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Relationship Between International Law and Municipal Law: Theories and Applications

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Understanding the relationship between international and municipal law is crucial to understand the application of international law in the domestic framework. Learn more about the relationship between international and municipal law in this post!

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What is Municipal Law and International Law?

International law governs the interactions between states and other subjects of international law, such as international organizations, by establishing norms, rules, and standards that countries agree to follow in their relations with one another. Conversely, national or state law, commonly referred to as municipal law, operates within a country, applying to individuals and corporate entities and setting out their rights and responsibilities. These two systems of law can sometimes come into conflict, creating complex challenges for courts that must determine which set of laws takes precedence in a given situation.

Conflict Between International Law and Municipal Law

When a conflict arises between international law and municipal law, courts face the difficult task of deciding which law should prevail. In an international tribunal, the primary question is one of primacy: does international law take precedence over municipal law, or is it the other way around?

This question is crucial because the resolution of such conflicts affects the enforcement and effectiveness of international law. International tribunals generally uphold the supremacy of international law to maintain the consistency and coherence of the international legal system.

However, when the conflict is brought before a municipal court, the answer depends largely on the constitutional framework of the state in question. Some states have constitutions that explicitly incorporate international law into their domestic legal systems, granting it direct applicability.

In these countries, international treaties and agreements automatically become part of municipal law once they are ratified, and courts can directly apply international law. In such cases, international law may take precedence over conflicting municipal laws, provided that the state's constitution allows for this.

In contrast, other states require that international law be transformed into municipal law through specific legislative acts before it can be applied domestically. This approach is known as the dualist theory, which views international law and municipal law as separate legal systems. Under dualism, international law does not have direct effect within the domestic legal system unless it has been explicitly incorporated through national legislation. Consequently, in cases of conflict, municipal law would take precedence unless international law had been duly incorporated.

Theories on the Relationship Between International Law and Municipal Law

Dualist Theory

According to the dualist theory, international law and the municipal laws of various states are distinct, separate, and self-contained legal systems. This perspective eliminates any question of supremacy between the two systems since they do not share a common field of application; each system is supreme within its own domain.

Historical Development

The dualist view was first developed by the prominent German scholar Heinrich Triepel in 1899 (Triepel, 1899). Triepel argued that international law and domestic, or municipal, law exist on separate planes.

International law governs the relationships between states and other international entities, while municipal law governs the relationships between individuals and between individuals and the state within a particular country. In Triepel's view, the two systems operate independently of each

other, and neither can claim dominance over the other in its respective field.

This theory was later adopted and further developed by the Italian jurist Dionisio Anzilotti (Anzilotti, 1929). Like Triepel, Anzilotti maintained that international law and municipal law are fundamentally different in nature and scope.

International law is concerned with the conduct of states and other international actors in their interactions with one another, while municipal law deals with the internal matters of a state, regulating the behavior of its citizens and the structure of its government.

By emphasizing the separation between international law and municipal law, dualist theory provides a clear framework for understanding how the two systems coexist without conflict. Each legal system retains its autonomy and operates within its own jurisdiction, ensuring that questions of legal supremacy do not arise.

This separation allows for the independent development of both international and municipal laws, tailored to the specific needs and contexts of their respective spheres of influence.

Differences in Sources

The authors of dualist theory argue that international law and municipal law differ fundamentally in their sources. According to dualists, the sources of municipal law include customs that have developed within the boundaries of the concerned state and statutes enacted by its sovereign authority. These laws are created to govern the internal affairs of the state, focusing on the relationships between individuals and between individuals and the state itself.

In contrast, the sources of international law are customs that have evolved among states and law-making treaties concluded by them. International law is based on the practices and agreements of sovereign states interacting with one another on the global stage. Customary international law develops from the consistent and general practice of states, followed by a sense of legal obligation. Additionally, treaties between states serve as formal agreements that establish binding legal rules governing their relations.

Thus, while municipal law is derived from internal customs and legislative acts within a state, international law emerges from the customary practices and formal treaties agreed upon by the international community of states. This distinction underscores the dualist perspective that these two legal systems operate independently and are rooted in different sources.

Differences concerning Subjects

Dualists assert that the subjects of international law and municipal law are fundamentally different. Municipal law, also known as national or state law, governs the relationships between individuals and corporate entities within a state, as well as the relationships between the state and its citizens. It establishes the rights and duties of individuals and organizations, ensuring order and justice within the domestic sphere.

In contrast, international law primarily regulates the relationships between sovereign states. It addresses issues such as diplomacy, treaties, trade, and conflict resolution among nations. International law sets out the rules and principles that guide state interactions on the global stage, aiming to promote peace, security, and cooperation.

According to dualists, this distinction in subjects underscores the separate and independent nature of the two legal systems. Municipal law focuses on the internal governance of a state and the conduct of its inhabitants, while international law deals with the external relations between states. By recognizing this separation, dualists highlight the autonomy and unique roles of each legal system, preventing conflicts over legal supremacy and ensuring that each operates within its respective domain.

Differences in Substances

Regarding the substance of law, dualists emphasize that municipal law is the law of a sovereign over individuals. It governs the behavior and relationships of individuals and entities within the state’s jurisdiction. Conversely, international law is not above sovereign states but exists between them. It regulates the interactions and agreements between sovereign states, addressing the conduct of states themselves rather than individuals. Municipal law is directed at the subjects under a sovereign authority, while international law pertains to the sovereign states, establishing rules and norms for their interrelations on the global stage.

Monistic Theory

Monistic theory was proposed in the 18th century by two German scholars, Johann Jacob Moser (1701–1785) and Friedrich von Martens (1756–1821) (Moser, 1764; Martens, 1795). According to monistic theory, municipal law and international law are components of a single universal legal system that serves the needs of the global community in various ways.

Proponents of monistic theory reject the dualist distinction between the two systems regarding their sources, substance, and subjects. They argue that the subjects of both legal systems are ultimately individuals.

United Legal System

Monistic theory holds that international law and municipal law form a unified legal system, with international law automatically taking precedence. Proponents of this theory argue that both systems of law serve the same fundamental purpose of regulating human behavior and interactions and thus should not be seen as separate or distinct.

Criticism of Dualist Theory

If one argues with the proponents of monistic theory that international law regulates the relations of states rather than individuals, they respond by questioning the nature of a state. They assert that since a state is composed of individuals, the rules of international law are ultimately binding on these individuals, just as municipal law is. Thus, in their view, there is no fundamental distinction between the two systems; both are aimed at regulating human behavior and interactions within a unified legal framework.

The Need for Harmonization

It can be argued that while dualistic and monistic theories are traditional and widely recognized, neither theory alone is entirely sufficient. It is essential to harmonize international law and municipal law, as both are ultimately designed to serve human beings. This harmonization acknowledges the interconnectedness and mutual relevance of both legal systems, aiming to ensure that they work together effectively for the benefit of humanity.

Case Study: Vishaka vs. State of Rajasthan

Background

Article 51 of the Indian Constitution outlines India’s general obligations to the international community, stating that “The State shall endeavor to: a) promote international peace and security; b) maintain just and honorable relations between nations; c) foster respect for international law

and treaty obligations in the dealings of organized peoples with one another; and d) encourage the settlement of international disputes by arbitration".

Supreme Court Ruling

The above article is part of Part IV of the Indian Constitution, which lays down the Directive Principles of State Policy. In the landmark case of Vishaka vs. State of Rajasthan, the Supreme Court held that international conventions and norms should be read into domestic law in the absence of specific legislation, provided there is no inconsistency between them.

In this case, a writ petition was filed by social activists and NGOs to promote the true concept of gender equality and prevent the sexual harassment of working women in all workplaces through the judicial process, addressing a legislative gap.

Reference to International Norms

The court referred to Article 11 of the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, which prohibits discrimination against women in employment and advocates for equality in the workplace. The court observed that equality in employment can be severely compromised when women are subjected to gender-specific violence, such as sexual harassment at work.

Interpretation of Constitutional Guarantees

Given that India lacked specific laws to effectively address the issue of sexual harassment of working women at the workplace, the court emphasized that international conventions and norms are crucial for interpreting the constitutional guarantees of gender equality and the right to work with human dignity under **Articles 14**, **15**, **19(1)(g)**, and **21** of the Constitution. These provisions inherently safeguard against sexual harassment, highlighting the importance of international standards in filling the legislative void.

Conclusion

The relationship between international law and municipal law is complex and varies according to the legal traditions and constitutional frameworks of individual states. Theories such as dualism and monism offer different perspectives on how these two legal systems interact and which one

takes precedence in cases of conflict. Ultimately, the effectiveness of international law depends on the extent to which national legal systems are willing and able to incorporate and apply its principles. The case of Vishaka vs. State of Rajasthan demonstrates the importance of harmonizing international conventions with domestic laws to protect fundamental rights and ensure justice. This harmonization acknowledges the interconnectedness and mutual relevance of both legal systems, aiming to ensure that they work together effectively for the benefit of humanity.