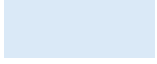




A conference hosted by the Constitutions, Rights and  
Basic Human Freedoms Centre  
Constitutional Law Association

# Outline







	<p>chaired by Dr Nkem Adeleye, Senior Lecturer in Law, University of Worcester.</p> <p><b>Paper 7:</b> <i>Compliance with International Law: Should Unilateral Sanctions or Development be Approved?</i> by Dr Stuart Wallace, King's College London.</p> <p><b>Paper 9:</b> <i>International Law and the Environment</i> by Dr Stuart Wallace, University of Leeds.</p>
12:30	
13:30	<p><b>Panel 4 (JL1005)</b> chaired by Felicity Miles, Lecturer in Law, University of Worcester.</p> <p><b>Paper 10:</b> <i>International Law and the Environment</i></p> <p><b>Paper 11:</b> <i>International Law and the Environment</i> by Sara Moran, Senedd Cymru / Welsh Parliament</p> <p><b>Paper 12:</b> <i>International Human Rights Law and the Environment: A Question of Competence?</i> by Dr Elin Ferguson, University of Aberdeen.</p>
14:30	
15:30	<p><b>Panel 5 (JL1005)</b> chaired by Danielle Horton-Jones, Lecturer in Law, University of Worcester.</p> <p><b>Paper 13:</b> <i>The ECHR: A Barrier to Parliamentary Sovereignty or a Protective Layer for our Rights?</i> by Mrs Kelly Dawson, University of Law.</p> <p><b>Paper 14:</b> <i>Justiciability of Environmental Claims in the UK</i> by Dr Chris Branson, University of Exeter.</p> <p><b>Paper 15:</b> <i>The Law of Treaty Withdrawal and its Application in the United Kingdom: In Search of a Synthesis</i> by Dr Frederick Cowell, Birkbeck College, University of London.</p>
16:50	<p><b>Closing Remarks (JL1005)</b> Dr Michael Lane, Lecturer in Law, University of Worcester.</p>
17:00	Conference End

# Papers

## 1. The Dislocation of Dualism by Nicholson, Durham Law School.

First, we contend that dualism provides

around the direct effects – its inability to account for significant gaps between the various divisions of internal/international law (non-justiciable; effective/non-effective – which it

account for the significant body of hybrid norms in the UK constitution – that is,

are better understood as co-gen domestic and international law orders. Third, whereas dualist criticism does not – for the reason that post-incorporation legitimacy challenges cannot guarantee the constitutional stability that its

from the reception of international norms into the domestic legal order. At least, a form of dualism is required to describe the relationship between the UK domestic and international legal orders. At present, it

## 2. “The Common Law’s Duty to Give Content to the Constitution” by Dr Lewis Graham, University of Cambridge.

local enforceability. So much is true. However, this does not mean that international law has no effect at the domestic level whatsoever, although the adopted position, which is, on the whole, resistant to the influence of

only under very narrow circumstances. This link together with a more general

current UKSC judges appear to endorse a more rigid and conservative conception of dualism compared to their predecessors.

### 2. 'Common law jurisdictional hooks to assess compliance with unincorporated international treaties' by Mr Gabriel Tan and Mr [Name] of Oxford, *Dualism*

The Supreme Court's decision in *D (SC)* [2021] UKSC 26 ("SC") is widely seen as reasserting an uncompromising defence of dualism. The Supreme Court

Government has breached an unincorporated international treaty, when so finding, it was stated that the principle that an unincorporated treaty does not favour of a right of law reflects "a long principle of our constitutional law". Yet, in two high profile decisions following SC – *Friends of the Earth v SSIT* [2022] EWCA Civ 14 and *EOG v SSUD* [2022] EWCA Civ 207 – the Court of Appeal has recently decided that using public law principles at common law to

unincorporated international treaties is permissible ("common law jurisdictional hooks"). In *EOG* it was specifically considered that such an analysis is not precluded by SC. This paper critically assesses the use of common law jurisdictional hooks for unincorporated international treaties. It argues that the *Friends of the Earth* and *EOG* judgments are not a return to a dualist view. First, an international treaty does not become part of the law unless it is incorporated into the law by legislation. Second, the executive has no power to alter domestic law. It argues that both these propositions are breached by the

that such an approach is incompatible with the principles of dualism.

### 4. 'Distinguishing Permissible from Impermissible Uses of Unincorporated Treaties: Beyond Dualism' by Dr Joanna Bell, University of Oxford, *Dualism*

Common law judges have often used unincorporated international treaties to assist in the construction of domestic law. This is done from an implicit perspective that unincorporated treaty provisions are legal reasoning. When faced with this question, judges commonly reach for a common set of ideas. The UK legal







convergence with the US) that results in lower compliance? Or the development of a British approach, rooted perhaps in the view that compliance is important, but not at all costs? These questions are not only of academic interest but also of practical importance. To evaluate these questions, this paper will use several unilateral sanctions regimes as case studies, including thematic and economic regimes to reveal how a more robust and consistent approach might be justified.

## 8. ~~Humanitarian Intervention: A Doctrine of International Law~~ by Guy of Susee, Prof. Christian Henderson, Univers

NATO's intervention in Kosovo in 1999. The notion of it being 'unlawful yet legitimate' in certain circumstances has found its way into debates in various disciplines, and the events raise as to how this might be reconciled with the current position of international law, its future impact upon international law,

emergence of the so-called 'Responsibility to Protect' no state has implicitly or explicitly taken the view that a legal right of unilateral humanitarian intervention exists in international law, that is, that a right of forcible intervention exists in international law.

exception of the United Kingdom which has claimed its existence both in the past and in the present. This paper explores the UK's relationship with the doctrine of humanitarian intervention, including the role of the UK in the development of UK government policy, its legal strategy and how it might claim that such a right exists *lex lata* given its seemingly isolated position.

## 9. of Leeds

Human Rights Commission (HRC) and the European Court of Human Rights (ECtHR) as a result of its jurisdiction over the UK. This paper examines the HRC's declaration of incompatibility under the Human Rights Act 1998 and how these violations come about and how they are remedied.

about the human rights treaty from which the rights are derived.

the Joint Committee on Human Rights, which is a committee of the House of Commons and the House of Lords.

looks at how violations are remedied after a declaration of incompatibility has

been made. What are the remedies available to victims of human rights violations?

### 10. National Law and the Role of the Courts in the UK

torture, race, enslavement and terror? An ordinary reading of section 134 of the Criminal Justice Act 2003 and section 50(A) of the Terrorism Act 2006, and article 3 of the Serious Crime Act 2007, would suggest that the provisions are not specific enough to cover those Acts would be inadequate, this paper advances an argument which cuts the place of international law in the United Kingdom and the powers and responsibilities of the judiciary in England & Wales.

Having advanced its argument the paper suggests reasons for confusion in those areas of law which are covered in the UK. It also suggests reasons for the confusion in international law and in the UK.



### 13. 'The ECtHR and the Right to a Fair Trial: A New Frontier for our Rights?' by Mrs Kelly Rowney, University of Law.

It was long considered that the UK's membership of the European Union (EU) limited its sovereignty and that Brexit signified a return to

EU referendum similar concerns

and result in need for the ECtHR. Although this partic-

ular article reviewed with the Labour-led progress as of June 2017 and its impact on government, there is still potential for an exit from the Council of Europe in the UK's future because of these sovereignty concerns. Thus, this paper assesses the limitations on the rights of citizens of both the EU and the ECtHR in order to examine whether the limitations caused by the ECtHR are of the same magnitude as the those caused by the EU. The focus for critical discussion will be on limitations presented by the enacting UK legislation (the

UK Human Rights Act 1998). The paper will conclude by exploring whether there are any changes that could be made to the HRA in order to reduce any interferences with Sovereignty and ultimately whether these changes are needed when putting this into the context of protecting human rights.

clear: 'I'll just as we will promote the rule of law domestically, so we will seek to ensure that international law and the rule of law are not just a fig leaf for the sake of it. We will support the Foreign Secretary in all his efforts of international law and the rule of law for the prosperity and security of all states. It is not a case of distinguishing between domestic and international law. But to what extent does the United Kingdom have international law obligations and the rule of law? The Chagos Islands legal dispute is a case in point. The United Kingdom government has chosen to ignore the International Court of Justice's Advisory Opinion and the subsequent United Nations General Assembly's

decision and with the United Kingdom's Ambassador at the United Nations criticised the fact that the International Court of Justice gave an advisory opinion and stated that its opinion is not binding. It is not a case of saying that international law is international law but that does not change the fact that it is not legally

Court of Justice. The United Kingdom government has chosen to ignore the International Court of Justice's Advisory Opinion and the subsequent United Nations General Assembly's decision and with the United Kingdom's Ambassador at the United Nations criticised the fact that the International Court of Justice gave an advisory opinion and stated that its opinion is not binding. It is not a case of saying that international law is international law but that does not change the fact that it is not legally

Other recent examples include the Rwanda Bill and the original United Kingdom Internal Markets Bill. During a parliamentary debate on the United Kingdom Internal Markets Bill, the then Secretary of State for the Home Department said: 'The Bill, if enacted [the Bill], would have the effect of making it possible for the Government to withdraw from the European Community without the consent of the House of Commons.'

## 15. 'The Law of Treaties: Withdrawal and Discontinuation in the United Kingdom. In Search of a Synthesis' by Dr Frederick Cowell, Birkbeck College, University of London

Constitutional law in the United Kingdom has traditionally placed processes relating to international treaties in the hands of the executive. Whilst there has been considerable political pressure and reform of the process surrounding the making of treaties, until *R(Miller) v The Secretary of State for Exiting the European Union*, the process has remained largely unchanged. This paper analyses the approach in UK constitutional law to treaty withdrawal and assesses how this interacts with the law of treaty

from other jurisdictions, international law, and the case law of the European Court of Human Rights. It also shows how treaty withdrawal is not the inverse of treaty ratification, and should not be treated as such in domestic law. The final section of this piece assesses how the decision to denounce a treaty on the international plane is made in the context of the House of Commons and other institutions.

... of treaty withdrawal, exploring the implications of possible withdrawal from the European Convention on Human

the different countries of which could be of relevance in future withdrawal. The different countries of which could be of relevance in future withdrawal are specified in the table below. The table below shows the different countries of which could be of relevance in future withdrawal in the UK constitutional context.