

International law in the domestic courts

Crucial, cunning or crazy?

What do we mean by
'international law'?

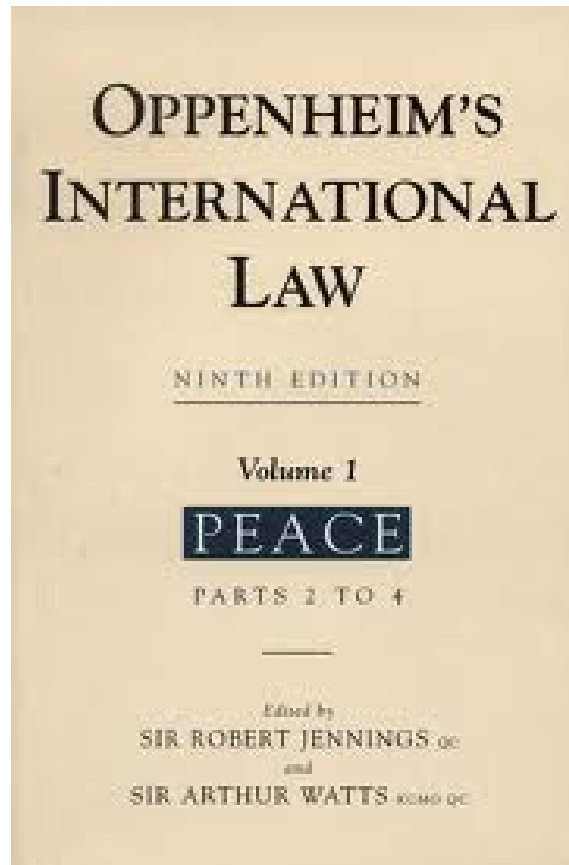
Article 38(1) of the Statute of the International Court of Justice



International Conventions



Customary international law



Judicial decisions and academic writings

How does it get into the UK
courts?

Customary international law

Transformation?

Incorporation?

Treaties

Incorporated?

Unincorporated?

Incorporated treaties

The statute

The text of the treaty

Context, object and purpose

State practice

Travaux



Pinochet



McKerr



Careful with the travaux!

Only a bulls-eye will do...

Unincorporated treaties

Why look at them in a domestic case?



Human rights treaties

Roma Rights



Construction of domestic statutes

Adams



Developing the common law

Torture



Application of customary international law?

Piracy



Milling and Jones

What now?



Drones



Torture

Jones v UK



Expulsion

Bancoult v UK

Bancoult v Foreign Secretary

Exporting obligations?
Importing rights?

37. I confess to be quite unimpressed by the pleadings of the United Kingdom Government to the effect that exporting the European Convention on Human Rights to Iraq would have amounted to “human rights imperialism”. It ill behoves a State that imposed its military imperialism over another sovereign State without the frailest imprimatur from the international community, to resent the charge of having exported human rights imperialism to the vanquished enemy. It is like wearing with conceit your badge of international law banditry, but then recoiling in shock at being suspected of human rights promotion.

38. Personally, I would have respected better these virginal blushes of some statesmen had they worn them the other way round. Being bountiful with military imperialism but bashful of the stigma of human rights imperialism, sounds to me like not resisting sufficiently the urge to frequent the lower neighbourhoods of political inconstancy. For my part, I believe that those who export war ought to see to the parallel export of guarantees against the atrocities of war. And then, if necessary, bear with some fortitude the opprobrium of being labelled human rights imperialists.

(Concurring Opinion of Judge Bonello, *Al-Skeini v UK*)

International law in practice...