Preface

One of the most important developments in Nordic law and law enforcement in the last part of the twentieth and early twenty-first centuries is increased internationalisation. This has been due to the growing participation of these countries in international cooperation of all kinds. This has led to an added number of international treaties in many different fields being signed and ratified, as well as to membership of international organisations, which in some cases are empowered to take binding decisions. In addition, many of these treaties aim at having a direct effect on the legal status of individuals and legal persons (economic operators). This development has influenced law in the Nordic countries as well as traditional academic views regarding international law as a source of law and its application in the domestic legal system.

The Nordic states covered in this book are among those states which, in principle, adhere to the doctrine of dualism when defining the relationship between international law and domestic law. Traditionally, according to case law and academic theory, it means: (a) international law and domestic law are two distinct legal orders; (b) international law will not be directly applicable on the domestic level unless the legislature take specific measures to implement or incorporate it as law; (c) individuals and legal persons cannot claim rights on the basis of a rule of international law *vis-à-vis* each other or *vis-à-vis* the state until it has been incorporated; and (d) in case of conflict between domestic law and international law, the former prevails.

This book offers an examination and analysis of this development. Initially it discusses the general theories of monism and dualism and their present-day relevance. Then it discusses how these theories transpire in practice. First, it examines rules relating to treaty-making and ratification of treaties. Then it discusses the doctrine of automatic incorporation and the doctrine of transformation. After this it discusses direct effect of international norms in the domestic system. This is followed by a discussion of the principle of consistent interpretation and a short chapter on remedies and reparations. Finally there is a chapter on the application of incorporated treaties, focusing mainly on the European Convention on Human Rights.

It is argued that both in incorporation and on behalf of the legislature and in its application on behalf of the judiciary, the restraints as to the impact of international law traditionally inherent in the dualistic approach have been relaxed considerably. As a consequence, a mere reference to dualism when describing the relationship between international law and domestic law falls short of capturing the actual and complex practical reality. It is argued that the traditional and persistent reference to dualism in preparatory works, judgments and academic literature in these countries used to describe the relationship between international law and domestic law is insufficient. Therefore reference to dualism in the traditional sense, as illustrated above, must be replaced by a much more thorough and detailed analysis of the real impact international law has on the domestic legislation and judicial and executive practice in the countries examined.

The material in this book relates mostly to six countries, namely: France, Germany, the United Kingdom, Denmark, Norway and Iceland. Of the Nordic countries, the material relating to Iceland is the most detailed. This material is based on the author's thorough study of the Icelandic situation presented at the University of Strasbourg in 2013 as part of obtaining the degree of Docteur de droit international: *Theoretical and Practical Intersection of International Law and Domestic Law*. This book is an extract from this more thorough and detailed study, with special emphasis on the Icelandic situation. It is believed that the analysis offered may be of general interest for the study concerning the relationship between international and domestic law. In this study many judgments are cited and analysed in detail which will not be repeated in this book. For those interested in a more detailed account of the Icelandic case law, a reference is made thereto.

I would like to thank Professor Dr Florence Benoît-Röhmer, University of Strasbourg, and Professor Dr Guðmundur Alfredsson, University of Akureyri, for their support and advice. I moreover would like to extend my thanks to Suzanne Grand-Clemant at the European Court of Human Rights in Strasbourg, Svala Ísfeld Ólafsdóttir, associate professor at Reykjavik University, and Dr Terry G. Lacy for their contribution.

This research is funded by the Danish National Research Foundation Grant no. DNRFF105 and conducted under the auspices of the Danish National Research Foundation's Centre of Excellence for International Courts (iCourts).

iCourts, University of Copenhagen, 30 March 2015
Daði Þór Björgvinsson