

THE INFLUENCE OF INTERNATIONAL LAW ON THE NATIONAL LEGAL SYSTEM

“The power of international law lies in its embodiment in national laws”

- Rosalyn Higgins (former judge of the UN International Court of Justice)

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Annotation: This scientific work comprehensively covers the influence of international law norms on the national legal system. The scientific work analyzes the concept of international law, its basic principles, its interaction with national law, as well as mechanisms such as implementation and transformation from a theoretical perspective. Also, the cases of application of international law norms in the legislation of Uzbekistan are studied using examples of judicial practice.

The study focuses on the harmonization of international treaties with national laws, the influence of decisions of international organizations on national court decisions, as well as the mechanisms for the implementation of international obligations of the Republic of Uzbekistan. This work provides conclusions and proposals based on theoretical approaches and practical solutions that strengthen the relationship between international law and national law. This study serves to provide a deeper understanding of the process of integration of international law norms into national law.

Object of study. The object of study of this scientific work is the role and influence of international law norms in the national legal system, as well as the processes of implementation (enforcement) and transformation (adaptation) of international legal norms into national legislation in the Republic of Uzbekistan. The study pays special attention to international treaties, decisions of international organizations, principles of international law and their harmonization with the Constitution and laws of the Republic of Uzbekistan.

Objectives of the work:

1. Analyze the influence of international law norms on the national legal system from a theoretical and practical perspective.
2. Study the processes of implementation and transformation of international treaties and norms in the legislation of the Republic of Uzbekistan.
3. Conduct an analysis based on real cases of application of international law norms in judicial practice.
4. Develop proposals and recommendations to ensure harmony between international and national law.

Introduction. Before providing information about the impact of international law norms on the national legal system, let us analyze the concepts of international law, national legal system, implementation and transformation.

The concept of international law refers to public international law and legally regulates the legal relations of states (subjects) that are participants in international relations. Public international law is divided into two:

✓ Public international law

✓ Private international law

Public international law is a set of legal norms that regulate relations between states, that is, it is a field of law aimed at protecting general public and state interests, for example, constitutional, criminal, administrative. Introduction. Before providing information about the impact of international law on the national legal system, let's analyze the concepts of international law, national legal system, implementation and transformation. The concept of international law refers to public international law, which regulates the legal relations of states (subjects) that are participants in international relations. Public international law is divided into two: Public international law Private international law Public international law is a set of legal norms that regulate relations between states, that is, it is a field of law aimed at protecting general public and state interests, for example, constitutional, criminal, administrative law and others. Sometimes, in order to understand the nature of such relations, they are also called power relations. Private international law is understood as a set of norms regulating civil legal relations complicated by a foreign element, that is, the field of law aimed at satisfying the needs and protecting the interests of individuals and legal entities in private law, for example, civil, family, labor law, etc. The role of private international law is somewhat controversial, since some authors consider private international law to be a part of national law, while others consider it to belong to international law. The legal system is the movement of existing legal norms in society as a whole, the arrangement of legal norms and areas in a certain consistency and interconnectedness. The branches of the internal legal system of the Republic of Uzbekistan are divided into two:

- Substantive law branches;
- Procedural law branches;

The substantive law branch includes the following: constitutional, administrative, family, land, agrarian, financial, civil, criminal, labor, water, ecology.

The procedural law branch includes such areas of law as civil procedural, criminal procedural, economic procedural, administrative procedural.

In addition, legal institutions also play an important role in our national legal system. Legal institutions are a group of interconnected legal norms that regulate a type of social relations.

In the field of constitutional law, the presidency, the rights and freedoms of citizens institute, in the field of criminal law - the liability institute, in family law - the marriage institute, etc.

1 Odilqoriyev Kh.T., Ochilov B.E. Public international law: a textbook for universities / Odilqoriyev Kh.T.,

Ochilov B.E.; Ministry of Justice of the Republic of Uzbekistan, Tashkent State Legal Institute. – Tashkent: Adolat, 2007. – 15 p.

Implementation (from English, literally implementation, implementation) – the application, introduction, implementation of international legal norms in their original form into domestic law²

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Transformation – the transformation of international obligations of states in relation to the legal status and legal regime of their constituent entities is necessary for them to have obligations in interstate relations.

In order for such obligations to have the corresponding rights and obligations of persons on the territory of the state, they must also find their proportionate reflection in the rules of domestic law of the state³

. In short, transformation is a set of measures taken by the state to implement the necessary international obligations of this state into its national legal order.

Scientific and theoretical part: Despite the fact that the goal of international law and national law is the same, that is, to regulate relations, there are a number of differences between them. International law differs from national law in regulating relations between states and the object of regulation. National law, on the other hand, is aimed at regulating relations that arise within the borders of a particular state. The distinctive feature of the two systems is that they constantly change each other's norms. There are common features of international law and national law, which are as follows: 1. Both legal systems represent a set of legal principles and norms that ensure their mandatory implementation; 2. Legal systems have their own structures: both systems have basic principles, both systems are divided into spheres and institutions, the initial element of both systems is the norm. Despite the various similarities and differences between international law and national law, the two legal systems constantly influence each other. This issue has its theoretical foundations in the doctrine of international law. Dualistic theory (representatives of the theory - Tripel, Ancilotti, Kamarovsky) This theory appeared at the end of the 19th century, and in this theory, taking into account the specific aspects of international and national law, it is emphasized that these two systems are not subordinate to each other in terms of the object of regulation, the composition of the subjects of legal relations, and the sources of the emergence of legal norms. Supporters of the dualistic theory argue that there is no conflict between the two legal systems, they are engaged in regulation at different levels, and the sphere of regulation of each is different⁴.

Over time, the idea of the existence of a connection between the two systems was put forward, and without it, neither of these systems could successfully fulfill their tasks. Such a reorientation was described as “dialectical dualism”. It is characterized by the recognition of the inextricable link between international law and the internal law of the state, while recognizing the superiority of international law over internal law. The monistic concept (founded by Lasson, Kaufman, Kelsen, Rousseau, etc.)

justifies the unity of the two systems under consideration, but recognizes the superiority of one of them over the other. According to one of the monistic directions, international law appears as a continuation or sum of national legal systems, or is a continuation of the “external law of states”, the norms of which acquire legal force only when they are somehow incorporated into the internal law of the state.

Proponents of the other direction of the monistic theory, on the contrary, are supporters of recognizing international law as a higher legal system that determines not only the scope of domestic law, but also the content of its entire normative rules. From a chronological point of view, this leads to the conclusion that the influence of national law on international law is primary, which allows us to understand that

4 International Public Law [Text]; textbook / A.Kh. Saidov et al. – T; TDYU Publishing House, 2023, - 35 p.

can be explained by the fact that most of the legal norms included in international law were initially formed as rules of domestic law of the state.

We can take the sphere of regulation of individual rights and freedoms as an example, since this sphere has long been entrenched in the legislation of various countries.

International law has influenced the national legal system in several ways, including:

1. International treaties: Once states have acceded to international treaties, international obligations are incorporated into their national legal system. This is usually done by amending national laws or by adopting or repealing new laws. For example, international conventions on the protection of human rights directly affect national laws, and in the event of a conflict between international treaties and national legislation, international treaties prevail. This rule is also enshrined in the Vienna Convention, according to which states that are parties to a convention cannot invoke the provisions of their domestic law to justify their failure to comply with a treaty.

In addition, this rule is also enshrined in Article 15 of the Constitution of the Republic of Uzbekistan, which is considered the fundamental law of the Republic of Uzbekistan, according to which, international treaties of the Republic of Uzbekistan, along with generally recognized principles and norms of international law, are a component of the legal system of the Republic of Uzbekistan. If an international treaty of the Republic of Uzbekistan establishes rules that are different from those provided for in the law of the Republic of Uzbekistan, the rules of the international treaty of the Republic of Uzbekistan shall apply. 2. Implementation and transformation model of international law: Implementation (from English, literally, implementation, putting into practice) - the application, introduction of international legal norms into domestic law in their original form implementation. The transformation model is a set of measures taken by a state to implement the necessary international obligations of this state into its national legal order.

3. Human rights: International law, especially in the field of human rights, has a significant impact on national legal systems. States are obliged to implement international human rights standards into national legislation, as well as international legal instruments that can affect the national legal system, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Conventions on the Rights of the Child.

4. Judicial practice: International law can be recognized by national courts.

Some state courts apply international law rules directly, especially if these rules do not contradict national law.

5. The primacy of international law: The constitutions of some countries establish the primacy of international law over national law. In others, national law prevails, but international obligations must be reflected in national legislation. This rule is enshrined in the Vienna Convention, and in addition, Article 15 of the Constitution of the Republic of Uzbekistan also mentions this rule, according to which, in the event of a discrepancy between the laws of the Republic of Uzbekistan and international treaties, the provisions of the international treaty shall apply. Case law: *Ferrini v. Italy*. There have been some problematic situations in the relations between Italy and the European Court of Human Rights (ECtHR). These problematic situations have led to discrepancies between ECtHR decisions and Italian national law.

Origin of the dispute: Luigi Ferrini, an Italian citizen, was captured by Germany in Italy during World War II and forced to work as a prisoner of war. Ferrini appealed to the Italian courts, claiming that his forced labor was a violation of his human rights. However, the Italian courts stated that they had no jurisdiction to bring a claim against Germany, since, according to the principle of sovereign immunity of states, national courts cannot bring a claim against other states. The case concerning the violation of Ferrini's rights was referred to the European Court of Human Rights, which found that his rights had been violated. The decision of the European Court of Human Rights was contrary to the decision of the Italian courts, which had refused to bring a claim against Germany. Analysis from the perspective of the issue and international law: In this case, the decision of the ECtHR affected state sovereignty and national legislation. The Italian national courts refused to recognise the ECHR judgment and decided to respect Germany's state immunity. This created a conflict between international and national law. As a result, the Italian Constitutional Court partially revised the principle of state immunity in 2014 and recognised the existence of exceptional cases in the protection of human rights, since the Italian court's decision was not in line with Articles 2, 3 and 6 of the European Convention on Human Rights. Furthermore, the Vienna Convention contains a principle of the application of international law in cases of conflict between national law and international law (Article 27 of the Vienna Convention). This principle is based on the principle of "pacta sunt servanda", i.e. "treaties must be observed". Thus, Article 27 of the Vienna Convention ensures the primacy of international treaties over domestic law for States.⁶ Conclusion. The Italian Constitutional Court partially revised the principles of state immunity in 2014 and recognized the existence of

exceptional circumstances in the protection of human rights, namely the right of Italy Ferries to sue Germania. Alabama Case.

Origin of the dispute:

On May 13, 1861, the British government declared war on the northern and southern territories of the United States and declared its neutrality in this war. It also required its citizens to respect the Act "On the Conduct of Military Operations in Foreign Countries". This document was a document prohibiting arbitrary actions that would prejudice the neutrality of Great Britain during the war, when it declared neutrality. Article 7 of this document strictly prohibited the parties to the war from entering the territory of Great Britain and arming their ships in order to achieve their "hidden" goals.

However, the Alabama was built by a British company called Buckenhead and was then loaded into the port of Liverpool and equipped with military equipment. The US government has presented several arguments to the British government, stating that the ship numbered 290 could soon be armed and leave the port of Liverpool to conduct military operations outside Britain. The British government, on the other hand, has argued that if the US arguments are true, the arming of the ship numbered 290 is contrary to the Foreign Military Sales Act and that measures should be taken to prevent the ship from leaving the port, and that sufficient evidence is needed to implement the measures envisaged. The US government has then presented several such arguments several times. Disputes arise between Great Britain and the United States regarding compensation for damage caused by the war action of the Alabama. They agree to submit the dispute to arbitration under the Washington Convention.

Judgment. The principle of "mutual liability" contained in Article 6, Sections 1 and 3 of the Washington Convention is to be applied in a manner proportionate to the risk which a neutral country may incur in a state of war due to the failure of a neutral country to fulfil its obligations. Having regard to the circumstances of the facts which form the main issue of this dispute, the British Government was required to take all necessary measures to respect the rights and obligations established by the Queen's declaration of neutrality on 13 May 1861. Great Britain, despite the obligation of neutrality, disregarded the principle of mutual responsibility.

Also, despite the information provided by the US Foreign Affairs authorities and other actions taken during the construction of the ship No. 290 (Alabama), the British government did not take practical measures to prevent the violation of the obligation of neutrality and was indifferent to it. Moreover, despite the decision to seize the ship, it was impossible to carry out this action because it was taken too late. Also, the counterclaim that Great Britain did not comply with the principle of mutual responsibility is not satisfied because the actions taken by it were insufficient. On the basis of the above considerations, the Court concludes that the British Government has failed to fulfil its obligations under Article 6, paragraphs 1 and 3, of the Washington Convention by failing to take the necessary action in this case.

Conclusion. The Court concludes that the United Kingdom is to pay the United States the sum of \$15,500,000 in damages.

Conclusion: Based on the above considerations and considerations, it is clear that the effect of international law and national law on each other is primary. We can conclude that most of the norms existing in international law initially existed in the national legal system and later this norm was well-formed and became a norm of international law. In addition, we have listed several ways in which international law affects the national legal system: international treaties, the implementation and transformation model of international law, human rights, judicial practice, the primacy of international law, etc. The most important of these methods are international treaties. If there is a conflict between international treaties and national legislation, the rules of international treaties are always applied. This rule is stipulated both in international conventions and in the legislation of some countries, for example, Article 15 of the Constitution of the Republic of Uzbekistan. Some provisions of international treaties may in some cases affect the sovereignty of states, but these states become members of them by agreeing to the terms of

international treaties, that is, even in this case, the provisions of international treaties are not considered to have harmed the sovereignty of states.

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