar.org/content/dam/aba/migrated/leadership/2010/midyear/daily_journal/108C.authcheckdam.pdf.

[40] Third Restatement of the Foreign Relations Law of the US. See also Jackson, 1987; Riesenfeld and Abbott, 1994; Aust, 2013, pp 174–6.

[41] See Fellmeth, 2012; Shelton, 2011, esp. pp 655–9; Bradley, 2014; Sloss, Ramsey and Dodge, 2011.

[42] For the position in Canada, for example, see *R* v *Hape* [2008] 1 LRC 551, paras 34–46.

[43] Per Lord Sumption in *Belhaj* v *Straw* [2017] UKSC 3, para 252.

commitments, but these will not be given effect within the national legal system if they require changes in the law or the jurisdiction of the UK or the payment of money (which must be voted by Parliament). The executive may conclude treaties which do not involve changes in domestic law—for example Treaties of Friendship or Investment Promotion and Protection Agreements.

The position was expressed succinctly by Lord Templeman thus in a case which followed the collapse in 1985 of the International Tin Council and the attempts of its creditors through UK courts to recover their losses from its member States:

> 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 or 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.[44]

Under Part 2 of the Constitutional Reform and Governance Act 2010,[45] which replaced the constitutional convention, formerly known as the Ponsonby rule, all treaties subject to ratification are laid before Parliament for 21 days on which it is sitting. It has, however, almost never happened that for a treaty—even an important one—not requiring any change in UK law, Parliament has pressed for a debate. The 2010 Act prohibits the government from ratifying if the House of Commons vote against it, and imposes conditions if the House of Lords vote against.[46] The Foreign and Commonwealth Office since 1996 accompany the treaty with an Explanatory Memorandum highlighting issues of significance.[47] Where the treaty requires changes in UK law or payment of money, the government also secure passage of the necessary changes—whether by Act of Parliament or by secondary legislation—before the treaty is brought into force for the UK. The government never deliberately assumes international commitments without being able to give internal effect to them. These constitutional constraints have meant that the UK has rarely been found in breach of its commitments.[48] Violations of the ECHR found against the UK are a very small proportion of the individual complaints brought, and the Human Rights Act 1998[49] was designed to reduce their number by providing a more effective system of domestic application.

Parliament may, however, decide as sovereign to violate treaty commitments. This was made clear by the Lord Chancellor in the context of the question of the response by the UK to a judgment of the European Court of Human Rights declaring unlawful the total ban on allowing prisoners to vote. The government accepted its international legal duty to implement this decision, but draft legislation presented to Parliament permitted it the choice of non-compliance.[50]

[44] *JH Rayner* v *Department of Trade and Industry* [1988] 3 All ER 257; 81 ILR 670.

[45] C 25.

[46] For detail, see Barrett, 2011. House of Commons Note SN/1A/5855, Parliament's new statutory role in ratifying treaties.

[47] For the new arrangements, see *Hansard*, HC, vol 576 (16 December 1996) WA 1101, (1996) *BYIL* 746 and 753.

[48] For UK practice see Aust, 2013, pp 168–71.

[49] C 42, especially s 3.

[50] Evidence to HL Select Committee on the Constitution 21 November 2012, QQ 2–7. The Lord Chancellor cited Lord Hoffmann's judgment in *R* v *Secretary of State for the Home Department ex parte Simms* [2000] 2 AC 115.

The UK government does not direct the courts on questions of international law. On request from the court or from a party to litigation, however, the Foreign and Commonwealth Office issues certificates on points of fact peculiarly within the knowledge of the government—for example, whether an entity is recognized as a State or government and whether an individual has been notified and received as a diplomat. These are accepted as conclusive. Where a point of international law of interest to the government is in issue in litigation, the Attorney-General may nominate counsel to assist the court as *amicus curiae*. But although counsel so nominated may be assisted by government legal advisers, he or she is not directly instructed and remains an independent 'friend of the court'.

These brief and superficial surveys illustrate that at the stage of national acceptance as well as of national judicial application of international law obligations, the methods employed do not turn on any universally applicable theory of the relationship. They turn rather on the relationship between the executive, legislative, and judicial organs of each State, on how a potential new international obligation should be democratically scrutinized, on how subsequent application can be effectively guaranteed, and on whether the national courts are independent of the executive in determining issues of international law.

V. SOME PROBLEMS WHICH ARISE IN NATIONAL COURTS

Examination of cases in national courts where the question of the relationship between international and national law has been raised shows the extreme diversity of the issues which present themselves. In many cases these issues are not capable of easy resolution in terms of national constitutions, far less in terms of general theories.

A. DOES A RULE OF CUSTOMARY INTERNATIONAL LAW PREVAIL OVER CONFLICTING NATIONAL LAW?

It seems that all national legal systems accept customary international law as an integral part of national law. Incorporation is specifically provided for in some constitutions, but in others which make no express provision the result is the same. The nature of customary international law as part of Scots law was examined for the first time in 1999 by the Appeal Court of the High Court of Justiciary in two criminal cases where the defendants, charged with sabotage against Britain's nuclear weapons, argued as 'reasonable excuse' for their conduct the international illegality of holding these weapons. The court held, without citing Scottish authority since there was none, that a 'rule of customary international law is a rule of Scots law'. It was not a fact to be established (like foreign law) by expert evidence, but was to be argued by submission and decided by the judge.[51]

English courts, however, found themselves for many years precluded from applying modern customary international law rules on restricted State immunity because the old rule of absolute State immunity had become embedded, or 'transformed' into English common law by judicial decisions. Under the rules on precedent, the judges maintained that these could be reversed only by the House of Lords as the supreme appellate body. Eventually Lord Denning, presiding over the Court of Appeal in the case of *Trendtex Trading Corporation Ltd* v *Central Bank of Nigeria*, persuaded one of his two judicial

[51] Cases of *John* v *Donnelly* and *Lord Advocate's Reference No 1, 2000*, 2001 SLT 507 (*Greenock anti-nuclear activists*), described in Neff, 2002.

colleagues that this attitude was wrong. Customary international law was incorporated into English law so that when its rules changed, English law also changed. Lord Denning said:

> International law does change, and the courts have applied the changes without the aid of any Act of Parliament. Thus, when the rules of international law were changed (by the force of public opinion) so as to condemn slavery, the English courts were justified in applying the modern rules of international law . . . [52]

National courts seldom set aside national law because of its conflict with customary international law, but the Court of Justice of the EU—functioning at a level intermediate between the international legal order and national legal orders—set out criteria under which it might review Union law for consistency with customary international law. In the *Air Transport Association of America* case,[53] the Court held that customary rules could be relied on by an individual as against an EU act insofar as, first, the rules were capable of calling into question the competence of the Union to adopt the act challenged and, secondly, the act was liable to affect rights or to create EU obligations. It then held that application of the EU's carbon-trading scheme to international flights by non-EU airlines landing or taking off from territory of the Member States was consistent with customary international law principles regarding sovereignty and jurisdiction.

B. WHAT IS THE MEANING OF AN INTERNATIONAL LAW RULE IN THE CONTEXT OF DOMESTIC LAW?

In most cases, the national court does not merely decide whether to apply a rule of international law, but on the effect of the international rule in the domestic law context where it arises. Thus, in the Scottish nuclear weapons protesters cases described in Section V A (n 52) of this chapter, holding that international law was part of Scots law was not the end of the matter. The court had then to consider whether the holding of nuclear missiles was lawful under international law—a question which had been carefully avoided by the International Court of Justice[54]—and further whether international law gave individuals a right of forcible intervention to stop international crimes such as would amount to a defence of 'necessity' under Scots criminal law. The Appeal Court held that the conduct of the UK government was not illegal and that international law conferred no right of forcible intervention on individuals. The UK House of Lords, dismissing claims by protesters against the impending conflict in Iraq that they were 'preventing crime', held in the case of *R* v *Jones*[55] that, although a crime of aggression existed in international law, it did not follow automatically that 'aggression' was an offence in domestic law. Aggression was a crime committed by a State, not precisely defined under international law, and it would be contrary to modern constitutional practice for English courts to treat it as a crime in English law without specific statutory authority. As to the argument that the crime under international law had been tacitly assimilated into domestic law, Lord Bingham maintained that it was 'very relevant not only that Parliament has so far refrained from taking this step but also that it would draw the courts into an area which, in the past, they have entered, if at all, with reluctance and the utmost circumspection'.

[52] *Trendtex Trading Corporation Ltd* v *Central Bank of Nigeria* [1977] 1 QB 529; [1977] 1 All ER 881. For critical comment, see Collier, 1989.

[53] *Air Transport Association of America, American Airlines Inc, Continental Airlines Inc, United Airlines Inc* v *Secretary of State for Energy and Climate Change*, Case C-366/10 [2012] 2 CMLR 4; Denza, 2012.

[54] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996*, p 226.

[55] *R* v *Jones* [2006] UKHL 16. See also remarks of US Court of Appeals in *Hamdan* v *US*, Judgment of 16 October 2012, No 11–1257.

In 2004 the US Supreme Court in *Rasul* v *Bush*,[56] in order to determine whether they had jurisdiction to review the legality of the detention of prisoners in the Guantánamo Bay Naval Base in Cuba, applied the terms of the Lease Agreement of 1903 under which Cuba conferred on the USA 'complete jurisdiction and control' over the Base while retaining ultimate sovereignty. The majority inferred from the Agreement that the relevant statute should be construed to give US federal courts jurisdiction.

In 2010 The US Supreme Court in the case of *Abbott* v *Abbott* had to construe the term 'rights of custody' in the Hague Convention on the Civil Aspects of Child Abduction to determine whether a father with a *ne exeat* right under Chilean law restricting removal of his son from Chile without his consent was entitled to demand his return under the Convention. The Supreme Court had regard to the object and purpose of the Convention, the negotiating history, the views of the State Department and decisions of courts in other contracting States in deciding that a *ne exeat* right amounted to a right of custody.[57]

US courts were authorized directly to determine questions of international law by the Alien Tort Statute 1789,[58] which confers original jurisdiction on federal district courts to determine 'any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States'. After the rediscovery of this statute in the celebrated case of *Filartiga* v *Peña-Irala*,[59] where the plaintiff claimed damages for the torture of his son in Paraguay, the courts were invited in many cases to decide whether conduct which had taken place abroad violated modern rules of international law. The Supreme Court, however, in 2004, in the case of *Sosa* v *Alvarez-Machain*,[60] placed a narrow construction on the statute. They held that it was intended to be a jurisdictional statute covering causes of action where in 1789 the common law imposed personal liability—offences against ambassadors, violation of safe-conducts, and piracy. New violations of international law were not entirely excluded, but the courts should be cautious in finding new private rights on the basis of the law of nations. In the case of *Kiobel* v *Royal Dutch Petroleum*[61] the Supreme Court held further that the statute was not intended to have extraterritorial application and could not be invoked by Nigerian nationals in regard to conduct abroad by the Nigerian subsidiary of a Dutch/British oil company. The majority said that the statute was intended to avoid friction for the US in foreign relations and not to make the USA a forum for litigating violations of international law in the territory of foreign sovereigns.

C. IS THE INTERNATIONAL RULE DIRECTLY APPLICABLE AND DIRECTLY EFFECTIVE?

International courts often have to determine whether an international rule—usually a treaty provision—is directly applicable, so that no further implementing action is required for it to be legally binding at national level. This question is often cast in terms of whether the treaty is 'self-executing'—an expression which may under national law depend solely on construction of the treaty or may also (particularly in the USA) turn on internal constitutional practice. A different question is whether the rule is directly effective—so that an individual may rely on it as a source of rights at national level. The distinction between direct applicability and direct effect has been clarified by the jurisprudence of the European

[56] *Rasul* v *Bush* (2004) 542 US 466.
[57] 130 S Ct 1983. See (2010) 59 ICLQ 1158; (2011) 105 *AJIL* 108.
[58] 28 USC §1350.
[59] *Filartiga* v *Peña-Irala*, 630 F.2d 876 (1980); 577 F.Supp 860.
[60] *Sosa* v *Alvarez-Machain* 124 S Ct 2739, 29 June 2004. For a full account and comment see Roth, 2004.
[61] US S Ct, 17 April 2013. See earlier discussion in (2012) 106 *AJIL* 509–71 and 862–5. For comprehensive analysis of the case and its implications see Wuerth, 2013b, Agora, 'Reflections on *Kiobel*' (2013) 107 *AJIL* 829.

Court of Justice. Contrary to what is sometimes suggested, the ECJ did not invent the doctrine of direct effect, which can be traced back to rulings of the Permanent Court of International Justice and to cases in European jurisdictions, but it did lay down criteria to be uniformly applied throughout the European Union. It is this uniformity which is one of the most striking features distinguishing EU from public international law.

The cases of *Breard* v *Pruett, Breard* v *Greene* were almost identical to the *LaGrand* case described in Section II A of this chapter.[62] Breard was a national of Paraguay convicted of murder by a Virginia court in the USA. A few days before he was to be executed, Paraguay brought proceedings before the International Court of Justice, on the ground that the authorities had failed to inform him of his rights to consular protection under Article 36 of the Vienna Convention on Consular Relations. The ICJ issued an interim order requesting that the USA should take all measures to suspend the execution pending its final decision.[63] On the day of the execution, the Supreme Court considered petitions seeking a stay. Among the issues was whether Article 36 of the Vienna Convention requiring notification to a person arrested of his rights to consular access and protection, was directly effective in a national court. On this, the Supreme Court held that:

> neither the text nor the history of the Vienna Convention clearly provides a foreign nation a private right of action in United States courts to set aside a criminal conviction and sentence for violation of consular notification provisions.[64]

The Supreme Court denied the petitions and Breard was executed in the face of the ICJ's order. The Supreme Court followed the *Breard* ruling in the case of *Sanchez-Llamas* v *Oregon*[65] notwithstanding intervening decisions of the International Court of Justice casting doubt on the application of domestic procedural rules where Article 36 had been violated. Chief Justice Roberts denied that the interpretation of the International Court was binding on US courts, saying:

> If treaties are to be given effect as federal law under our legal system, determining their meaning as a matter of federal law 'is emphatically the province and duty of the judicial department' headed by the 'one supreme Court' established by the Constitution.

In *Medellin* v *Texas*, described in Section II A (n 14) of this chapter,[66] the Supreme Court held further that a judgment by the International Court of Justice in the *Avena* case[67] did not create directly enforceable domestic law. The conflict between entitlement under international law and US state law has continued and been confirmed by the case of *Leal Garcia* v *Texas*.[68]

A similar issue was raised in the case of *US* v *Alvarez-Machain* in 1992. Alvarez-Machain, a national of Mexico, was abducted in an operation for which the US Drug Enforcement Administration (DEA) was responsible. Charged with kidnap and murder of a DEA agent, he argued that his forcible abduction constituted outrageous conduct in violation of customary international law and that US courts therefore lacked jurisdiction to try him. The Supreme Court accepted that the abduction, against which Mexico had protested, violated general international law principles. This violation did not, however, give the defendant a free-standing right to contest jurisdiction. Nor could the US–Mexico Extradition Treaty

[62] See text at n 10 of this chapter.

[63] *Vienna Convention on Consular Relations (Paraguay* v *United States of America), Provisional Measures, Order of 9 April 1998, ICJ Reports 1998*, p 248.

[64] 134 F.3d 615 (1998); 118 ILR 23.

[65] *Sanchez-Llamas* v *Oregon* (2006) 548 US 331.

[66] *Medellin* v *Texas* (2008) 552 US 491.

[67] See n 13.

[68] 131 S Ct 2966 (2011); Charnovitz, 2012.

be read as including an implied term prohibiting abduction or prosecution when the defendant's presence was obtained by means outside the Treaty.[69]

In the following year a similar situation arose in the English case of *Bennett* v *Horseferry Road Magistrates' Court*. There the presence of the accused resulted from abduction by South African police in collusion with English police. The House of Lords held that the courts should decline as a matter of discretion to exercise criminal jurisdiction. Lord Bridge said:

> Where it is shown that the law enforcement agency responsible for bringing a prosecution has only been enabled to do so by participating in violations of international law and of the laws of another state in order to secure the presence of the accused within the territorial jurisdiction of the court, I think that respect for the rule of law demands that the court take cognisance of that circumstance.[70]

D. DOES A TREATY PREVAIL OVER INCONSISTENT NATIONAL LAW?

On the whole, national constitutions give clear directions to their courts on questions of priority, though they differ. For the UK and for its former dependencies which continued to follow its approach on becoming independent States within the Commonwealth, an unincorporated treaty cannot prevail over a conflicting statute, whether the statute is earlier or later in time. Under Article 55 of the French Constitution, by contrast, duly ratified and published treaties take precedence over national laws, whether earlier or later. The Constitutional Council in 1988 examined a complaint by candidates in elections to the National Assembly requesting annulment of elections in a particular constituency on the ground that the French Law of 11 July 1986 prescribing the procedure for elections violated Article 3 of the First Additional Protocol to the European Convention on Human Rights and Fundamental Freedoms, signed in 1950. This requires that elections should take place 'under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature'. The Constitutional Council held, however, that the 1986 Law was not inconsistent with Protocol No. 1.

The Russian Constitution of 1993, as explained earlier, gives priority to customary international law and treaties over inconsistent Russian national laws. Article 17 of the Constitution further guarantees human rights in conformity with generally recognized principles of international law. In the *Case Concerning Certain Normative Acts of the City of Moscow and Some Other Regions*,[71] the Constitutional Court reviewed the legality of local acts reintroducing a residence permit requirement in the light of Article 17. The court held that they were inconsistent with the right to freedom of movement and choice of place of residence guaranteed under Article 12 of the International Covenant on Civil and Political Rights, by Protocol No. 4 to the ECHR and by general principles of international law.

Under the US Constitution an act of Congress supersedes an earlier rule of international law if it is clear that this was the intention of the domestic law and the two cannot fairly be reconciled. Thus in the *Breard* case, described in Section V C of this chapter, the Supreme Court found that even if Breard had a right to consular assistance on the basis

[69] *US* v *Alvarez-Machain* (1992) 504 US 655. For the sequel, see *Sosa* v *Alvarez-Machain*, in the previous section.

[70] *Bennett* v *Horseferry Road Magistrates' Court* [1993] 3 All ER 138, 155.

[71] VKS 1996 No 2, described in Danilenko, 1999, pp 57, 64.

of Article 36 of the Vienna Convention on Consular Relations, it had been superseded in 1996 by the express terms of the Antiterrorism and Effective Death Penalty Act, providing that a petitioner in federal courts alleging that he was held in violation of treaties of the USA would not, as a general rule, be afforded an evidentiary hearing on his claim if he had failed to develop the factual basis of his claim in State courts.[72]

The courts of the US, like those of other States, usually go to considerable effort to avoid conflict between national rules and international obligations. The approach of English courts was set out by Lord Denning in *Saloman* v *Commissioners of Customs and Excise*, where he said of a treaty which could not directly be relied on but which formed part of the background to the statutory provision in issue:

> I think we are entitled to look at it because it is an instrument which is binding in international law and we ought always to interpret our statutes so as to be in conformity with international law.[73]

The case of *Alcom* v *Republic of Colombia and others*[74] in 1984 raised the question whether execution of a judgment could take place against the ordinary bank account of a diplomatic mission. This had not been expressly regulated by any UK statute. The House of Lords accepted, largely on the basis of a 1977 judgment of the German Constitutional Court in proceedings against the Philippine Republic, that international law required such immunity from enforcement. Lord Diplock observed that the position in international law at the date of the State Immunity Act did not conclude the question of construction, and said:

> It makes it highly unlikely that parliament intended to require United Kingdom courts to act contrary to international law unless the clear language of the statute compels such a conclusion; but it does not do more than that.

A similar approach was taken by the Southern District Court of New York in *US* v *The Palestine Liberation Organization and others*, which held that the US Anti-Terrorism Act 1988 did not supersede the 1946 Headquarters Agreement between the UN and the USA. The court emphasized that precedence of a later statute over a treaty occurred only where the two were irreconcilable and Congress had clearly shown an intent to override the treaty in domestic law, stating that:

> unless this power is clearly and unequivocally exercised, this court is under a duty to interpret statutes in a manner consonant with existing treaty obligations. This is a rule of statutory construction sustained by an unbroken line of authority for over a century and a half.[75]

E. CAN A TREATY PREVAIL OVER A NATIONAL CONSTITUTIONAL NORM?

There are many instances where a national constitutional court has reviewed the compatibility with the national constitution of a treaty before its ratification. The French and German Constitutions were each amended to ensure the compatibility of the Treaty on European Union signed at Maastricht and succeeding EU Treaties with the national constitutional order. By the European Communities Act 1972 the UK also amended its

[72] 118 ILR 23, 33–4.

[73] *Saloman* v *Commissioners of Customs and Excise* [1967] 2 QB 116. See also Lord Denning in *Corocraft Ltd and another* v *Pan American Airways Inc* [1969] 1 QB 616.

[74] *Alcom* v *Republic of Colombia and others* [1984] 2 All ER 6.

[75] *US* v *The Palestine Liberation Organization and others*, 695 F.Supp 1456 (1988); 82 ILR 282.

constitution in order to accept features of the Community legal order—in particular direct applicability and direct effect—which were inconsistent with its own general approach to the implementation of international obligations. While the European Union (Withdrawal) Bill if enacted would make EU legislation in operation on exit day part of UK domestic law and would preserve its direct effect and supremacy in the UK, the Bill also provides that 'the principle of the supremacy of EU law does not apply to any enactment or rule of law passed or made after exit day'.[76]

With the possible exception of the Netherlands Constitution, there appears to be no example of a national legal order requiring the supremacy of international legal obligations over the national constitution. The transparent procedures used before the acceptance of treaties by most States have ensured that direct conflicts between national constitutions and treaties in force have been rare. In 1974, however, the German Federal Constitutional Court in the *Internationale Handelsgesellschaft* case[77] considered the possibility that European Community law might infringe constitutional rights guaranteed under the German Constitution. The court said that so long as [solange] the Community did not have its own catalogue of fundamental rights, the German courts must reserve the right to examine the compatibility of Community law with the fundamental rights in the German Constitution. The judgment (known colloquially as the *Solange* judgment) appeared to challenge the supremacy of European Community law, and it gave rise to successive and prolonged attempts by the Commission of the European Communities, by Germany, and by some other Member States to secure accession by the Community and then the Union to the European Convention on Human Rights. It confirms that for German courts, their own constitution, as amended to provide for acceptance of specific treaties, is their supreme law. This approach has been confirmed by the *Gőrgülü* case described in Section IV B of this chapter.[78] In 2016 the Constitutional Court of Hungary concluded that it was entitled to review the compatibility of European Union law with fundamental rights and sovereignty as guaranteed by the Hungarian Constitution.[79]

While European law may be compared with international law so far as national legal systems are concerned, in its implementation of its international obligations it should be compared with national legal systems. The European Court of Justice in the *Kadi* case,[80] considering the relationship between the international legal order and the Community legal order, in order to decide whether it could review the legality of Community measures implementing a Security Council resolution on sanctions, also began with its own basic constitutional charter, the European Community Treaty, and fundamental rights as general principles of law guaranteed by the Court. It stressed that:

> the obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the EC Treaty, which include the principle that all Community acts must respect fundamental rights, that respect constituting a condition of their lawfulness . . .

Review of a Community implementing instrument would, however, not entail any challenge to the primacy of the Security Council resolution in international law.

[76] Clause 5.

[77] *Internationale Handelsgesellschaft* v *Einfur und Voratsstelle Getreide*, Case 11/70 [1970] ECR 1125; [1974] 2 CMLR 540.

[78] Note 26.

[79] Decision 22/2016 (XII 5) AB on the interpretation of Article B (2) of the Fundamental Law, analyzed in (2017) 111 *AJIL* 468.

[80] *Kadi and Al Barakaat International Foundation* v *Council*, Joined Cases 402/05 and 415/05 [2008] ECR I-6351, paras 280–330. See Denza, 2013, pp 185–7.

F. SHOULD THE EXECUTIVE DIRECT OR GUIDE THE NATIONAL COURT?

In most States this question is not dealt with in constitutional provisions, but is clear from practice. National judges cannot have up-to-date knowledge of international law, even where it forms part of their training. Except where there are practising lawyers with this expertise, or where international law teachers may appear as advocates, the main source of expert advice are the lawyers working continuously for the government on international law. National courts generally seek to avoid conflicts with international obligations which would embarrass their governments. They accept that it is highly desirable that on questions of recognition, jurisdiction, and immunity the State should speak with one voice.

In a large number of States—notwithstanding any principle of separation of powers—the executive will direct a national court on questions of international law—particularly on diplomatic and State immunity. In France, for example, the Conseil d'Etat would until recently normally seek guidance from the Ministry of Foreign Affairs on the construction of an international agreement, particularly if it saw a danger of embarrassment to the government. French courts may, however, decide that a reference is unnecessary because the treaty is clear (*acte clair*) and may dissent from the advice given (de la Rochère, 1987).[81] In the USA, although the courts have general powers to determine questions of international law, it is usual for the executive to give assistance in sensitive cases, either through *amicus curiae* briefs, interventions, or 'executive suggestions'. In the legal battles over Concorde's access to Washington and New York, culminating in the case of *Air France and British Airways* v *Port Authority of New York and New Jersey* in the US District and appellate courts, *amicus curiae* briefs from the US government to the courts on international obligations under the bilateral air services agreements with the UK and with France were crucial to the airlines' success and so to Concorde's entry into commercial service (Owen, 1997, ch 10). By the Foreign Sovereign Immunities Act,[82] the US government sought to delegate to its courts determination of questions of State immunity which had often proved politically sensitive. But the State Department has made clear that residual common law State immunity remains in some areas and that in these areas it may still file *amicus curiae* briefs and will expect US courts to defer to its views.[83] In *Habyarimana* v *Kagame*[84] the US Court of Appeals, citing earlier cases, accepted as conclusive the determination of the executive that the Head of State of Rwanda was immune from suit even for acts committed prior to assuming office.

In the UK, the executive are constrained by the independence of the courts from offering direction on questions of law. On questions of fact peculiarly within the knowledge of the government it is practice to provide certificates on request, and statutes such as the Diplomatic Privileges Act 1964[85] and the State Immunity Act 1978[86] expressly provide for such certificates to be given 'by or under the authority of the Secretary of State' and for their conclusive effect. In cases of importance for the government, the Attorney-General may nominate counsel to act as an independent *amicus curiae*—as in the case of *Alcom* v *Colombia* described in Section V D of this chapter and in the *Pinochet* case.[87]

[81] See *Gisti* case, Conseil d'Etat, 29 June 1990, 111 ILR 499; *Agyepong* case, Conseil d'Etat, 2 December 1994, 111 ILR 531. In the case of *Beaumartin* v *France, Judgment of 24 November 1994, Ser A, No 296-B*; 19 *EHRR* 485 the European Court of Human Rights held that the practice was incompatible with the right, under Article 6 of the ECHR, of access to 'an independent and impartial tribunal established by law'.

[82] 28 USC § 1603. [83] See US *amicus* brief in *Matar* v *Dichter*, No. 07–2579-cv, 19 December 2007.

[84] 821 F.Supp 2d 1244.

[85] C 81, s 4. For examples, and for US practice see Denza, 2016, pp 255–7 and 322–3. [86] Section 21.

[87] *R* v *Bow Street Metropolitan Stipendiary, ex parte Pinochet Ugarte (No 1)* [1999] UKHL 52; [1998] 3 WLR 1456. On the contrasting approaches of US and UK courts, see Collins, 2002.

Although international law does not prescribe what guidance the executive should give a domestic court, assistance may be derived from the Advisory Opinion of the International Court of Justice in the *Cumaraswamy* case.[88]

G. SHOULD A NATIONAL COURT APPLY A FOREIGN LAW WHICH CONFLICTS WITH INTERNATIONAL LAW?

The six questions described in preceding Sections A–F raise questions about the application of international law within each national legal order and, generally speaking, answers are provided by national constitutional law and practice. Two other questions often arise for which no direct answers are given in national constitutions. The first concerns the effect of a foreign law or executive action which is alleged to contravene international law. To answer this question the national court is required not merely to ascertain the content of international law but to decide whether it has been violated by the act of another State and, if so, the effect of that illegal act within its own legal order.

The doctrine of judicial deference to the acts of another sovereign has been most extensively developed by the courts of the USA. The classic statement of the rule, in 1897, was in *Underhill* v *Hernandez*, where the Supreme Court said:

> [E]very sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory.[89]

The rule has often been applied in the context of acts of expropriation alleged to violate international law, and US courts have adopted a flexible approach designed not to hinder the executive and legislative branches in their conduct of foreign policy. The 'act of State' doctrine was re-examined by the Federal Court of Appeals in 1983 in the context of claims of corruption and anti-competitive practices in the context of an award of a concession to exploit offshore oil. In the case of *Clayco Petroleum Corporation* v *Occidental Petroleum Corporation and others* the court confirmed its applicability. The grant of a concession to exploit natural resources was inherently a sovereign act which no private person could perform, and 'the purpose of the doctrine is to prevent the judiciary from interfering with the political branch's conduct of foreign policy'.[90] By contrast, the US Court of Appeals refused to apply the doctrine in the case of *Republic of the Philippines* v *Marcos and others*, where the successor government of the Philippines sought to prevent further misappropriation of real properties in New York illegally acquired by Marcos when he was President. The court emphasized that any misappropriation had been a purely private act, that Marcos was no longer President of the Philippines, and that the present government of the Philippines actively sought the assistance of the US courts. This action by the new government was not expropriation:

> The complaint seeks recovery of property illegally taken by a former head of state, not confiscation of property legally owned by him.[91]

The House of Lords re-examined the rule in *Kuwait Airways Corporation* v *Iraqi Airways*.[92] The case resulted from the taking by Iraqi forces during their 1990 invasion of

[88] *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, ICJ Reports 1999*, p 62, paras 60–2 and in Separate Opinion of Judge Oda.

[89] *Underhill* v *Hernandez* 168 US 250, 18 S Ct 83n (1897).

[90] *Clayco Petroleum Corporation* v *Occidental Petroleum Corporation and others* 712 F.2d 404 (1983); 81 ILR 522.

[91] *Republic of the Philippines* v *Marcos and others* 806 F.2d 344 (1986); 81 ILR 581.

[92] *Kuwait Airways Corporation* v *Iraqi Airways Co (No 2)* [2002] UKHL 19; [2002] 3 All ER 209. See Note in (2002) 73 *BYIL* 400. The reasoning was criticized by Carruthers and Crawford, 2003.

ten commercial aircraft belonging to Kuwait Airways Corporation (KAC) and their transfer, by decree of the Revolutionary Command Council, to the State-owned Iraqi Airways Company. Some of the aircraft were later destroyed by coalition bombing during the conflict to liberate Kuwait and others were flown to and sheltered by Iran. KAC claimed the return of the aircraft or payment of their value, and damages. To determine liability under English law it was necessary to apply the law of Iraq and thus to determine the validity of the decree of the Revolutionary Command Council. It was clear that the invasion of Kuwait and the seizure of its assets violated fundamental rules of international law including binding Security Council resolutions. Lord Nicholls went on to say, at paragraph 29:

> Such a fundamental breach of international law can properly cause the courts of this country to say that, like the confiscatory decree of the Nazi government of Germany in 1941, a law depriving those whose property has been plundered of the ownership of their property in favour of the aggressor's own citizens will not be enforced or recognized in proceedings in this country. Enforcement or recognition of this law would be manifestly contrary to the public policy of English law. For good measure, enforcement or recognition would also be contrary to this country's obligations under the UN Charter. Further, it would sit uneasily with the almost universal condemnation of Iraq's behaviour and with the military action, in which this country participated, taken against Iraq to compel its withdrawal from Kuwait. International law, for its part, recognizes that a national court may properly decline to give effect to legislative and other acts of foreign states which are in violation of international law . . .

A similar approach was adopted by the UK Court of Appeal in *Yukos Capital* v *OJSC Rosneft*,[93] in which the Court held that they were not precluded from challenging a Russian court decision on the ground that it had been secured through a judicial process lacking independence.

The overlapping doctrines of act of State as applied in the UK, the US, and several other jurisdictions were comprehensively reviewed and analysed by the UK Supreme Court in the *Belhaj* case.[94] Belhaj and his wife alleged that UK security services cooperated with US and Libyan authorities to surrender them to Libya where Belhaj was tortured and held for six years. Rahmatullah, whose appeal was joined with that of Belhaj, was surrendered from UK into US custody and alleged that he was then tortured and held for ten years in the US air base at Bagram in Afghanistan. All seven Supreme Court judges clearly distinguished between foreign act of State in the sense now under discussion, which, according to Lord Mance in paragraph 7 of his leading judgment, 'requires a domestic court to accept without challenge the validity of certain foreign state acts', and the other sense—discussed in Section V H—of 'a broader principle of non-justiciability, whereby the domestic court must simply declare itself incompetent to adjudicate'. There are differences between Lord Mance and the separate judgments of Lord Neuberger and Lord Sumption as to whether the 'recognition' aspect of the act of State doctrine should be sub-divided between acceptance of a foreign legislative act and acceptance of an executive act. But all seven judges agreed that the doctrine was subject to exceptions on grounds of public policy and that the most important of these applied to the breaches of fundamental human rights alleged by Belhaj and Rahimtoola—in particular torture and prolonged detention without judicial review. All seven judges also agreed in dismissing the existence of a separate doctrine whereby UK courts should abstain from adjudicating on a foreign act where this would embarrass the UK government in the conduct of its international relations.

[93] *Yukos Capital* v *OJSC Rosneft*, [2014] EWHC 1288 (Comm).

[94] *Belhaj and another* v *Straw and others*; *Rahmatullah (No 1)* v *Ministry of Defence and another* [2017] UKSC 3.

Although the US and English cases on this form of 'act of State' have developed on parallel tracks, a comparison shows that the US cases are based more closely on deference to the views of the executive, so that the State may speak with a single voice, while the English courts seek rather to apply public and private international law themselves. The distinction between the US and the UK doctrines of 'foreign act of State' has been clearly drawn in the UK Supreme Court judgments in *Belhaj*.

H. ARE THERE QUESTIONS OF INTERNATIONAL LAW WHICH NATIONAL COURTS SHOULD DECLINE TO ANSWER?

Generally speaking, where questions of international law arise before national courts, they are either (as with immunity) an essential preliminary to assumption of jurisdiction over the claim or criminal charge, or they are incidental to the construction of a national statute or a claim brought under national law. The court, with whatever assistance it can secure from counsel or from its ministry of foreign affairs, must do the best it can. Sometimes, however, where a question of international law is central to the claim, English and US courts have held that they are in effect not competent to answer it. The classic statement of this principle of 'judicial restraint' was the judgment of Lord Wilberforce in the House of Lords in the case of *Buttes Gas and Oil Co* v *Hammer*.[95] On its face the claim was one of defamation and the defence was justification. But the real underlying dispute was over the extent of the territorial waters of Sharjah in the Persian Gulf and the right to exploit natural resources below these waters, and could not be decided without investigation of the conduct of Umm al Qaiwain, Iran, and the UK as well as Sharjah. Lord Wilberforce, with the support of his judicial colleagues, found that for an English court there were no judicial standards to judge the issues of international law and that:

> the court would be in a judicial no-man's land; the court would be asked to review transactions in which four sovereign states were involved, which they had brought to a precarious settlement, after diplomacy and the use of force, and to say that at least part of these were 'unlawful' under international law.

The principle of judicial restraint was considered in the successive *Pinochet* cases before the House of Lords. In the first case Lord Slynn and Lord Lloyd—both of whom held that General Pinochet was immune as a former Head of State—also maintained that the rule was applicable. Lord Lloyd said assumption of jurisdiction would imperil relations between governments and that:

> we would be entering a field in which we are simply not competent to adjudicate. We apply customary international law as part of the common law, and we give effect to our international obligations so far as they are incorporated in our statute law; but we are not an international court.[96]

[95] *Buttes Gas and Oil Co* v *Hammer* [1982] AC 888; 64 ILR 273 and 331.

[96] *R* v *Bow Street Metropolitan Stipendiary, ex parte Pinochet Ugarte (No 1)* [1998] UKHL 41; [2000] AC 61; [1998] 4 All ER 897; [1998] 3 WLR 1456, 1495.

[97] *R* v *Bow Street Metropolitan Stipendiary, ex parte Pinochet Ugarte (Amnesty International Intervening) (No 3)* [1999] UKHL 17; [2000] 1 AC 147; [1991] 2 All ER 97; [1999] 2 WLR 827; 119 ILR 135. See, on the question of act of State, Denza, 1999. See also *Campaign for Nuclear Disarmament* v *The Prime Minister* [2002] EWHC 2759 (QB) and Note in (2002) 73 *BYIL* 444.

[98] *The Republic of Ecuador* v *Occidental Exploration and Production Company* [2005] EWHC 774 (Comm). See also the judgment of the Court of Appeal at [2007] EWCA Civ 456.

Lord Nicholls and Lord Steyn held, however, that the doctrine did not apply. Lord Steyn maintained that the charges against General Pinochet were already in 1973 condemned as high crimes by customary international law and that it would be wrong for English courts to extend the doctrine of judicial restraint in a way which ran counter to customary international law at the relevant time. In the third *Pinochet* case before the House of Lords[97] judicial restraint was given short shrift.

The English High Court also gave a narrow interpretation to non-justiciability in 2005 in *The Republic of Ecuador* v *Occidental Exploration and Production Company*.[98] Aikens J described the doctrine as establishing 'a general principle that the municipal courts of England and Wales do not have the competence to adjudicate upon rights arising out of transactions entered into independent sovereign States between themselves on the plane of international law'. He held that it did not apply so as to prevent the court from determining a challenge by Ecuador under the UK Arbitration Act 1996 to an Award made pursuant to a Bilateral Investment Treaty between the USA and Ecuador. The Court of Appeal agreed with his analysis.

In *Mbasogo (President of the State of Equatorial Guinea)* v *Logo*,[99] the English Court of Appeal dismissed a claim for damages arising from an attempted private coup, holding that it was non-justiciable since it involved the exercise or assertion of a sovereign right. English courts had no jurisdiction to enforce the public law of a foreign State. The English Administrative Court also declined to review the UK government's decision to ratify the Treaty of Lisbon without a referendum in the case of *R (Wheeler)* v *Office of the Prime Minister*, denying the existence of an implied promise giving rise to a legitimate expectation. The court held that '[t]he subject-matter, nature and context of a promise of this kind took place in the realm of politics, not of the courts, and the question whether the government should be held to such a promise is a political rather than a legal matter'.[100]

The doctrine of judicial restraint has been strongly criticized by Rosalyn Higgins (Higgins, 1991, pp 273–4). But the approach is parallel to the restraint shown by the Permanent Court of International Justice in the extract from the *Serbian Loans* and *Brazilian Loans* cases cited at the outset of this chapter. It may also be seen as similar to the rule of *forum non conveniens* in private international law whereby courts defer to domestic courts of another State.

In the *Belhaj* case described in the previous section, the House of Lords considered whether the doctrine applied given that a decision on the merits of the claims would necessarily involve adjudication on the lawfulness of the acts of the other States implicated—in particular Libya and the US. The clearest analysis of the principle in the light of the precedents was given by Lord Sumption who said:[101]

> In all the cases cited, the claimant relied on a recognised private law cause of action, and pleaded facts which disclosed a justiciable claim of right. But the private law cause of action failed because, once the cause of action was seen to depend on the dealings between sovereign states, the court declined to treat it as being governed by private law at all . . .

and that:

> Once the acts alleged are such as to bring the issues into the issues into the 'area of international dispute' the act of state doctrine is engaged.

There were differences among the judges as to whether violations of international law or fundamental human rights implied that the doctrine did not apply or constituted an

[99] *Mbasogo (President of the State of Equatorial Guinea)* v *Logo* [2006] EWCA Civ 1370, [2007] QB 846.
[100] [2008] UKHL 20. See also McGoldrick, 2010 and Nicholson, 2015.
[101] *Belhaj and another* v *Straw and others* [2017] UKSC 3, para 234.

exception. Lord Sumption said that this did not matter—what mattered is that the underlying principle should be clear, coherent, and in line with contemporary standards. It would be 'contrary to the fundamental requirements of judicial administration by an English court to apply the foreign act of state doctrine to an allegation of civil liability for complicity in acts of torture by foreign states'.[102] Notwithstanding the differences in analysis of the doctrine in the judgments of Lord Mance and Lord Neuberger, all seven judges concurred in this result.

VI. CONCLUSION: ELEMENTS OF A HAPPY RELATIONSHIP

Several of the constitutional provisions described in this chapter have been revised in recent years in order more effectively to integrate international law into the national legal order. There is continuous cross-fertilization in attempts to remedy perceived weaknesses. The extent to which this now happens in the superior courts in the UK has been vividly described by Lord Bingham, who summed up as follows:

> If we believe, as we probably do, that peace and good order in the world depend to a large extent on the observance of legal rules, on the international as on the national place, the contribution made by national courts, not least our own, is one of which we . . . may be proud.[103]

But on the other hand there have been signs in a few States—Germany, Russia, the USA, and the UK are mentioned in this chapter—of renewed emphasis on the supremacy of national constitutions and of popular suspicion of adverse judgments from international courts.

It is unrealistic to suggest that any fundamental harmonization of national constitutional provisions is practicable. So long as national constitutions reflect the history and identity of independent States, and so long as international law itself remains in general non-intrusive as to how it is applied and enforced at national level, there will be infinite variety in national systems.

It is difficult even to suggest criteria on which a 'scoreboard' of impressive and failing performers could be drawn up. If, for example, the criterion is the production of judgments on general questions of international law which carry weight in other jurisdictions, one would rate Germany at the highest level. The laconic judgments of French courts, however correct, lack wider appeal because there is little evidence of the legal reasoning behind them. Judgments of the UK House of Lords and the US Supreme Court probably carry less weight abroad because the courts have so often been openly divided on fundamental questions—*Breard*, *Alvarez-Machain*, *Pinochet*, to name only three discussed in this chapter.[104] Receptiveness to decisions in other States could be a criterion—in most jurisdictions there is increasing readiness to take into account cases from other jurisdictions, even though primary reliance on national precedents has led to some divergence of international law into separate streams.[105] Adverse judgments from international tribunals might be another criterion—and for the UK this was undoubtedly a factor in changing its system of enforcing the European Convention on Human Rights in its domestic legal order. But an objective assessment on this basis would need to take in readiness to accept exposure to international assessment. The UK accepted the right of individual

[102] Ibid, paras 249–59, 262. [103] Bingham, 2010, p 54.
[104] On *Pinochet's* influence, see Wuerth, 2013a. [105] See Roberts, 2011.

petition under the Convention at an early stage and is now the only Permanent Member of the Security Council to accept the compulsory jurisdiction of the International Court of Justice.

In the absence of any identification of the ideal relationship between international law and national law, five factors will be proposed as generally conducive to the avoidance of conflict. They are:

(1) close involvement in the treaty-making process of lawyers with knowledge both of their own legal systems and of international law;

(2) close attention to questions of national implementation during the treaty-making process and before ratification;

(3) detailed parliamentary scrutiny of important treaties before national ratification;

(4) teaching of international law as a compulsory element of a law degree and of professional training; and

(5) involvement of specialist international lawyers as counsel and as *amici curiae* whenever difficult questions of international law arise in national courts.

Some of these suggestions go to 'the reality of legal culture' (Higgins, 1991, pp 266–8). All of them call for openness to international law, including its imperfections, its uncertainties, and its rapid shifts. The motto for national law-makers and judges might well be 'only connect'.

REFERENCES

Aust, A (2013), *Modern Treaty Law and Practice* (3rd edn, Cambridge: Cambridge University Press).

Barrett, J (2011), 'The United Kingdom and Parliamentary Scrutiny of Treaties: Recent Reforms', 60 *ICLQ* 225.

Bell, J (2005), 'French Constitutional Council and European Law', 54 *ICLQ* 735.

Bingham, T (2010), *Widening Horizons: The Influence of Comparative Law and International Law on Domestic Law* (Hamlyn Lectures, Cambridge: Cambridge University Press).

Bradley, C (2014), *International Law in the US Legal System* (Oxford, New York: Oxford University Press).

Butler, W (2002), *The Law of Treaties in Russia and the Commonwealth of Independent States* (Cambridge, New York: Cambridge University Press).

Carruthers, JM and Crawford, EB (2003), 'Kuwait Airways Corporation *v* Iraqi Airways Company', 52 *ICLQ* 761.

Charnowitz, S (2012), 'Correcting America's Continuing Failure to Comply with the Avena Judgment', 106 *AJIL* 572.

Collier, J (1989), 'Is International Law Really Part of the Law of England?', 38 *ICLQ* 924.

Collins, L (2002), 'Foreign Relations and the Judiciary', 51 *ICLQ* 485.

Craig, P and De Búrca, G (2007), *EU Law: Text, Cases and Materials* (3rd edn, Oxford: Oxford University Press).

Danilenko, G (1994), 'The New Russian Constitution and International Law', 88 *AJIL* 451.

Danilenko, G (1999), 'Implementation of International Law in CIS States: Theory and Practice', 10 *EJIL* 51.

De La Rochère, D (1987), in Jacobs and Roberts (eds), p 39.

Denza, E (1999), 'Ex parte Pinochet: Lacuna or Leap?', 48 *ICLQ* 687.