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The Relationship Between Municipal Law And International Law

- This chapter is concerned with the relationship that exists between international law and municipal law. **That relationship gives rise to two main areas of discussion:**

The theoretical question as to whether international law and municipal law are part of a universal legal order ('monism') or whether they form two distinct systems of law ('dualism');

The practical issue of what rules govern the situation where there appears to be a **conflict between the rules of international law and the rules of municipal law:**

This may occur either:

before an international court; or

before a municipal court

- This Chapter calls for discussion on the question of how international law is applicable in the Somalia legal systems. States achieve the incorporation into their national law of multilateral or bilateral treaties of which they are contracting parties, so that the rights and duties contained in such international law may become applicable and enforceable domestically.
- With regards to the application of international law, the Somalia judicial systems have chosen to considerably circumvent in pleasing with international law aspects when adjudicating in the parties concerned.
- **Does the Attorney General give advices as to whether the state can ratify or accede to international treaties and conventions, since the Attorney General is the general legal adviser of the state, like any other nations in the world.**
- Entering into international agreements or conventions with foreign powers is one of the attributes of **state sovereignty**. No country can insulate itself from the rest of the world whether it can be in the matter of international relations or policies.

- This is truer since the end of the World War II. In this sense, Somalia is one of the developers to international law more specifically in the areas of international human rights law, environmental law, refugee law, the Vienna Convention on diplomatic relations and the Vienna convention on consular relations among others. **However, it is very important to discuss how the international law is enforceable in the Somalia's legal system.**

❖ **Status Of International Law In The Somalia's Legal System**

- The theories used for the relationship between international law and municipal law are **Monist and Dualism**. Although the distinction between international law and municipal law has become less distinct during the 20th Century, the definition still holds true.
- Municipal law governs the **national aspects of state** and deals with issues between individual or individuals and the administrative apparatus, while international law focus primarily upon the relations between states.

Monism Theories

- The monistic theory maintains that the subjects of **two systems of law vis-à-vis international law and municipal law are essentially one or belongs to the same legal system.**
- The monistic theory asserts that international law and municipal law are fundamentally the same in nature, and arise from the **same science of law**, which are manifestations of a single conception of law.
- Treaties and conventions therefore apply as a source of law of the party state upon the signing thereof and ratification.
- In a monist system, international law does not need to be incorporated into national law. According to this theory, national law is subordinated to international law e.g. the ICC statute, therefore, can be directly applied and adjudicated in national court. More so, in a monist state mostly they rely on the judges and not on the legislators, but if a judge in a monist state makes mistakes when applying international law, then the country violates international law.

Dualist Theories

According to dualist theory, international law and municipal law represent **two entirely distinct legal systems**. International law has an intrinsically different character from that of municipal law. Being a separate system, international law does not as such form part of the municipal law of a state.

International law does not determine which point of view is to be preferred monism or dualism. Every country decides for itself, according to its legal customs. National courts may choose or be obliged to ignore international law until it is incorporated into national law.

• **DOMESTICATION PROCESS OF INTERNATIONAL TREATIES OR CONVENTIONS IN SOMALIA**

Somalia belongs to dualist tradition which views international law and municipal law as two distinct legal systems. Domestication of international law by way of an **act of parliament** is the only means by which international treaties or any other foreign policies can be applied.

Therefore, once a treaty is ratified, it has to undergo a separate procedure to make it admissible under Somalia's law. The same only become applicable after domestication through domestic statute or legislative process.

- **The law of nations in the Somalia's perspective may be generally breakdown into two ways, these comprises as follows: -**

a) The Application of International law before the Constitution of Somalia

The relations between Somalia's Constitution with international law date back to the pre-independence days. These historical period before the constitution of Somalia was legally adopted, the two colonials ruled Somalia is better known as the pre-constitutional period. **The British and the Italians declared a protectorate in northern and southern Somalia respectively.**

- In 1889, not until in 1960 the Somali-Italian and the British Somaliland united and form the independent Republic of Somalia. In the course of this period, **Somalia obeyed all the two principles and norms of international law.**
- Additionally, the history of the Somalis legal system has been much **connected with the formation of the former colonial rule in the country more especially the Italian laws and jurisprudence** since the legal practice required knowledge of the Italian system as well as the **Italian language.**

b) The Application of International Law after the Independence Constitution of Somalia

The independence Constitution of Somalia in 1962 first provided for one general provision of Somalia's foreign policy. **Under article 6 of the constitution stated that the generally accepted rules of international law and international treaties duly concluded by the republic and published in the manner prescribed for legislative acts shall have the force of law.**

It was understood that under this provision, parliament **are the only authority to domesticate international law** before the national courts can be applied (Constitution of Somalia, 1962).

In 2012, Somalia adopted provisional constitution which contains several mentions to international law principles. It references inter alia that economics social and political be achieved for all the citizens and aims to promote liberty of thought and expression to all in the country. These values are said to be the foundation of real democracy and are considered international in nature (the Constitution of Somalia, 2012).

The Executive, Legislative And Judicial Recognition of International Law In Somalia

a) The Executive Power Under International Law

The executive is one of the branches of government that enforces law, and has responsibility for the government of a state.

The executive branch consists of the president and a Council of Ministers, led by the Prime minister of Somalia. According to the constitution, the Executive has the power to make laws by the **virtue of Article 90**.

Therefore, there is no restriction on the powers of the executive in relation to international law, and this allows the executive to enter into any treaty obligation.

(b) Legislation under international law

- Legislation has been defined as the main system of policy articulation, while policy is a general statement of aims or desirable goals in relations to given circumstances.
- policy is stated and approved by government through parliament. As noted above, the international law that Somalia has ratified have been translated into **legislation, policies or programme**, thus bringing the benefit of international standards into the national legal framework.
- This means that in order for any international treaty to be effect in Somalia's legal framework, a separate process of domestication must take through enactment of law or an act of parliament.

c) The Judiciary under international law

- Although the national judiciary system of Somalia does not have the power to make law or policies but **one of its major roles is to interpret the obligations of Somalia under international law by adjudicating national cases concerning issues of international treaty or convention.**
- Unfortunately, the Somalia's judiciary played in active role in the implementation of Somalia's international obligations under international treaty specifically in the areas of environmental law, climate change and human rights law among other.
- Somalia is a dualist state, means for international treaties to acquire the force of law or become legally enforceable in a court of law, merely ratification of the treaty in question is not enough.
- In this respect, national courts of Somalia may choose or be obliged to ignore international law until it is incorporated into domestic.
- However, there is no state which can ignore its obligation under international law before international tribunals. International tribunals give effect to international law even if international law conflicts with the domestic laws of the parties to the case. **Even the constitution of the parties is not considered if domestic law conflicts with their treaty obligation.** This was illustrated in the international court of justice, in the applicability of the obligation to arbitrate case- was emphatic that international law overrides national or domestic law (PCIJ series A no.7).

The Principle of Self-executing Treaty in Somalia

- There is a significant school of thought in international law that **holds that even in a dualist state, a domesticating act of parliament is unnecessary where the provisions of the international agreement are self-executing treaty, unless this principle is expressly excluded.**
- The **Permanent Court of International Justice**, in the jurisdiction of the court of Danzig, held that, respecting the Danzig-polish agreement, made pursuant to the treaty of Versailles of 1919 that **‘the very object of an international agreement according to the intention of the contracting parties, may be the adoption by the parties of some definite rules creating individual rights and obligation and enforceable by national court’** (Jurisdiction of the Courts of Danzig, Advisory Opinion, 1928).
- Generally, self-executing treaty is most commonly understood as a monistic doctrine wherein implementation legislations are generally not required for a treaty to have the force of municipal law. (*Spies vs. C. Itoh, 1981*).
- Conversely, non-self-execution, on the other hand, generally follows the dualist system wherein treaties require implementing legislation before national courts can apply it.

- On the recent example of the most important of these doctrines came up in the case **concerning the maritime boundary delimitation between Somalia and Kenya on 2009**. Somalia and Kenya are two neighboring states but had a longstanding maritime dispute relating to boundaries including delimiting extended continental shelf.
- In 2014 Somalia submitted the dispute to the International Court of Justice. the ICJ, among other things, considered the argument by Somalia that the **Memorandum of Understanding in 2009**, which is a treaty entered into by the two countries, was not valid. Somalia assailed the validity of the treaty on the ground that **'it was never approved by the national parliament in contravention of Somalia's constitutional requirements**. These contentions were, however, rejected by the court.

- The ICJ observed that under customary international law, Somalia may not seek to revoke an international law obligation by virtue of internal law provisions regarding competence to conclude treaties; there was no reason to suppose **that Kenya was aware that the signature of the minister may be insufficient.**
- In the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening).
- In its judgment on the merits, the Court addressed an argument made by Nigeria that a Declaration, signed by its Head of State and that of Cameroon, was not valid because it had not been ratified in accordance with Nigerian law.

CONCLUSION

Somalia is signatory to several international treaties and conventions. Although the country is expeditiously ratifying or accedes to international law but its implementations are often slow or never materialize. Somalia belongs to the dualist tradition, thus views international law and national law are two distinct legal regimes and hence domestication of international law by an act of parliament is necessary before international law can be applied in the national courts of law.



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