



The Reciprocal Influence of Domestic and International Law in the Jurisprudence of the International Court of Justice: A Case Study of Disputes Between Iran and the United States

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Abstract

The relationship between domestic law and international law is considered one of the most fundamental theoretical and practical issues in contemporary international law. The expansion of international obligations of states and the increasing role of international judicial authorities, especially the International Court of Justice, have made it particularly important to examine the interaction of domestic and international rules. On the one hand, domestic courts play a fundamental role in implementing international obligations, and on the other hand, the International Court of Justice is forced to examine the domestic laws and regulations of states in many cases in order to establish their international responsibility. The present study uses a descriptive-analytical method to examine the mutual influence of domestic law and international law in the practice of the International Court of Justice and, focusing on the cases between the Islamic Republic of Iran and the United States of America, analyzes the position of domestic law in determining the jurisdiction of the Court, interpreting treaties, implementing international obligations, and resolving disputes. The findings of the study show that although international law has a superior position in the field of international responsibility of states, domestic law still plays a decisive role in the formation, interpretation and implementation of many international rules. The case law of the International Court of Justice also confirms that states cannot evade the implementation of their international obligations by citing domestic law.

Keywords: domestic law, international law, International Court of Justice, State immunity, 1955 Treaty of Amity, International responsibility of states.

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Introduction

The increasing growth of international relations and the development of cooperation between states have led to international law playing a broader role in regulating international relations compared to the past. Especially after World War II and the establishment of the United Nations, the need for states to adhere to international rules and obligations has received more attention from the international community than

ever before (Shaw, 2021, p. 45). In the meantime, one of the most important theoretical and practical challenges of international law is determining the place of international rules in domestic legal systems and how to deal with possible conflicts between domestic and international law (Brownlie, 2019, p. 48).

The issue of the relationship between domestic law and international law has long been a source of disagreement among legal scholars. Proponents of the theory of legal unity (Monism) believe that domestic law and international law are components of a single legal system; while the theory of legal dualism (Dualism) considers these two to be two independent and distinct systems that require a process of transformation or acceptance in order to implement international rules in the domestic territory (Kelsen, 1966, p. 328; Triepel, 1923, p. 27). The importance of this issue doubles when international disputes are raised in international judicial authorities. The International Court of Justice, as the principal judicial organ of the United Nations, is obliged in many cases to examine the domestic laws of States in order to establish international responsibility, interpret treaties and assess the compliance of States' actions with their international obligations. In the case of "Certain German Interests in Polish Upper Silesia", the Permanent Court of International Justice stated that although domestic laws are subject to review, these laws are assessed as legal facts within the framework of international law (PCIJ, *Certain German Interests in Polish Upper Silesia*, Judgment No. 7, 1926, p. 19). On the other hand, a fundamental principle of international law is that States cannot invoke domestic regulations to justify their failure to fulfill their international obligations. This principle is also stated in Article 27 of the Vienna Convention on the Law of Treaties, 1969 (Vienna Convention on the Law of Treaties, 1969, Art. 27). Accordingly, international jurisprudence has consistently emphasized the priority of international obligations over conflicting domestic regulations.

In recent years, numerous lawsuits between the Islamic Republic of Iran and the United States of America at the International Court of Justice, especially the "Certain Iranian Assets" case and the "Breach of the 1955 Treaty of Amity" case, have provided a suitable basis for a practical examination of the relationship between domestic law and international law. In these cases, domestic laws of the United States, including the Foreign Sovereign Immunities Act (FSIA) and the Terrorism Compensation Act (TRIA), have been evaluated by the Court against the obligations arising from the 1955 Treaty of Amity (ICJ, *Certain Iranian Assets*, Judgment, 2023). The present study seeks to answer the fundamental question of what place domestic law has in the practice of the International Court of Justice and how does the Court balance the requirements of domestic law of states with their international obligations? The main hypothesis of the research is that although domestic law plays an important role in determining the competence of authorities, implementing obligations and forming some international law institutions, in case of conflict with international obligations, it cannot prevent the realization of the international responsibility of states

1. Theoretical foundations of the relationship between domestic law and international law

The explanation of the relationship between domestic law and international law is one of the most important theoretical issues in public international law. The answer to the question of which one prevails over the other in the event of a conflict between domestic rules and international obligations has long been of interest to lawyers. In this regard, two main theories have been formed, namely the theory of legal unity (Monism) and the theory of legal dualism (Dualism). Based on the theory of legal unity, domestic law and international law are considered components of a single legal system and both have the same source of legitimacy. Hans Kelsen is one of the most important proponents of this theory, which accepts the primacy of international law over domestic law and believes that the validity of the domestic legal system ultimately stems from the fundamental rules of international law (Kelsen, 1966, p. 328). In contrast, the theory of legal duality, proposed by jurists such as Triepel and Anzilotti, considers domestic law and international law to be two independent and separate systems that differ in terms of subject matter, audience, and sources of creation. According to this view, international rules will only be enforceable in the domestic territory if they are transformed into national law through legal processes established in the domestic legal system (Triepel, 1923, p. 27). Despite the theoretical differences between the proponents of these two approaches, the practical practice of states and international courts shows that contemporary international law has moved towards accepting the primacy of international obligations over domestic laws. Article 27 of the 1969 Vienna Convention on the Law of Treaties stipulates that no state may invoke the provisions of its

domestic law to justify its failure to perform its obligations under treaties (Vienna Convention on the Law of Treaties, 1969, Art. 27). In the legal system of the Islamic Republic of Iran, although the Constitution does not explicitly mention the primacy of international law, Articles 77 and 125 of the Constitution stipulate that the validity and enforcement of international treaties are subject to the ratification of the Islamic Consultative Assembly and the signature of the President. Article 9 of the Civil Code of Iran also stipulates that legal treaties concluded between Iran and other countries are considered domestic law (Katouzian, 2019, p. 148).

2. The Impact of Domestic Law on International Law

Although international law plays a pivotal role in regulating relations between states, the role of domestic law in the formation, development, and implementation of international rules cannot be ignored. Many of the fundamental institutions of international law are realized through the mechanisms of the domestic law of states. For example, determining the competent authority to conclude treaties, the manner in which a state expresses its consent to be bound by a treaty, granting nationality, and determining the limits of the powers of state authorities are all subject to the domestic laws of states (Crawford, 2019, p. 63). The International Court of Justice has also had to examine the domestic laws of states on numerous occasions. In the case "Certain German Interests in Upper Silesia in Poland", the Permanent Court of International Justice stated that although domestic laws are not among the sources of international law, they must be taken into account in order to establish the international responsibility of states and determine the extent to which they have complied with their international obligations (PCIJ, 1926, p. 19). In addition, the continuous practice and performance of states, which is manifested in the form of domestic laws, executive decisions, and judicial decisions, is considered one of the essential elements in the formation of international custom. From this perspective, domestic law can play an effective role in the process of developing customary international rules (Shaw, 2021, p. 72).

۳. The Impact of International Law on Domestic Law

The expansion of international organizations and the increase in the number of multilateral treaties have led to international law having an increasing impact on domestic legal systems. Today, many states have given a special place to international rules in their constitutions. For example, Article 55 of the French Constitution of 1958 considers treaties in force to be superior to ordinary domestic law. Similarly, Article 25 of the German Constitution considers the general rules of international law to be part of federal law and to take precedence over ordinary law (Brownlie, 2019, p. 51).

National courts also play an important role in the implementation of international rules. Many important decisions of international law are in fact implemented by domestic courts. For this reason, some authors have referred to national courts as "ordinary judges of international law" (Cassese, 2020, p. 394). In Iranian law, international obligations also become enforceable after legal procedures, and courts are obliged to comply with them within the limits of domestic law. However, the lack of a clear statement about the hierarchical position of international treaties over ordinary law is still one of the issues discussed in Iranian legal doctrine (Mir Abbasi, 1400, p. 87).

4. The position of domestic law in the practice of the International Court of Justice

The International Court of Justice, as the most important international judicial authority, has repeatedly faced the issue of the relationship between domestic law and international law. Although, according to Article 38 of the Statute of the Court, domestic law is not among the main sources of applicable law, in many cases, the Court has been forced to examine the domestic laws and regulations of states in order to determine the legal status of the subject of the dispute.

In the *LaGrand Case* between Germany and the United States, the Court emphasized that States cannot rely on domestic procedural rules to avoid fulfilling their obligations under the Vienna Convention on Consular Relations (*LaGrand Case, Germany v. United States*, ICJ Reports, 2001, p. 466). In the *Avena Case*, the Court reiterated that domestic regulations cannot prevent States from fulfilling their international obligations

and that States are obliged to provide the necessary legal mechanisms for fulfilling their international obligations (Avena Case, ICJ Reports, 2004, p. 59).

Thus, the jurisprudence of the International Court of Justice shows that although domestic law is subject to review in many cases, it cannot be considered a basis for evading the international responsibility of States. The principle of the performance of promises (*Pacta Sunt Se*).

5. Analysis of the Iranian Assets Case and the Position of Domestic Law in the International Court of Justice's Decisions

One of the most important cases pending between the Islamic Republic of Iran and the United States of America in the International Court of Justice is the Certain Iranian Assets case. This case was filed by Iran against the United States in 2016 and concerned the seizure and confiscation of some of the assets of the Central Bank and some Iranian institutions based on domestic US law. Iran claimed that the actions of the United States, in particular the implementation of the Foreign Sovereign Immunities Act (FSIA), the Terrorism Risk Insurance Act (TRIA), and certain specific laws of the US Congress, violated its obligations under the 1955 Treaty of Amity, Economic Relations, and Consular Rights (ICJ, Certain Iranian Assets, Judgment, 2023).

1-5. Conflict between domestic US law and international obligations

The United States relied on its domestic regulations to justify the seizure of Iranian assets. However, it is a well-established principle of international law that States cannot rely on domestic law to avoid fulfilling their international obligations. This principle is expressly stated in Article 27 of the Vienna Convention on the Law of Treaties, 1969 (Vienna Convention on the Law of Treaties, 1969, Art. 27). The International Court of Justice has also emphasized this principle in numerous judgments. In the present case, the Court stated that the legality of the domestic laws of the United States is examined solely from the perspective of their compliance with the international obligations contained in the Treaty of Amity and that the mere existence of a domestic law cannot rule out the violation of the State's actions (ICJ Reports, 2023).

2-5. The Issue of the Legal Nature of the Central Bank of Iran

One of the most important issues in the case was the determination of the legal status of the Central Bank of the Islamic Republic of Iran. The United States argued that the Central Bank is an institution independent of the State and is not subject to the protections provided for in the Treaty of Amity. In contrast, Iran argued that the Central Bank, in accordance with the country's Monetary and Banking Law, is part of the government's governance structure and is responsible for the fundamental functions of monetary policy, the management of foreign exchange reserves and the regulation of the country's financial system.

In its ruling, the Court distinguished between the commercial activities of the Central Bank and its governance functions. According to the Court, the mere carrying out of certain financial transactions and the purchase and sale of securities is not sufficient to prove the commercial nature of the Central Bank; the main purpose and nature of the activities must also be taken into account. The Court ultimately declared that the actions relied on by the United States were taken in connection with the governance functions of the Central Bank and that Iran's claim in this regard was therefore subject to jurisdictional limitations (ICJ Reports, 2023, paras. 80-95.)

3-5. Immunity of States and Sovereign Property

The principle of immunity of States is one of the fundamental principles of customary international law, according to which States and their sovereign property are in principle immune from the jurisdiction of the domestic courts of other countries. This principle has also been recognized in the United Nations Convention on Jurisdictional Immunities of States and Their Property, adopted in 2004 (United Nations Convention on Jurisdictional Immunities of States and Their Property, 2004). Although the said Convention has not yet entered into force, many of its provisions are considered to reflect the customary rules of international law. From this perspective, the seizure of the assets of the Central Bank as an institution with

sovereign functions has always been one of the controversial issues in international practice (Crawford, 2019, p. 493).

6. Review of the claim for violation of the 1955 Treaty of Amity

The Treaty of Amity, Economic Relations and Consular Rights between Iran and the United States of America was concluded in 1955 and was the legal basis for economic relations between the two countries for decades. Article 21 of this treaty provides for the jurisdiction of the International Court of Justice to hear disputes arising from the interpretation and application of its provisions. In 2018, the Islamic Republic of Iran, citing this treaty, filed a case against the United States of America regarding the return of economic sanctions and their effects on trade, air transport, banking transactions and access to humanitarian goods.

1-6. Interim Order of the Court

In its interim order dated October 3, 2018, the Court declared that the United States was obliged to remove the obstacles created in the field of export of medicine, medical equipment, food and parts required for the safety of civil aviation. The Court also emphasized that both parties should refrain from actions that would aggravate the dispute (Alleged Violations of the 1955 Treaty of Amity, Order of October 3, 2018). This decision was of particular importance from the perspective of international law, as it showed that even in conditions of severe political tension, the contractual obligations of states can still be invoked and enforced.

2-6. The United States' conviction in the Court

In examining the merits of the case, the Court declared that some of the United States' actions were inconsistent with the obligations contained in the Treaty of Amity. In particular, the restrictions resulting from some domestic laws of the United States effectively hindered the economic and commercial activities of Iranian companies and were inconsistent with the principle of freedom of trade set out in Article 10 of the Treaty.

This decision is important because the Court reiterated that the domestic laws of states cannot be a means of ignoring the obligations arising from international treaties. In fact, the treaty obligations of states take precedence over conflicting domestic decisions (ICJ Reports, 2023).

7. Criticism and Evaluation of the Judgments of the International Court of Justice

The judgments issued in the Iran-US cases have several strengths and weaknesses, the examination of which can be helpful in analyzing the relationship between domestic law and international law.

1-7. Strengths

First, the Court once again emphasized the fundamental principle of prohibiting the invocation of domestic law to justify the violation of international obligations. This approach is fully consistent with the Court's consistent practice and the rules contained in the Vienna Convention on the Law of Treaties.

Second, by accepting its jurisdiction based on the Treaty of Amity, the Court emphasized the continued validity of international treaties even in situations of political tension between states.

Third, the Court's judgment showed that the rules of international law can still be an effective tool for controlling unilateral actions by states and protecting the rights of weaker states against great powers.

2-7. Weaknesses

Despite its positive points, some parts of the Court's judgment have been criticized. The most important criticism concerns the way it analyzes the legal status of the Central Bank of Iran. Some authors believe that the Court in its final judgment departed from the approach adopted at the jurisdictional stage and did not pay sufficient attention to the sovereign nature of the central bank and the customary rules of State immunity (Fox & Webb, 2015, p. 602).

The Court also avoided in some parts directly addressing the issue of State immunity and limited its focus to the interpretation of the Treaty of Amity. This has left some fundamental issues of customary international law unanswered.

Conclusion

What was briefly discussed was the effects that each of the two international laws and domestic laws have on each other. It became clear that with the position that international law has found among societies today, its effect on the laws of countries has become more and more extensive, and there is almost no country that has not been affected by these rules in its domestic laws. On the other hand, the effect of domestic laws of countries, especially powerful and large countries, on international law cannot be denied. It is necessary to state that today, despite the existence of legislative bodies, such as the Security Council, in the international arena, international issues are still influenced by political aspects and tools, not legal ones; the level of political power of each country is an influential element in international components. Of course, what seems promising is the importance, however apparent and formal, of international laws and resolutions among countries. So that almost all countries consider themselves bound by the legal rules and the Charter of the United Nations and its observance, and no country has explicitly denied or negated them, and this prepares the ground for the rule of international law, albeit in a long time. In short, even if we accept the superiority of international law over domestic law, this does not reduce the importance of domestic regulations; because these regulations can be relied on in numerous international issues such as the jurisdiction of the coastal state in maritime areas, the conditions for acquiring citizenship, determining the competent authority for concluding international treaties, etc. However, domestic laws that contradict international regulations cannot be accepted. Also, the silence of the Constitution cannot be used as a basis for evading international obligations. It can be said that the judicial procedure in this regard has been formed in the Foreign Claims Commission. Also, settlement through a final agreement and referral to the Foreign Claims Settlement Commission imposes less cost on this country. Therefore, considering the above, it can be inferred that the United States is more inclined to resolve disputes through a final agreement, although the website of the United States Foreign Disputes Settlement Commission also includes the Islamic Republic of Iran among the countries to which the State Department sends a plan to refer cases. Regarding the disputes raised between Iran and the United States, regardless of the validity of the decisions issued by the national courts of both parties, which are based on international law, which are considered valid based on the domestic law of each of the two states, given that according to the domestic regulations of the United States, the resolution of disputes arising from these decisions is a prerequisite for normalizing relations between the two states, a measure must be devised to deal with these decisions.

There have long been various ways to resolve such disputes. What exists in current disputes, given the capacities available in international law, is legal methods or resolution through a final agreement, which is a kind of compromise. Two methods, each with its own advantages and disadvantages, which have been mentioned in this article. Clause 2 of Article 21 of the Treaty of Amity between Iran and the United States provides methods for resolving disputes through legal means. That is, the parties can refer to the International Court of Justice through the Treaty of Amity and generally resolve their disputes regarding the legality or otherwise of these claims in domestic courts, given the existence of the rule of immunity in international law. Supposedly, if the Court passes the rule of immunity and does not violate it, the issue of attribution to the state and the threshold of this control is another issue that is expected to be examined in the International Court of Justice. As we said, through this Treaty of Amity, the parties can create other ways to resolve their disputes. One of the ways that governments use in such extensive claims is the process of litigation of extensive claims, which Iran and the United States of America have experience with by establishing the Iran-United States Arbitration Court.

The advantage of these two methods and the resolution of disputes is based on the principles and rules of international law. The conclusion of definitive agreements and the establishment of claims and litigation commissions are another way of resolving disputes. In the case of Iran's special property, the Court deviated in its 2023 decision from its 2019 decision and even the 1996 jurisdictional decision, and this deviation is critical in several ways: the Court was aware of the main facts regarding Iran's monetary and

banking law, the nature of the sovereignty of the Central Bank, and the customary law governing the matter, and in its 2023 decision it deviated from its 2019 decision. The Court ignored the US government's action in recognizing the Central Bank as a commercial entity, which is contrary to the estoppel principle. The Court, with this decision, did not make a valuable contribution to strengthening the immunity of the Central Bank as an institution with an absolutely sovereign function because it ignored the issue of immunity and the 2004 Convention, which could have been part of customary international law in the light of which the treaty of amity should be interpreted and implemented. The Court did not provide any justification for departing from its practice and limited itself to the fact that it did not say anything about the criterion of the purpose of the transactions in the 2019 decision, which is also considered a deficiency despite being aware of the existing rules. This method is a kind of compromise between states in resolving disputes and, as mentioned in the article, has been used many times by states in resolving disputes. In this method, the attribution of responsibility is assumed and the parties negotiate only about the subject and personal scope of the agreement and the lump sum and a place where it should be paid. In summary, considering the issues raised, the authors believe that using legal methods is a more appropriate solution than other methods for resolving disputes arising from decisions issued based on the immunity laws of the two states.

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