

Video Transcript

International Law and Municipal Law – Gleider Hernández

Hello, this is the brief lecture that we'll be presenting on Chapter 4 of *International Law*, and that is about the relationship between international law and what we call 'domestic' or 'municipal' law, which is the technical way of describing the domestic law of a country, the internal law of a state.

The question is in some respects a little bit theoretical, and it sounds, when a student is being introduced to it for the first time, as though it's a bit conceptual and, perhaps, a bit divorced from reality. But that is not, strictly speaking, true. And in fact, the question has great practical significance because, on a day-to-day level, you get questions of domestic law before international courts, or involved in international disputes, but equally so (and the phenomenon is only increasing), you see questions where international law and international legal principles are being argued and debated, and must be decided by domestic courts. So the relationship between the two legal systems is of great importance on the very, very practical level, and affects day-to-day life for international lawyers and for states around the world.

So, one of the theoretical frameworks that is used to try to explain that relationship between domestic and international law (or municipal law and international law) is called dualism. Dualism is a theory that seeks to describe the relationship as two separate legal orders existing side-to-side and interacting only when necessary. The idea is that neither international law nor municipal law are supreme, so they must coexist. Municipal law and municipal courts have to look on a case-by-case basis how to resolve conflicts between rules of international and municipal law.

Now, the dualist tradition is particularly prominent in many common-law states, and what usually is a characteristic of those dualist traditions is that when there's an international legal rule that binds the state, it is insufficient for the state just to have ratified the treaty, to agree to the obligation. In addition, the obligations of international law have to be incorporated within the domestic legal order by some sort of legislation or rule that makes that directly enforceable. That is a very important characteristic of dualism that in practice shapes how courts treat the question.

The other school is called monism. And monism, as its name implies, suggests some sort of unity. It suggests that the relationship between international law and municipal law is coherent and unified, and that validity from both derives from one common source. Now in the book, I go through the prominent writings of a theorist called Hans Kelsen, who suggested that all law, whether domestic or international, derives from something called the Grundnorm —but that's explained further in the book. For your purposes, I think it's important to understand that monism refers to this relationship as being unified and, essentially, that international and municipal legal systems operate as part of a coherent whole. This is a view that is common, to a degree, across many states that are grounded in what is called 'the civil law tradition', a system of codified law where international law plays a part.

Now, one very prominent state that has a monist, municipal legal order, is the Netherlands, but you also find that to a lesser or greater degree in Latin American States, certain francophone African States, Portuguese speaking African States, and in some Asian legal orders that have incorporated this monist conception of international law.

Practically speaking, it leads to a number of doctrines that students will be asked to look at. So you will be asked to consider doctrines where certain rules of international law might not be applicable for other reasons. So there are doctrines, like the Act of State Doctrine, which suggests that domestic legal courts have to refrain from examining the acts of foreign states, especially if they're conducted in their own territory. You also have a doctrine called the Non-Justiciability Doctrine, which suggests that a municipal court will not examine questions of international law that involve certain matters of high politics, or involve matters that are within the discretion of a state, effectively being political questions. In fact, the doctrine is called the Political Questions Doctrine in the United States.

In essence, what this chapter seeks to outline and to expose is the overlap between domestic and international legal orders, and what possible solutions lawyers can find to resolve the conflicts between them.

Thank you.