United Kingdom, Interpreting the Act of Implementation

[Source: 1 All ER (1968), pp. 779-783]

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

CHENEY v. CONN (Inspector of Taxes)
SAME v. INLAND REVENUE COMMISSIONERS
[CHANCERY DIVISION (Ungoed-Thomas, J), July 3, 1967]

UNGOED-THOMAS, J: This is an appeal against an assessment [...] and also an assessment to surtax. Both these cases raise the same point. The submission is that the assessments are invalid because it is to be taken that what is collected will be, in part, applied in expenditure on the armed forces and devoted to the construction of nuclear weapons with the intention of using those weapons if certain circumstances should arise. It is conceded for the purposes of this case that a substantial part of the taxes for the years that I have mentioned was allocated to the construction of nuclear weapons. The issue therefore becomes whether the use of income tax and surtax for the construction of nuclear weapons, with the intention of using them should certain circumstances arise, invalidates the assessments.

The assessments were made under statute and the relevant statute is the Finance Act 1964. [...] The provision is, first, of force statutorily; secondly, unambiguous; and, thirdly, limited to the raising of taxation and not to the purposes for which that taxation has to be applied or any such policy matters at all.

The ground on which it was argued that the use of this money for the construction of nuclear weapons is illegal is that such use conflicts primarily with Conventions incorporated in an Act of Parliament – and, so it was suggested, impliedly ratified by them – and also ratified by the Crown in the usual way; and also

because, according to the Case Stated, it was contrary to international law. But the case as presented before me was rested primarily, at any rate, on a conflict between two statutes – namely, the statute which refers to the Geneva Conventions (viz., the Geneva Conventions Act, 1957) and the Finance Act 1964. Before coming to the Act of 1957 I shall deal first with the relationship of statute law to international law and international conventions.

First, international law is part of the law of the land, but it yields to statute. [...] It is therefore very understandable why the taxpayer in the case relies primarily, at any rate, not on a conflict between international law in general and the statute, but on the conflict between the Act of 1957, and its reference to ratification, and another statute, the Finance Act 1964. Secondly, conventions which are ratified by an Act of Parliament are part of the law of the land; and, thirdly, conventions which are ratified, but not by an Act of Parliament, which would thereby give them statutory force, cannot prevail against a statute in unambiguous terms. The law is thus stated in OPPENHEIM'S INTERNATIONAL LAW (8th ed.) at p. 924:

"The binding force of a treaty concerns in principle the contracting States only, and not their subjects. As international law is primarily a law between States only and exclusively, treaties can normally have effect upon States only: This rule can, as has been pointed out by the Permanent Court of International Justice, be altered by the express or implied terms of the treaty, in which case its provisions become self-executory. Otherwise, if treaties contain provisions with regard to rights and duties of the subjects of the contracting States, their courts, officials, and the like, these States must take such steps as are necessary, according to their Municipal Law, to make them provisions binding upon their subjects, courts, officials and the like."

At p. 40 the law is stated thus:

"Such treaties as affect the private rights and, generally, as require for their enforcement by English courts a modification of common law or of a statute must receive parliamentary assent through an enabling Act of Parliament. To that extent binding treaties which are part of international law do not form part of the law of the land unless expressly made so by the legislature. That departure from the traditional common law rule is largely due to the fact that, according to British constitutional law, the conclusion and ratification of treaties are within the prerogative of the Crown, which would otherwise be in a position to legislate for the subject without obtaining parliamentary assent"

IN WADE AND PHILLIPS' CONSTITUTIONAL LAW (7th ed.) [...] [I]t is pointed out on p. 275 that: "treaties which, for their execution and application in the United Kingdom, require some addition to, or alteration of the existing law are treaties which involve legislation."

Here the legislation so relied on is, as I have indicated, the Genveva Conventions Act, of 1957. The title and preamble of the Act of 1957 are as follows:

“An Act to enable effect to be given to certain international conventions done at Geneva on Aug. 12, 1949, and for purposes connected therewith. Whereas, with a view to the ratification by Her Majesty of the conventions set out in the schedules to this Act, it is expedient to make certain amendments in the law.”

What the Act of 1957 then does is to make certain specific amendments in the law by reference to particular provisions in the Geneva Conventions. There is no conflict whatsoever between the particular provisions included in those specific amendments and to the Finance Act 1964; nor have any of those specific amendments been relied on for that purpose.

What has been relied on has been the combination of the title and the preamble, which I have read. It is said that the whole object of the Act of 1957 was, first, with a view to ratification by the Crown; and secondly, with a view to giving effect to the Geneva Conventions. The ratification by the Crown might or might not have been made. If the ratification were made (as in fact, subsequently, it was made in this case), then, of course, the ratification would take effect, not by reason of this Act of Parliament at all, but by reason of ratification by the executive. It would then have the consequences in law which ratification by the executive has, as contrasted with the effect it would have in law if it were ratified by law, embodied in statute and made by Parliament part of the law of this land. The title and the preamble relied on do not make the Geneva Conventions statute; and therefore, except to the extent of the specifical amendments to the law made by the Act of 1957 itself, which I have mentioned and which have not been relied on for the purposes of this case – and which, indeed, appear hardly applicable to it at all – the Act of 1957 does not provide material which can be relied on as being in conflict with the Finance Act 1964 at all. Is conceded by the Crown for purposes of this case, though not otherwise, that the ratification in fact took place; but it is clear that in so far as the ratification has taken place by executive action and not by parliamentary action, it yields to statute. So even if there were a conflict between what is contained in the conventions ratified and the Finance Act 1964, the Finance Act 1964, unambiguous as it is, would prevail. Therefore, on this ground, apart from any other, the taxpayer’s case, in my judgement, fails.

Discussion

1. a. Why did the Act of 1957 fail to make the Geneva Conventions part of British statutory law? What limitations did the preamble place on the Act? Why is it important that the Geneva Conventions should become part of statutory law?
   b. From the decision of this Court, are we to presume that none of the provisions of the Geneva Conventions relevant to this situation are self-executing? Does it matter in English law whether a provision of an international treaty is self-executing?
2. Do the Geneva Conventions prohibit the construction of nuclear weapons? Their use? Which provisions, if any, of IHL prohibit the use of nuclear weapons? Are those rules self-executing? (HR, Art. 23(e); P I, Arts 35(2)-(3), 36 and 51, CIHL, Rules 70-71)
3. Would statutory law still take precedence if customary law prohibited the use and/or construction of nuclear weapons? [See ICJ, Nuclear Weapons Advisory Opinion]
4. What obligation does the UK have regarding implementation of the Geneva Conventions? Does the Act

of 1957 fulfil this obligation? As interpreted in this Case? (GC I-IV, Arts 49/50/129/146 respectively; CIHL, Rules 139-161)