IN THE COURT OF APPEAL OF BELIZE, A.D. 2024

CRIMINAL APPLICATION NO. 2 OF 2023

BETWEEN:

THE KING

Applicant

and

PERRY STRATFORD

Respondent

Before:

The Hon Madam Justice Hafiz-Bertram	President
The Hon Mr. Justice Bulkan	Justice of Appeal
The Hon Madam Justice Arana	Justice of Appeal

Appearances:

Ms. Cheryl-Lynn Vidal S.C., Director of Public Prosecutions, for the applicant
Mr. Darrell Bradley for the respondent

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2024: 27 March
27 September

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JUDGMENT

[1] **BULKAN, JA:** The simplicity of the question to be answered in this appeal belies the complexity of the issues involved. That question is whether the respondent is subject to the jurisdiction of the Belizean courts for the crimes he allegedly committed. To answer it, however, we must first determine whether the treaty under which he claims immunity applies in Belize, not having been incorporated into law by way of legislation. If it does, a further issue arises as to whether that treaty applies to *him*, given that at the time of the events in question, he was not stationed in Belize and was there on a personal jaunt.

[2] This matter arises out of a bloodcurdling series of events which took place in the pre-dawn hours of Christmas eve in 2022, resulting in a number of charges against the respondent, Perry Stratford. At the time, Stratford was a member of the British Armed Forces and had travelled to Belize just days before to visit his ex-fiancée, Gabriela van Utterbeeck, in the hopes of reconciling. But just a few days after he arrived, following a night out drinking and dancing, Gabriela woke up to find an enraged Stratford standing in the bedroom. It appeared that while she was sleeping, he was scrolling through her phone, and he discovered exchanges between her and another male friend. Under his questioning, Gabriela readily admitted that the two were having sex, which answer triggered a volcanic reaction. The description of what followed comes from the statements given to the police by Gabriela, much of which was corroborated by physical evidence.

[3] Stratford started to dump her personal belongings through a window into a river below, items such as clothing, shoes, make-up, jewellery, perfume, and even various electronic equipment like her Bluetooth speaker. Next, he moved on to her pet dog, which he dangled through the window, threatening to drop it into the water below. As Gabriela tried to rescue the dog, he kicked her in her belly. This 6 foot, 2 inch tall, muscular soldier deployed such force that Gabriela hurtled back against a wall, hitting her head. At that point, perhaps realizing what mortal danger she was in, Gabriela tried to leave, but the door of the house was locked and she was unable to open it quickly enough.

[4] Stratford pursued and caught up with her, dragging her back into the bedroom by her hair, and began hitting her all over her body with whatever he could lay his hands on. All the while, Stratford was cursing and insulting her, using such violence that one of her toenails came off. Stratford then forced her out of the house and into her mother's vehicle, driving off in a wild and erratic manner. On the way, he stripped off her nightdress, presumably to shame her into remaining captive, before driving into a gas station. However, Gabriela's survival instincts kicked in and once the vehicle stopped she escaped, running towards a lit building, out of which a security guard emerged in response to her cries for help. Only then did the terror end as Stratford drove off, though he ended up crashing subsequently, completely wrecking the vehicle beyond repair.

[5] On regaining her freedom Gabriela immediately telephoned the police and an investigation was set in motion. Statements were taken, the various crime scenes visited, photographed and documented, and

Stratford was quickly arrested and charged. He was taken to the Magistrate's court the following day and, given the extent and gravity of his alleged crimes, was refused bail.

[6] A few days later Stratford petitioned the High Court for bail, which was granted by Sandcroft J. At some point thereafter, he was welcomed into the British Army Training Support Unit Belize (BATSUB), which is governed by a Status of Forces Treaty.[1] It was this development which spawned all the complications that followed. In February 2023 Stratford applied for a variation of the conditions of his bail, which was also granted by Sandcroft J. At the hearing of that application, Stratford raised the issue of jurisdiction, citing the Status of Forces Treaty and his newly minted deployment in Belize.

[7] In the meantime, the criminal proceedings against Stratford continued. A preliminary inquiry was held and in June 2023 he was duly committed to stand trial. Stratford was then indicted for the offences of harm, kidnapping and damage to property and his trial listed before Justice Nanton. But before it could take place, on December 1st Sandcroft J delivered an oral ruling that Article 4 of the Status of Forces Treaty gave both concurrent and exclusive jurisdiction to the UK over British forces in Belize, and ordered that the respondent's passport, which was being held under the conditions of his bail, be released to him.

[8] Interpreting this ruling as effectively quashing the indictment, the Crown applied for a stay and brought this application for leave to appeal under s. 236(1) of the *Senior Courts Act 2022*. The application for stay came up before Her Honour Justice of Appeal Hafiz-Bertram, President of the Court of Appeal, and was swiftly granted by her along with an instruction to the Registrar to list the Crown's application for Leave to Appeal in the next session. At that hearing, which took place on March 27th, this court was informed that although the respondent's passport remained in the custody of the State, an aircraft was dispatched to Belize by UK authorities to collect the respondent, thereby enabling his clandestine departure. Thus, notwithstanding the pending stay of Sandcroft's order and the unsettled issue of jurisdiction, the respondent has been able to evade the Belizean criminal justice system with the aid of the British government.

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[1] Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Belize concerning the Status of United Kingdom of Great Britain and Northern Ireland Forces in Belize and Defence Cooperation (entered into force 1 March 2020).

[9] The Crown's application for leave to appeal was duly heard on March 27th. On behalf of the Crown, Mrs. Vidal S.C. raised two main grounds in support: first, that the Status of Forces Treaty (SOFT) was never incorporated into domestic law and is thus unenforceable, given that Belize is a dualist state in keeping with the common law tradition. As such, its provisions which purport to confer exclusive jurisdiction on UK service authorities in relation to criminal proceedings against UK forces personnel cannot override or otherwise exclude clear statutory provisions vesting authority in the Belize Police Department to investigate crimes in Belize and jurisdiction in the High Court of Belize over offences committed in Belize. Second, Mrs. Vidal S.C. argued that having been employed in BATSUB *after* the incident in question, the respondent does not benefit from any immunity, which is conferred on UK forces personnel only when they are in Belize for purposes connected with BATSUB's activities. As will be recalled, the respondent came to Belize to try and effect a reconciliation with the victim, and it is safe to assume that the brutalisation of Belizean women does not form part of the business of UK armed forces or its BATSUB division.

[10] On behalf of the respondent, Mr. Bradley contested both arguments. Regarding the first, he submitted that dualism does not answer the question of enforceability because some treaties – like the one in question – are self-executing – and thus do not require incorporation by legislation in order to be binding. Citing Pollard JA in ***BCB Holdings v AG (2013) 82 WIR 63*** at [145]-[149], Mr. Bradley argued that dualism has never been inflexibly adhered to in Belize. This treaty is one such example, and is self-executory based on its language which does not require any further action, its processes which are specific and detailed, and the practice thereunder, in which the State has purportedly treated various of its provisions (such as tax exemptions and the ability to bear arms) as binding.

[11] As to the second ground, Mr. Bradley relied on two American cases – ***US v Khobragade (2014) 15 F. Supp. 3d 383*** *(S.D.N.Y.)* and ***Abdulaziz v Metropolitan Dade County (1984) 741 F.2d 1328*** *(11th cir)* – in support of his argument that jurisdiction is continuing, meaning that a court may gain or lose jurisdiction over a person during proceedings depending on their particular status. According to Mr. Bradley, the fact that Article 4.5 is written in the present tense is significant, indicating that the material time to be considered is the time of the indictment – at which point the respondent had been appointed to BATSUB and was thus immune from the jurisdiction of Belizean courts. On these bases, counsel submitted, Sandcroft J was right in purporting to decline jurisdiction (in fact, no indictment was ever presented before this judge, but that is a different issue). I turn therefore to examine each of these grounds in turn.

Application of the Status of Forces Treaty in Belize

[12] The material provisions of SOFT, so far as this matter is concerned, are Article 2 dealing with 'Composition and Purpose' and Article 4 which covers jurisdictional arrangements. Article 4 provides in full:

> "4.1 The UK Service Authorities shall exercise exclusive jurisdiction with respect to all criminal and civil proceedings against UK Forces Personnel, and their Dependants in Belize. Where the proceedings involve persons and / or property of persons other than UK Forces Personnel or their Dependents, the UK Service Authorities shall promptly notify the Government of Belize. The UK Service Authorities shall keep the Government of Belize informed as to the progress of the investigation and subsequent dealing until the matter is resolved.
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> 4.2 The UK Service Authorities shall have the right to investigate and deal with the crime, incident, or individual in accordance with national procedures.
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> 4.3 The UK Service Authorities, and if involved the UK civil police, Royal Military Police, and the Belizean Police shall collaborate to secure best evidence concerning a crime, incident, or individual. The Belizean Police shall share all relevant material in their possession in order to assist the UK Service Authorities in the exercise of their jurisdiction.
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> 4.4 Any Belizean Police action involving UK Forces Personnel in Belize or their Dependants shall be notified immediately to the UK Service Authorities and to the British High Commission in Belize and any individual arrested by the Belizean authorities shall be immediately released into the custody of the UK Service Authorities.
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> 4.5 If UK Forces Personnel and their Dependants are in Belize for purposes unrelated to the activities identified in Article 2 of this Treaty, then they are not subject to these jurisdiction provisions."

Meanwhile, Article 2.1 stipulates:

> "The UK Forces Personnel shall be based in Belize for the purposes of carrying out training, training the Belize Security Forces, and with the consent of the Government of Belize, training the security forces from other states. They shall also undertake associated activities including but not limited to, administration, logistics, and representative activities."

[13] There is considerable common ground between the parties as to the meaning and implications of dualism. Given the proliferation of judicial pronouncements on this subject, by this court and beyond, the basic principles can be shortly stated. Dualism is a feature of common law systems, in which national and international law operate on different ('dual') planes. International treaties are therefore not automatically binding internally upon accession by the executive government, but must first be 'incorporated' into local law

by the legislature.[2] The joint judgment of de la Bastide P and Saunders J in ***AG v Joseph and Boyce (2006) 69 WIR 104*** described this position comprehensively, as follows:

> "In States that international lawyers refer to as 'dualist', and these include the United Kingdom, Barbados and other Commonwealth Caribbean States, the common law has, over the centuries, developed rules about the relationship between domestic and international law. The classic view is that, even if ratified by the executive, international treaties form no part of domestic law unless they have been specifically incorporated by the legislature. In order to be binding in municipal law, the terms of a treaty must be enacted by the local Parliament. Ratification of a treaty cannot ipso facto add to or amend the Constitution and laws of a State, because that is a function reserved strictly for the domestic Parliament. Treaty-making on the other hand is a power that lies in the hands of the executive…"[3]

[14] The rationale most often given for this position is evident in the passage above, which references the respective limits of executive and legislative functions. While the executive can enter into treaties as part of the prerogative power, altering the domestic law is the exclusive preserve of the legislature.[4] Thus, so long as a treaty is not incorporated into local law by legislation, it is not binding.

[15] Or that, at any rate, is the strict orthodoxy of dualism. The reality is more nuanced, as courts have developed several techniques to avoid the consequences of a rigid dichotomy between international and municipal law. One of the most familiar is a rule of statutory interpretation, by which it is presumed that Parliament does not intend to pass legislation in breach of its international obligations. This rule applies only where a statutory provision is ambiguous, in which case a local court may have regard to an applicable treaty in order to resolve the ambiguity.[5] Another is where the existence of a treaty may give rise to a legitimate expectation on the part of citizens that the Government, in its acts affecting them, will observe the terms of the treaty. In such a case, the treaty may give rise to a procedural benefit, namely that the executive will observe or follow the expected course of conduct and, if it intends to act otherwise, will afford to anyone affected both notice and the opportunity to make representations.[6] Famously, this was guardedly extended

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[2] *Blackburn v AG* [1971] 2 All ER 1380; *Malone v Metropolitan Police Commissioner* [1979] 1 All ER 256; *Higgs v Minister of National Security* (1999) 55 WIR 10 (PC Bah) per Lord Hoffman at 17.
[3] *AG v Joseph and Boyce* (2006) 69 WIR 104, per de la Bastide P and Saunders J at [55].
[4] *Higgs* (note 2) at 18.
[5] *R v Secretary of State for the Home Department, ex parte Brind* [1991] 1 AC 696 per Lord Bridge at 747; *Joseph & Boyce* (note 3) at [56].
[6] *Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, [1995] 3 LRC 1 (HC, Aust); *Higgs* (note 2) at 18.

in *Joseph and Boyce* to cover a substantive benefit, in which it was held that the ratification of the American Convention on Human Rights by Barbados, coupled with positive statements by representatives of the executive arm of government evincing an intention or desire on the part of the executive to abide by the Convention, and the practice of the government in giving condemned persons an opportunity to have petitions to international human rights bodies processed before proceeding to the execution of their sentences, had given the respondents a legitimate expectation that the State would not execute them without allowing a reasonable time within which the proceedings under the Convention could be completed.[7]

[16] Another limit on the scope of dualism is that of 'self-executing' treaties in which a treaty confers rights directly on the individual without the need for legislative intervention. As counsel for the respondent submitted, courts, including in this very jurisdiction, have long acknowledged that some treaties may be applicable without the need for incorporation.[8] In ***BCB v AG***, Pollard JA in this court opined as follows:

> "…states, as an attribute of sovereignty, may confer directly on private citizens rights under a treaty which can be enforced in municipal systems absent the enactment of relevant legislation: *Republic of Ecuador v Occidental Exploration and Production Co [2006] 2 All ER 225 at [28]*, where it was determined that the agreement to arbitrate set out in a treaty is not itself part of the treaty but 'an agreement between a private investor, on the one side, and the relevant state on the other'. As such, there is no need for transformation by enactment to become legally binding in municipal law."[9]

[17] As illustrated by the cases cited, self-executing treaties figure in the field of trade or human rights, invariably allowing individuals to access directly some dispute-resolution procedure in an external body. In *BCB*, that right was to seek arbitration in a foreign jurisdiction. Pollard JA dissented in the court of appeal of Belize, but on appeal he was upheld by the CCJ which confirmed that the right to commence arbitral proceedings was an autonomous procedure, conferred by the treaty and not contingent on any domestic approval. Similarly, many of the death penalty cases from the early 2000s, including *Joseph and Boyce* referred to above, concerned situations in which international human rights treaties (notably the American Convention on Human Rights and the International Covenant on Civil and Political Rights) allowed individuals to petition treaty bodies directly – a procedure routinely invoked by criminal defendants in several dualist Caribbean States even though no local legislation is ever passed providing such avenues for redress.

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[7] *Joseph & Boyce* (note 3) per de la Bastide P and Saunders J at [78]-[125].
[8] *Medellin v Texas* (2008) 552 U.S. 491 (US SC) per Roberts CJ.
[9] *British Caribbean Bank v AG* (2013) 82 WIR 63 (Bel CA), per Pollard JA at [144].

[18] But how does one tell whether a treaty is self-executing? For one, the language must clearly demonstrate that its intent is to operate without the need for legislative intervention. This requirement was highlighted by the CCJ in *BCB*, which pointed out that the provision as to arbitration was "clear and unambiguous" and that the "plain wording of the article also demonstrates that there are no preconditions to the right to submit the dispute to international arbitration."[10] For another, the provision in question cannot entail any public expenditure or deprive persons of existing rights or impose duties on them – as in all such cases those actions would be beyond the constitutional authority of the executive.[11]

[19] Indeed, the last qualification embodies a larger principle true of all treaties, self-executing or not, which is that in dualist states they are ultimately subject to the constitution as supreme law. While references to the 'Constitution' may create the impression that this is a feature unique to post-independent States, in actuality the common law established early on that if domestic legislation conflicts with a Treaty, the courts will ignore the treaty and apply the local law.[12] Significantly, even Wit J, who in *Joseph and Boyce* mounted the most withering critique of dualism and its inconsistencies, acknowledged candidly that unincorporated treaties cannot adversely affect private rights or otherwise impose any change requiring legislative authorisation.[13] Wit J quoted Roslyn Higgins, former President of the ICJ, who affirmed extra-judicially that if "a statute is truly unambiguous (which can often not be ascertained with confidence until relevant related texts are examined), then it will necessarily prevail over a contrary provision in an unincorporated treaty."[14]

[20] The reason for this strict stance is not a reflection of blind doctrinal fidelity. True, courts are invariably anxious to preserve the contours of separation of powers, and allowing the executive to alter rights, authorise public expenditure,[15] or even change settled procedures such as within the criminal justice system[16] would blur the lines between executive and legislative roles. But there is a far more substantive underpinning of this separation, and that is to guard against executive overreach and protect the rights of individuals. This was

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[10] Ibid, per Byron P and Anderson J at [21].
[11] *Joseph and Boyce* (note 3) per Wit J at [43].
[12] *The Parlement Belge* (1879) 4 PD 129.
[13] *Joseph and Boyce* (note 3) per Wit J at [34].
[14] Prof Rosalyn Higgins QC, 'The Relationship between International and Regional Human Rights Norms and Domestic Law' (1992) 18 *Commonwealth Law Bulletin* 1268 at 1274; See also *Matthew v the State* (2004) 64 WIR 412 (PC TT) per Lord Bingham, Lord Nicholls and Lord Walker at [55].
[15] *BCB Holdings v AG of Belize* [2013] CCJ 5, (2013) 82 WIR 167 (CCJ Bel) at [42].
[16] *Joseph and Boyce* (note 3) per de la Bastide P and Saunders J at [76].

explicitly acknowledged by the CCJ in *Joseph and Boyce*, where the leading judgment expressed it as follows:

> "A fundamental rationale of the dualist approach to international law is that, should its violation be encouraged, there would be a risk of abuse by the executive to the detriment of the citizenry. Ensuring that the executive does not, by its treaty-making power, usurp the legislative role of Parliament is a measure designed principally to protect the rights of the individual."[17]

[21] From all this, therefore, it can be seen that despite dualism's critiques, and the techniques employed by courts on occasion to avoid it, there are certain boundaries that are not crossed. The supremacy of written law and in particular the constitution in Caribbean states, the rights of individuals, and the public purse, are some of the key areas where international law cannot automatically dictate. If, in any of those instances an unincorporated treaty diverges from local law, legislative transformation – that is, the process of democratic participation by the people's representatives – is necessary to effect changes, and absent such incorporation the conflicting treaty provisions cannot prevail but must give way to domestic law.

Application to this case

[22] Having regard to the terms of the SOFT under consideration, it is not so obvious that the treaty is meant to operate without legislative intervention. In fact, as pointed out by the learned DPP, the effect of its jurisdictional arrangements, as set out in Article 4, would be to override and in some instances abrogate Belizean statutory law. The latter vests jurisdiction in Belizean institutions, namely the Police Force and the Judiciary, over the investigation, prosecution and punishment of crimes committed within this territory.

[23] Section 4 of the ***Police Act***, Chapter 138 of the Substantive Laws of Belize (Revised Edition) 2020 provides as follows:

> "There shall be established a Police Department to be known as the Belize Police Department, which shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of property and the due enforcement of all laws, regulations, rules and orders with which it is charged, and, for the performance of such duties, police officers may carry arms."

Along the same lines, section 4 of the ***Indictable Procedure Act***, Chapter 96 of the Substantive Laws of Belize (Revised Edition) 2020, stipulates – in the clearest of terms:

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[17] Per de la Bastide and Saunders J, ibid at [127].

> "The jurisdiction of the court for the purposes of the Code, Cap. 101 or any other law creating a crime extends to every place within Belize, or within any island or territory over which the Government exercises authority for the time being or within three miles of the coast of Belize, or of any coast of any such island or territory aforesaid."

[24] Quite simply, by purporting to vest "exclusive jurisdiction" in UK service authorities with respect to all criminal proceedings against UK Forces Personnel who are in Belize for the purposes set out in Article 2.1, article 4 of SOFT directly conflicts with the above provisions of Belizean law which grant exclusive jurisdiction to Belizean institutions in all criminal matters arising within this territory. This is distinct from provisions of treaties which give individuals an additional avenue of redress, such as those in multilateral human rights treaties invoked by persons convicted of crimes. In this case, the treaty, if applicable, would supplant domestic processes altogether.

[25] As discussed earlier, it is well-established by authorities binding on this court[18] and supported by high academic authority,[19] that where the terms of a treaty conflict with statutory provisions, in a dualist system it is the latter which prevails. In this case, the jurisdiction arrangements laid down in SOFT do not merely conflict – they override and completely oust – the jurisdiction of the local Police Force and Judiciary, both unambiguously conferred by statute. In such a scenario, the treaty arrangements cannot be 'self-executory', but require legislation to have effect locally over and above Belizean statute law. This position is reinforced by the fact that the SOFT impacts on the domestic criminal justice system, the inviolability of which has been clearly affirmed by Belize's highest court. In *Joseph and Boyce*, the leading judgment explicitly noted that "the traditional view has always been that … a change [to the criminal justice system of a state] can only be effected by the intervention of the legislature, and not by an unincorporated treaty."[20]

[26] Furthermore, SOFT's jurisdiction arrangements collide not only with the statutory provisions identified above, but also have material implications for the constitutional rights of victims (and, relatedly, the rule of law) along with Belizean treaty obligations in other areas. Each of these potential consequences is developed below, as they reinforce the conclusion that the agreement is not self-executory.

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[18] *The Parlement Belge* (n 12 above) and *Matthew* (n 14 above) at [55].
[19] Higgins (n 14 above).
[20] *Joseph and Boyce* (note 3) per de la Bastide P and Saunders J at [76].

[27] Section 6(1) of the Belize Constitution, whose marginal note reads 'protection of the law', provides: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law". The remainder of this section, and in particular sub-section (3), itemises a catalogue of rights for the benefit of persons charged with criminal offences. Because of this formulation perhaps, the right has traditionally been perceived as oriented towards the criminally accused. However, that narrow interpretation has long since been overtaken. It is now accepted that the concept of 'protection of the law' encompasses far more than the rights itemised therein – and more specifically that its protections extend beyond accused persons to include *victims* of crime as well. In other words, the guarantee requires that criminal proceedings must be fair to *both* sides – the defendant and the victim.

[28] In the last two decades there has been increasing acceptance of this view, including from some of the highest appellate courts of the region, memorably expressed in *Joseph and Boyce* by de la Bastide P and Saunders J, who cautioned that protection of the law "would be a very poor thing indeed if it were limited to only those aspects specified in the detailed right".[21] Years later, in his dissenting opinion in ***Lucas v Chief Education Officer***, Saunders J returned to this idea, elaborating that the "right to the protection of the law is broad and pervasive. The right is anchored in and complements the State's commitment to the rule of law. The rule of law demands that the citizenry be provided with access to appropriate avenues to prosecute, and effective remedies to vindicate, any interference with their rights."[22]

[29] In the Caribbean, one of the earliest proponents of this expanded understanding of the right to protection of the law was UWI Professor, Tracy Robinson. In a 2011 presentation at the 2nd Conference of the Caribbean Association of Judicial Officers (CAJO), Robinson identified a nascent and growing trend that

> "…victims of crime, like alleged perpetrators, are entitled to the protection of the law or due process. Put simply, using the turn of phrase of Phillips JA in *Lasalle v AG*, one of the finest Caribbean decisions of the seventies, victims have a 'right to justice'."[23]

Drawing on a surprisingly large number of cases from different courts at different levels across the region, buttressed by more established jurisprudence at international human rights law, Robinson identified several

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[21] Ibid at [60].
[22] *Lucas v Chief Education Officer* [2015] CCJ 6 (AJ) at [138]
[23] Tracy Robinson, "The Right of Victims of Crime to the Protection of the Law: No Poor Thing", 2nd Conference of Caribbean Association of Judicial Officers, Nassau, Bahamas, 6-8 October 2011, page 2.

elements of this right vis-à-vis victims, such as positive duties on the State to prevent the violation of rights by third parties,[24] to investigate human rights violations,[25] to prevent impunity,[26] and to ensure overall fairness.[27]

[30] As noted, this expanded understanding of the right to protection of the law has been embraced by courts across the region, more recent examples of its application being to uphold the constitutionality of 'paper' committals in sexual offence cases as a means of sparing victims of sexual violence the trauma of having to testify twice,[28] and in a case attributing liability to the State for failing to protect a victim of domestic violence, who was eventually murdered by her abusive partner. In the latter, after conducting a detailed analysis of the authorities, Mohammed J held (inter alia) that the right to protection of the law imposed obligations on the Trinidad and Tobago Police Service to safeguard the rights of victims of domestic violence.[29]

[31] Perhaps the most fulsome explanation of the scope of this right has come from the CCJ, this time in the judgment of Byron P and Anderson J in a case dealing with the land rights of the indigenous peoples of Belize, where they held:

> "The right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts by the government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. **It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights**. However the concept goes beyond such questions of access and includes the right of the citizen to be afforded, 'adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.' (*A-G v Joseph [2007] 4 LRC 199*. See also Lord Diplock 'The Protection of the Law' October (1978) WILJ 11 at 13.) The right to protection of the law may, in appropriate cases, require the relevant organs of the state to take positive action in order to secure and ensure the enjoyment of basic constitutional rights. In appropriate cases, the action or failure of the state may result in a breach of the right to protection of the law. Where the citizen has been denied **rights of access and the procedural fairness demanded by natural justice**, or where the citizen's rights have otherwise been frustrated

[24] *Francois v AG* LC 2001 HC 16 (CA SLU).
[25] *Kareem v AG* (CA T&T, 21 December 1990, Civ App No 71 of 1987).
[26] *R v Gilbert* (2002) 61 WIR 174 (PC Gren).
[27] *Joseph and Boyce* (note 3 above).
[28] *DPP v Bacchus* (2018) 96 WIR 404 (CA Guy).
[29] *Lampkin v AG* (HC TT, 16 May 2024, CV2021-03178) at [233].

> because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy."[30]

[32] As these examples demonstrate, protection of the law has greater depth than might be realised from a literal or superficial reading of its terms, and courts in Belize and across the Commonwealth Caribbean demonstrate increasing awareness of this. As an integral aspect of the rule of law, it safeguards the rights of both victim and perpetrator, ensuring overall fairness. The central idea in all these instances of its application cannot be isolated as access to the courts or accountability or even the prevention of crime – but captures instead, as succinctly put by Phillips JA – the right to justice. This is a fundamental or 'umbrella' notion of fairness, central to the Bill of Rights.

[33] The above obligations are not merely constitutional ones (though that would be enough). One could go further and point to Belize's international obligations, set out in Treaties which it has ratified and incorporated, under which the State has a duty to prevent, prosecute and punish acts of violence as well as to provide redress, including reparations, to victims. This obligation is arguably heightened regarding gender-based violence, because of the historic vulnerability of women and their susceptibility to violence. There are two emblematic conventions in this regard: the ***UN Convention on the Elimination of Discrimination against Women*** (CEDAW), to which Belize acceded in 1990, and the ***Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*** (Belem do Para Convention), to which Belize acceded in 1996.

[34] CEDAW contains no explicit reference to gender-based violence (GBV) but it has since been authoritatively interpreted as requiring States parties to prevent and punish all such acts. General Recommendation 19, adopted in 1992, made this explicitly clear, noting that GBV, which "impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention".[31] The CEDAW Committee followed up with an express recommendation that "States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act,

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[30] *Maya Leaders Alliance* v AG [2016] 2 WIR 414 (CCJ Bel) at [47] (emphasis mine).
[31] CEDAW, General Recommendation No. 19: Violence against Women (1992), para [7].

including penal measures."[32] This was updated by General Recommendation 35 in 2017, which reinforced the obligation of States parties to the Convention to prevent, prosecute and punish all acts of GBV.

[35] The CEDAW Committee in its adjudicatory role has repeatedly stressed this obligation. In ***X v Timor-Leste***, a complaint was brought by a victim of domestic violence who was convicted for killing her partner – unsurprisingly, also a soldier – even though she suffered years of domestic violence at his hands without redress. The CEDAW committee found a violation of her rights under the Convention and recommended that she be given a full pardon. Of note are the dicta of the Committee on the obligations of States parties in relation to victims of GBV, as follows:

> "Under the obligation of due diligence, States parties must adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors, including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all State agents and bodies who diligently enforce the laws. The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, prosecute and punish perpetrators and provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations."[33]

[36] Arguably, the Belem do Para Convention of the regional Inter-American system of which Belize is a member contains even stronger and more explicit obligations in this regard. *Belem do Para* affirms in its preamble that violence against women constitutes a violation of their human rights, while crucially acknowledging that it is an "offense against human dignity and a manifestation of the historically unequal power relations between women and men". To this end, the Convention imposes a series of duties on States parties, including the duty of "due diligence to prevent, punish and eradicate violence against women",[34] and the obligation on States to "establish fair and effective legal procedures for women who have been subjected to violence, which include, among others, protective measures, **a timely hearing** and **effective access to such procedures**".[35] In the landmark case of ***Maria da Penha v Brazil***, where the Petitioner alleged that Brazil condoned, for years during their marital cohabitation, domestic violence against the petitioner by her

[32] Ibid at para 24.
[33] *X v Timor-Leste*, CEDAW/C/69/D/88/2015, Views adopted 26 February 2018, at para. 6.7.
[34] Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994), Article 7(b).
[35] Ibid, Article 7(f), (my emphasis).

husband, which culminated in attempted murder and resulting in the victim suffering irreversible paraplegia, the Inter-American Commission on Human Rights concluded that the State violated (inter alia) article 7 of the Belem do Para Convention. Instructive for our purposes are the following statements of the Commission:

> "The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention."[36]

> "As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation."[37]

[37] The above are weighty obligations. They have not remained on the international plane, but are incorporated into local law by virtue of the *Domestic Violence Act*, enacted in 2007.[38] Pursuant to both the constitution and incorporated treaties, therefore, the State of Belize must ensure that victims of crimes and human rights violations have access to the courts to vindicate their rights and obtain reparations. In the case of GBV, this obligation is strengthened because specific international conventions binding upon Belize, as discussed above, require States parties to prevent, investigate, punish and eradicate all such acts. Any treaty, therefore, such as SOFT, which purports to exclude the jurisdiction of Belizean courts (and criminal justice system as a whole), impacting (potentially negatively) upon the rights of victims to access to the court and to obtain an effective remedy, collides with these obligations. For these reasons, SOFT most definitely cannot be self-executory, but requires specific legislation to oust the jurisdiction of Belizean authorities. Put another way, since the jurisdictional provisions of SOFT upend the Belizean criminal justice system, with grave implications for victims' rights, accountability, fundamental justice, and ultimately the rule of law, they cannot be self-executory. One of the key reasons for this is precisely because dualism is meant to protect the rights of individuals, as noted above.[39] Moreover, any legislation to implement such provisions would have to be carefully crafted, observing the principles of legality, necessity and proportionality, to justifiably limit the entrenched constitutional rights necessarily impacted. In the absence of any such legislation, the jurisdictional

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[36] IACHR, Report Nº 54/01, Case 12.051, *Maria Da Penha Maia Fernandes v Brazil*, April 16, 2001, para 42.
[37] Ibid at para 43.
[38] *Domestic Violence Act*, CAP 178, Substantive Laws of Belize (Revised Edition) 2020.
[39] *Joseph and Boyce* (note 3 above) at [127].

provisions of SOFT do not apply and the respondent, Perry Stratford, is accordingly subject to the jurisdiction of this court.

[38] This conclusion takes care of this appeal, but in the event that it is incorrect, we proceed to consider the second ground argued by the parties, namely, whether the treaty would protect the respondent if in fact it is self-executory and applicable locally.

Application of the Status of Forces Treaty to the Respondent

[39] Assuming that SOFT is enforceable in Belize, the second issue that arises is whether it applies to the respondent, given that at the time of the events in question he was not a member of BATSUB. The DPP says that it does not apply for that very reason, as he was in Belize for private purposes and thus expressly excluded by the conjoint effect of Articles 4.5 and 2 of the Treaty. For the respondent, Mr. Bradley argued the contrary, on the basis that the material time is not when the incident occurred but rather when the matter came up before Sandcroft J. Since by then the respondent was employed by BATSUB, Mr. Bradley submits that the court no longer had jurisdiction over him, as that was now vested exclusively in UK service authorities.

[40] As a general rule, a host State has exclusive jurisdiction over all things and persons within its own territory. Historically, insofar as foreign armed forces are concerned, a distinction was drawn between the granting of a right of passage to a foreign force through the territory of a State and the stationing of a foreign force on the territory of the host State. According to Halsbury's:

> "It is not clear whether, at customary international law, a foreign armed force and its members who are stationed in, as opposed to passing through, the territory of a foreign state are entitled to immunity from the jurisdiction of the state in which they are stationed, and if so, to what extent. The view of the United Kingdom government is that such a force is not immune from the local jurisdiction, even when the force is stationed in the United Kingdom during hostilities against a common enemy."[40]

[41] This principle also holds true in Canada, where the courts have resiled from the idea of absolute immunity for members of visiting forces, even during wartime. According to the Canadian Supreme Court:

> "There is no rule of law in force in Canada which deprives the Canadian civil courts that is to say non-military courts of jurisdiction in respect of offences against the laws of Canada committed by the

[40] Halsbury's Laws of England (2018), Volume 61, para. 314.

> members of such forces on Canadian soil. The Canadian criminal courts do not in fact exercise jurisdiction in respect of acts committed within the lines of such forces or of offences against discipline generally committed by one member of such forces against another member in cases in which the act or offence does not affect the person or property of Canadian subject."[41]

[42] To get around this general position, States have resorted to legislation (in the UK, for example, the *State Immunity Act 1978* and the *UK Visiting Forces Act 1952*) along with various bilateral and multinational treaties, which waive, share, or grant conditional jurisdictional immunity to visiting forces stationed in a host State. Those treaties are commonly referred to a status of forces agreements, the most well-known of which are those governing the North Atlantic Treaty Organisation (NATO)[42] and the European community.[43] It is therefore a question of construction of the agreement in question to determine in which State jurisdiction for criminal offences vests.

[43] We pause here to acknowledge the general principle that a domestic court is not competent to interpret or apply an international treaty.[44] Nonetheless, this is not an absolute bar, and situations arise in which a domestic court may have no option but to engage in interpretation. One such instance is that which arises in this very case, namely, where the treaty must be construed to determine the rights and duties of an individual under domestic law.[45] For that reason, we must then turn to the terms of SOFT to determine whether it in fact applies to the respondent.

[44] Counsel for the respondent submitted that jurisdiction is continuing, meaning that the material time for considering whether jurisdiction exists is when the indictment is presented and not when the incident occurred – in other words, if the status of the individual changes during that period, it is that which obtains at the subsequent time which matters. Relying on two American cases,[46] counsel argued that immunity acquired during the pendency of proceedings destroys jurisdiction even if the charges were validly laid before the immunity applied. In ***Khobragade***, the defendant, an Indian consular officer posted in New York city, had executed fake employment contracts with her housekeeper in India in order to obtain a visa for her to perform

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[41] *Reference Re Exemption of United States Forces from Canadian Criminal Law* [1943] 4 DLR 11.
[42] Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty Organisation (London, 19 June 1951; TS 3 (1955); Cmd 9363.
[43] EU Status of Forces Agreement (EU SOFA) (Brussels, 17 November 2003; EC 2 (2009); Cm 7572.
[44] *R v Lyons* [2002] 4 All ER 1028 at [27].
[45] See *Republic of Ecuador v Occidental Exploration and Production Co* [2006] 2 All ER 225 at [31].
[46] *United States v Khobragade* 15 F. Supp. 3d 383 (S.D.N.Y. 2014) and *Abdulaziz vs. Metropolitan Dade County* (1984) 741 F.2d 1328 (11th circuit).

similar duties in NY. Once the housekeeper obtained the visa, the defendant then executed a second and more unfavourable contract with her. While in NY, the defendant exploited the housekeeper in violation of the terms of the contract used to obtain the visa and the minimum standards applicable under American labour law, not to mention basic human decency. When the housekeeper eventually fled from the home and received the help of an anti-trafficking NGO, the defendant was charged with visa fraud.

[45] As a consular officer, the defendant enjoyed only limited immunity, namely for official acts and not serious crimes. But on the day that she was charged, the government of India appointed her to the diplomatic mission at the United Nations, which gave her full immunity. The US government asked India to waive her diplomatic immunity, but the government of India refused. The indictment was dismissed for lack of jurisdiction, and the defendant left the US that same day at the request of the US government. Relying on the earlier case of *Abdulaziz*, the court held that the defendant's status at the time of arrest was not determinative. Having acquired diplomatic status the day before the indictment was presented, at the time she appeared in court the court lacked jurisdiction, so the motion to dismiss had to be granted. The court held that the material time for determining jurisdiction was her diplomatic status when she appeared in court.

[46] In our view, these American authorities do not advance the respondent's case. First, in *Khobragade*, the defendant was appointed to the Permanent Mission to the United Nations prior to the return of the grand jury indictment. At that stage, she was already clothed with full diplomatic immunity. In the present case, the charges were laid before the respondent became employed in BATSUB. Second, and more crucially, the nature of diplomatic immunity is substantially different from the jurisdictional immunities granted to armed forces personnel.

[47] As is evident from the *Khobragade* case, different immunities apply to different categories of persons on foreign soil. Of the lot, diplomatic immunity is the most extensive – even wider than consular immunity which Ms. Khobragade enjoyed while she was working in NY. Consular officers are immune from the jurisdiction of the receiving state specifically for acts performed in the exercise of their official functions, but not for crimes or civil wrongs.[47] By comparison, diplomatic agents enjoy complete immunity from the criminal jurisdiction of the receiving state and are also generally immune from its civil jurisdiction.[48] However, once

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[47] *Vienna Convention on Consular Relations* 1963, art 43.
[48] *Vienna Convention on Diplomatic Relations* 1961, art 31.

the diplomat's functions as a member of the mission come to an end, immunity for past acts continues only for acts which were performed in the exercise of those functions. In other words, even diplomatic immunity is not unlimited. But as a mere consular officer, Ms. Khobragade would have been subject to US jurisdiction for any criminal acts committed by her, and was saved only by her abrupt elevation to diplomatic status.

[48] The immunities enjoyed by military personnel is even lower than that of consular officers. As the authorities cited above indicate, at common law a distinction was made between periods of war or hostility and peacetime, and even in the former it was limited to acts occurring between soldiers on the base itself. There is thus very little support for any position that would clothe soldiers with extensive immunities of the sort enjoyed by diplomatic officials.

[49] However, it is instructive that even the apparently extensive immunities enjoyed by diplomats is not impregnable. A useful illustration is ***Basfar v Wong [2022] UKSC 20***, a recent decision of the UK Supreme Court which demonstrates how narrowly these jurisdictional immunities – including one in a treaty as old and historic as the *Vienna Convention on Diplomatic Relations* – are construed. In *Basfar*, the appellant was a migrant domestic worker of Filipino nationality who was in the employ of the respondent, a diplomat in the Saudia Arabian mission in the UK. The appellant claimed that she was the victim of human trafficking, forced to work by the Saudi diplomat and his family in circumstances amounting to slavery. She brought a claim against the diplomat in an employment tribunal for wages and breaches of employment rights. He applied to have her claim against him struck out on the ground that he was immune from suit because of his diplomatic status. However, while diplomats are generally immune from a host state's civil jurisdiction, there is an exception for civil claims relating to "any professional or commercial activity exercised by the diplomatic agent in the receiving state outside his official functions". The issue arising on the appeal was therefore whether exploiting a domestic worker in the manner alleged constituted "exercising" a "commercial activity" within that exception. Allowing Ms. Wong's appeal, the UK Supreme Court by a majority answered this question in the affirmative, rejecting the diplomat's claim of immunity in those circumstances.

[50] The majority decision finding that the Saudi diplomat was not immune from the jurisdiction of UK courts is instructive both for its discussion of the nature of immunity as well as the subtext as to why such immunities must be kept in check. Writing for the majority, Lord Briggs and Lord Legatt pointed to the rationale of the Vienna Convention in granting immunities, which is "not to benefit individuals but to ensure the efficient

performance of the functions of diplomatic missions as representing States."[49] They explained that diplomatic immunity is necessarily wider than state immunity, quoting Lord Sumption in an earlier case who noted that "Human agents have a corporeal vulnerability not shared by the incorporeal state which sent them."[50] In other words, individuals need protection in order to carry out their functions and go about their daily lives without hindrance.[51] However, also relevant must be the delicate nature of diplomacy, involving sensitive functions with implications for high matters of state, which justify protecting such officials from reprisals by a disgruntled host country. Across the board, immunities (whether diplomatic, consular, or military) are integrally connected to the highly sensitive nature of the work performed by these officials.

[51] At the same time, the sensitivity of their functions is precisely why immunities are not unlimited, and for diplomats and consular officers it lasts only as long as they remain in the post (except for acts done in their official capacity). Going further, as occurred in *Basfar*, despite diplomatic immunity from the civil jurisdiction, the UKSC went out of its way to apply the exception for "commercial activities" and so render the diplomat subject to its jurisdiction. In justifying this position, the majority was clearly persuaded by its knowledge of the egregious human rights situation faced by domestic workers, identifying a 'series of vulnerabilities' attendant upon it such as physical and social isolation, psychological abuse and the withholding of pay.[52] As for the rationale behind the grant of immunity of the need to protect diplomats and their families from hindrance in going about their daily lives in the receiving state, they countered that it "would be not merely wrong but offensive to suggest that conduct of the kind disclosed by the assumed facts of this case is incidental to daily life, let alone the daily life of an accredited diplomat."[53] These words resonate powerfully when one compares the conduct disclosed in this case with the functions of the BATSUB division.

[52] It would be a fair criticism to say that interpreting "commercial activity" as including the employment/exploitation of a domestic worker involves some strain on the concept, even though the majority justified this by pointing to the systematic nature of the diplomat's actions and the substantial financial gain which he made from exploiting the labour of Ms. Wong. That said, what this outcome and its underpinning rationale demonstrate persuasively is that immunities, including the most extensive such as that enjoyed by

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[49] *Basfar v Wong* [2022] UKSC 20 at para [12].
[50] The words of Lord Sumption in *Reyes* [2019] AC 735 at [28], quoted by Lords Briggs and Legatt in *Basfar*, ibid at [33].
[51] *Basfar* (note 48) at [33].
[52] Ibid at [44]-[49].
[53] Ibid at [57].

diplomats, is not unlimited, and in construing their extent a court would be justified in employing a very strict construction with an eye to the purpose of the immunity, especially in a context of grave human rights violations.

[53] To resolve this issue, therefore, our starting point must be with the material provisions of SOFT. The exclusive jurisdiction conferred on UK service authorities under this treaty is hemmed in by an important qualification, namely that it applies only to UK Forces personnel and their dependants who are in Belize *for purposes related to the activities identified in Article 2 of SOFT*. Those activities specify the training of Belizean security Forces and security forces from other states, along with associated activities such as administration and logistics. The evident purpose is designed to protect BATSUB personnel in relation to consequences occurring in the course of their official functions; in other words, the immunity is connected to substance, not timing. From the plain language of the provisions, British soldiers in Belize not part of BATSUB or who happen to be in the country for personal reasons manifestly fall outside of this net.

[54] In the second place, there is a clear trend, as discussed above, to construe these provisions strictly with an eye to their purpose. In discussing their scope and effect, courts often point to the rationale of granting immunities, which are to protect certain categories of persons so that they may be able to carry out their functions unhindered. This is why immunities are invariably connected to official acts, and if wider than that, then they subsist only as long as the posting lasts. Given this settled rationale, it is unclear why UK soldiers would be clothed with such extensive immunities as claimed by the respondent. More specifically, for someone conveniently appointed to BATSUB *after* the alleged commission of a series of unlawful acts completely unconnected to the business of this division, what would be the rationale for shielding him from accountability? How does the ability to shield obvious or suspected criminal activity advance the interests of the receiving or sending states? How would facilitating impunity for serious crimes promote the lawful work of this division in Belize? And how would this enhance the reputation and standing of other BATSUB personnel? Even a consular officer, working in a foreign mission and coming into contact with sensitive documents of state, does not enjoy such extensive immunity. Far less, in our view, would a foreign soldier on vacation have such extensive immunities. The construction advanced by the respondent is not merely perverse, it holds no obvious benefit in terms of promoting the objectives of the treaty or facilitating the business of the Division in question.

[55] In the third place, there is nothing in the language of the treaty that indicates it is to have retrospective effect. It is a standard presumption that legislation does not operate with retrospective effect,[54] which Antoine describes as 'a firmly established rule'.[55] As stated by Antoine, "It is therefore presumed that Parliament does not intend to alter the law applicable to past events so as to alter the rights and obligations of the parties in a manner which is unfair to them unless a contrary intent is clearly demonstrated."[56] In this case, the construction urged upon us by the respondent is not neutral, and it has serious consequences for access to justice, accountability, and the overall fairness of proceedings, both civil and criminal. Pursuant to this settled presumption, therefore, if the intention was that UK forces based in Belize would be immune from the jurisdiction of Belizean courts including for acts committed before they became a part of BATSUB, that intention needed to have been expressed clearly in the agreement itself. However, there is nothing in the Agreement which speaks to retrospective application. The exclusive jurisdiction granted to the UK Authorities in Article 4.1 must therefore relate to offences committed when the UK Service Personnel was stationed in Belize for the purposes of Article 2.1. It does not operate to deprive Belize of jurisdiction *ex post facto*.

[56] Accordingly, the combination of all these factors – the language of the treaty construed according to standard rules of interpretation, the varying levels of immunity and the trend of restrictive interpretation even for the most extensive ones, the importance of respecting the rule of law and protecting victims of crimes – militate against the construction advanced by the respondent. In our view, and we so hold, if a crime is committed in Belize by a UK service member who is not present in the jurisdiction for the purposes of Article 2.1, then Article 4 which grants exclusive jurisdiction to UK Service authorities does not apply and Belize is entitled to enforce its criminal jurisdiction. It is immaterial if the same individual subsequently becomes a member of the UK Forces under the exclusive jurisdiction of the UK Authorities.

Conclusion

[57] Coincidentally, the State of Belize came up for review earlier this year under the 'Universal Periodic Review', which is the procedure by which all member states of the United Nations are examined by the Human Rights Council every four years for compliance with human rights standards. According to this procedure, the country to be reviewed engages in an 'interactive dialogue' with the Council, during which the

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[54] *Hoyte v Liberation Press* (1975) 22 WIR 175 (HC Guy).
[55] Antoine, Commonwealth Caribbean Law and Legal Systems, 2nd ed. (Lond. Routledge-Cavendish, 2008) 265.
[56] Ibid.

representatives of the State make a presentation after which they are asked a series of questions by delegates of the Council, to which they must respond. That dialogue, in relation to Belize, took place on January 29th, 2024, was formally recorded and the proceedings are publicly available.[57]

[58] It so happens that the UK is currently a member of the Human Rights Council, so its delegate participated in the interactive dialogue with the Belizean delegation, which was headed by the Minister of State in the Ministry of Human Development, Families and Indigenous Peoples' Affairs, Elvia Vega-Samos. In what must be the supreme irony, the UK asked the Belizean delegation about its approach to the problem of violence against women, the intervention being summarised as follows:

> "The United Kingdom of Great Britain and Northern Ireland welcomed the progress made by Belize on the draft disability bill and the establishment of a Women's Parliamentary Caucus. Nonetheless, it was concerned by the very high instances of violence and abuse against women and girls and called upon Belize to ensure that those cases were investigated and, where appropriate, prosecuted."[58]

[59] We will refrain from commenting on the staggering hypocrisy of this intervention, and observe only that with it, the UK government demonstrated an awareness of the obligation of due diligence to prevent, prosecute, punish and eradicate gender-based violence held by Belize under international law. It cannot be that this obligation only exists where the perpetrators are Belizean, for even UK servicemen are subject to the rule of law. So what this intervention does reinforce is the universality of the principle of due diligence and the uncompromising obligation of States to respect it with a view to eradicating what is a terrible scourge, not just in Belize but worldwide.

[60] The jurisdictional provisions of BATSUB have major implications for the rights of victims and, by extension, the ability of Belize to respect and fulfil both constitutional and conventional obligations. Those provisions, therefore, which purport to exclude the jurisdiction of Belizean authorities (and impede access to justice for Belizean victims) cannot be self-executory. Of course, the State is free to limit these rights and to restrict its jurisdiction over offences occurring within its territory, but since those rights and jurisdiction are contained in binding domestic law, it cannot do so by treaty but must enact legislation to achieve this outcome.

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[57] Human Rights Council, Report of the Working Group on the Universal Periodic Review-BELIZE, A/HRC/56/14 (14 March 2024).
[58] Ibid at para [85].

In the absence of any such legislation, the provisions of SOFT which purport to exclude the jurisdictional provisions of Belizean legislation and which impact upon the constitutional rights of victims in Belize, do not apply. Accordingly, for these reasons, the respondent Perry Stratford is subject to the jurisdiction of this court.

[61] For these reasons, we hold that Sandcroft J erred by applying the Status of Forces Treaty and finding that Belizean courts have no jurisdiction over the respondent. As discussed above, this Treaty is not binding locally in the absence of legislation excluding the operation of domestic statute law which confer that jurisdiction on Belizean authorities. Even if it is, the Treaty does not apply to the Respondent as he was not a member of BATSUB at the time of the events in question or even when the charges were laid against him. In the circumstances, we hereby grant the Crown's application for leave, treat this hearing as the appeal, and allow the appeal.

Arif Bulkan
Justice of Appeal

Minnet Hafiz-Bertram
President

Michelle Arana
Justice of Appeal