INTERNATIONAL LAW AND MUNICIPAL LAW: TOWARDS A UNIFYING FRAMEWORK OF APPLICABILITY*

Abstract

All over the world, there is a mounting concern about the effect international law has on the municipal system and the effect of municipal law on the international system mostly when disputes may arise, and which legal regime may apply. In the absence of a coherent theory explaining these issues, problems are bound to reign amongst policy makers, politicians and jurist over which course to take in resolving conflicts and issues arising. A doctrinal approach and a comparative analysis of the application in Nigeria, South Africa and Namibia reveal a divergence in the reception and application of international law. The paper therefore concludes that there is the need for a universalist system to broaden the scope of research in this area.

Keywords: International law, Municipal Law, Monism, Dualism, Applicability.

1. Introduction

Two systems of law exist; that of municipal law applicable within a given country as a general rule and that of international law applicable on the international scene at the first instance.[1] Interestingly, although as a general rule municipal law is only applicable within a country, there is a provision under international law that municipal law should not ground violations of international obligations or obligations in international law. This appears to be a norm of international law applicable in a municipal system. Furthermore, the reception of an international norm by a municipal system is based on the normative ordering of that municipal system. As a general rule it's the constitution of the municipal system that prescribes the manner of application of international law in a municipal system. In some municipal systems, international law norms are automatically applicable as though they were municipal law norms. In others, the international law norms require domestication in one form or the other. The consensus today is that the world is a global village in truth and in fact. With advancement in technology and communications, the traditional view of territorial integrity of states has been largely rendered ineffective through social media and electronic commerce amongst others. The effect is that international and municipal realm, which hitherto are considered separate and distinct categories, have become fused into the universal. This fact is truer still in the realm of law, with the system of international law and the system of municipal law reinforcing each other to the point of becoming indistinguishable and rendering credence to the idea of the system of universal law. The rules governing the international system and the rules governing the municipal system although traditionally separate categories, have both witnessed rising similarities as a result of the growing level of interface between both systems. The literature review of the interface between municipal law on one hand and international law on the other has been often construed in the terms of two perspectives namely monism and dualism. These perspectives to a large extent rationalise how a given country applies international law within its municipal system of law.

In the light of the above, the paper argues that the monist, the dualist and the other perspectives all contribute to an understanding of how both the international and the municipal legal systems aid our understanding of the extent to which the municipal legal system of a given country applies international law rules and the extent to which the international legal system takes notice of and applies the rules of a given municipal legal system to give it an international applicability. This will enhance the relevance of international law to municipal law and vice versa as a sustainable normative enterprise. In achieving the theme of this paper, the paper is divided into five parts. Part one analyzes international law and municipal law are analyzed from the meaning ascribed to both theories, while part two discusses the theories and other concepts developed over the years by scholars in this field to espouse the disparity

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[1] G. Boas, *Public International Law: Contemporary Principles and Perspectives* (Edward Elgar: 2012) 119.

between international law and municipal law. Part three and four on the other hand, analyzed the application of both municipal and international laws in international tribunals and municipal courts. Drawing from the application of international law and municipal law, part five compares the application of international law and municipal law in some selected jurisdictions.

2. Definition of International Law and Municipal Law

Although related, the subjects of international law and municipal law have in time past addressed arguably separate issues. They are traditionally different systems of law with differences in applicability and target audience. While international law is mostly concerned with, but not completely identified as, the relationship amongst States, municipal law regulates the relationship between private persons within a particular State and between both private persons and the institutions of the State. Another area in their differences is in their processes; both of them are usually applied by national or municipal courts which mean complete decentralization of the judicial function in international law and effective centralization under municipal law.[2] Similarly, attempts to use municipal law to address cases of violations of international law also supports a discussion of this nature as it relates to applicability.[3] International law and municipal law also share a variety of similarities. One important kind of similarity is in the sources of international law and municipal law. An important source of international law is the multilateral treaty which can be referred to as the equivalent of legislation in municipal law. Another important source of international law and municipal law is what is called custom. This important source of law is usually unwritten but carries a large degree of acceptance within the legal system applying it.

The Black's Law Dictionary defines International Law succinctly as:

> ...the legal system governing the relationship between nations; more modernly, the law of international relations, embracing not only countries but also such participants as international organizations and individuals (such as those who invoke their human rights or those who commit war crimes...[4]

The Black's Law dictionary also contains other related definitions of the term such as public international law; law of nations; law of nature and nations; *jus gentium, jus gentium publicum, jus inter gentes*; foreign-relations law; interstate law between states (the word state in the latter two phrases being equivalent to ''nation'' or ''country." According to Dominique F. De Scoop, international law is the body of rules which States have developed to regulate relations between themselves, or with inter-governmental organization, on a specific matter or range of issues, and includes minimum standards which they have agreed to observe within their territory.[5] Consequently, international law may be described as the law or rules that regulate the conduct of states and other entities which at any time are recognised as being endowed with international personality. International law can conveniently be analysed according to its functions, its sources or its actors. However, whatever conception of the subject matter that is adopted, it should be borne in mind that the definition of international law has changed with time from the traditional conception to a modern approach which recognize the continuous expansion of the scope, subject and subject matter of the term. Furthermore, international conventions, whether general or particular, international customs, general principles of international and internal law, judicial decisions of international tribunals and juristic opinion are the materials and processes out of which the rules and principles regulating the international community are developed.

The Black's Law Dictionary defines the term Municipal Law as: (i) The ordinances and other laws applicable within a city, town or other local government entity. (ii) The internal law of a nation as opposed to International Law.[6] Again municipal law is the technical name given by international lawyers to the national or internal law of a state. Thus, while municipal law on the one hand applies to

[2] This scenario fits the situation in the English case of R v. Jones (2006) UKHL, 16, as cited in Malcolm Shaw, *International Law* 8th Ed (Cambridge University Press: 2017) 97.
[3] Ibid. See also Gennady M. Danilenko, 'Application of Customary International Law to Municipal Law' in G. I. Tunkin and R. Wolfrum, *International Law and Municipal Law*, Eds (Duncker and Humblot: 1987) 13.
[4] B. A. Garner, *Black's Law Dictionary*, (Ed) 10th Ed (Thomson Reuters: 2014).
[5] D. F. De Stoop, *An Outline of International Law* (Australian Self Publishing Group: 2019) 3.
[6] Garner, ibid (n 4).

the internal aspect of government and is applicable to controversies between individuals and between individuals and the apparatuses of government, international law on the other, is primarily focused on the relations of states. International Law is a system of law applicable in the international system. It comprises of those norms of the international system that regulate the conduct of subjects of international law. Although it is quite different from municipal law, there are areas where both legal systems are similar. Municipal Law, on the other hand, is usually applicable in a particular municipal legal system. It regulates the activities between or relationships of the individual citizens of such a legal system and the relationship between the individuals and the State or government.

3. Theories of International Law

There are a variety of theories explaining or elucidating the relationship of international law and municipal law.[7] These theories have posed problems for both scholars and students of public international law exacerbated by conflicting theories about the relationship between the two sets of legal regimes[8] help to clarify a lot of issues arising from the interaction or relationship between international and municipal law. Two major theories of international law namely monism and dualism exist.[9] The illustration by Ian Brownlie in emphasizing the practical significance of the theories exemplifies the danger in adopting either theory as an evidence of intending disputes as demonstrated by the proponents of the monist and dualist schools of thoughts.[10] He states thus:

> An alien vessel may be arrested and the alien crew tried before a municipal court of the arresting authority for ignoring customs laws. The municipal law prescribes a customs enforcement zone of x miles. The defendants argue that international law permits a customs zone of x–4 miles and that the vessel, when arrested, had not yet entered the zone in which enforcement was justified under international law.[11]

As Gideon Boas concluded, should national law or international law apply in such a dispute? Applying a dualist approach, domestic law would apply; applying a monist approach, international law should prevail.[12] It is this unending scenario that gives credence to an analysis of this nature bothering on the dualist and monist theories. It is imperative to note further that besides these theories, there exist such other theories such as transformation, specific adoption, specific incorporation and delegation theories. We will discuss each of them below.

Monism

> …the *monist* approach tends to fall into two distinct categories: those who, like Lauterpacht, uphold a strong ethical position with a deep concern for human rights, and others, like Kelsen, who maintain a monist position on formalistic logical grounds. The monists are united in accepting a unitary view of law as a whole and are opposed to the strict division posited by the positivists.[13]

The Monist contends that there is only one system of law, of which international and municipal laws are no more than two aspects or parts. According to Gideon Boas, Monists argue that as law ultimately regulates the conduct of individuals, there is a commonality between international and national law which both ultimately regulate the conduct of the individual. Therefore, each system is a 'manifestation of a single conception of law.'[14] In justifying the above position, it argues that both systems of law govern sets of individuals (States being seen for this as collection of individuals), both are binding, and both are manifestations of a single concept of law. Here international law is superior and stronger, as it

[7] M. Dixon, R. McCorquodale and S. Williams, *Cases and Materials on International Law* 6th Ed. (Oxford University Press: 2016) 103.
[8] De Stoop, ibid (n 5) 14.
[9] R. M. Wallace, *International Law* 4th Edition (Thomson Sweet and Maxwell: 2002) 35
[10] I. Brownlie, *Principles of Public International Law* 7th Edn (Oxford University Press: 2008) 31, cited in Boas, ibid (n 1). 121.
[11] Brownlie, ibid.
[12] Boas, ibid (n 1) 122.
[13] Ibid.
[14] Ibid.

represents the system's highest rules- jurisdiction on a domestic level being only delegated to States, which cannot avoid being bound to apply international law at the domestic level. So if municipal law conflicts with international law the State is duty bound to resolve it and failure to do so will not excuse the State's obligations[15].

In support of the argument of a single system of law, Hersch Lauterpacht posits thus:

> The main reason for the essential identity of the two spheres of law is, it is maintained, that some of the fundamental notions of international law cannot be understood without the assumption of a superior legal order from which the various systems of municipal law are, in a sense, derived by way of delegation. It is international law that determines the jurisdictional limits of the personal and territorial competence of states. Similarly, it is only by reference to a higher legal rule in relation to which they are all equal that the equality and independence of a number of sovereign states can be conceived.

He therefore suggests a preference for the predominance of international law and views the effectiveness of the system as a dominant concern of states while protecting and promoting the equality of States, which supports the countervailing argument that if international law is not solid enough to ensure fulfillment of its own fundamental principles then it may not be a stable legal system.[16] In addition, this further gives credence to the argument that international law and municipal law are part of a universal legal order where international law is supreme,[17] and determines the jurisdictional limits of the personal and territorial competence of States, and the equality and independence of States.[18]

Dualism

The Dualist view international law and municipal law as distinct and separate systems of law arising from different sources, governing different areas and relationships, and different in substance.[19] Accordingly, its proponents argue that international law is inferior to and weaker than municipal law. Thus from a practical perspective, if a national court in a dualist state is considering a case and there is a conflict between international and national law, the court (in the absence of any legislative guidance to the contrary) would apply domestic law.[20] Thus, where municipal legislation permits the exercise of international law rules, this is on sufferance as it were and is an example of the supreme authority of the State within its own domestic jurisdiction, rather than of any influence maintained by international law within the internal sphere.[21] Put differently, where international law is incorporated into national law by the State, this is seen as an exercise of authority by the State, rather than international law imposing itself into the domestic sphere.[22] Consequently, domestic courts are not bound to apply international laws by their respective States unless those laws have been incorporated in domestic law by legislation or other means.[23] In criticizing the dichotomy in both systems of law, Dominique De Stoop observed thus:

> While both theories contain elements of truth, they tend to oversimplify the realities of the relationships between the two systems of law. In the first place, while international law and municipal law operate at different levels they also interact quite frequently. For example, under the constitution of several States, aspects of international law form part of municipal law and create rights and duties for nationals without the necessity of incorporation into national law. But in many

[15] See generally S. B. Sinha J, 'A Contextualised Look at the Application of International Law- the Indian Approach' (2004) *AIR Journal*, 33.
[16] Boas, ibid (n 1).
[17] De Stoop, ibid (n 5) 14.
[18] Ibid.
[19] Ibid.
[20] Boas, ibid (n 1) 120.
[21] Shaw, ibid (n 2) 131.
[22] Brownlie, ibid (n 10).
[23] See De Stoop, ibid (n 5) 14.

> States, treaties that have been ratified, or acceded to, have to be implemented by legislation before they can have an effect at the domestic level.[24]

4. Other Theories of Relevance

As observed above, there are other theories which are seldom caught in the dispute between monism and dualism theories. They are transformation, incorporation and delegation. Transformation is based on the dualist concept. The theory of Transformation states that no rules of International Law by its own force can be applied by municipal courts unless they undergo the process known as transformation and be specifically adopted by the municipal courts and systems. The rules of International Law are part of national law only if specifically adopted. Incorporation on the other hand posits that once created, the rule of international law automatically becomes part and parcel of the municipal or internal law of a State without the need for any ratification according to procedure laid down under the constitution. This theory is applicable in customary international law as against treaty provisions. Lastly, according to the theory of delegation, there is a laid down constitutional rule which permits each State to decide or determine for itself how and when the provisions of an international treaty or convention are to come into force and in what manner they are to be implemented or embodied into State law.

5. Applicability of Municipal Law in International Law

It is generally accepted that on the international forum, international law is undoubtedly supreme. This fact is buttressed by international conventions and the decisions of arbitral and judicial bodies. Article 13 of the Draft Declaration on Rights and Duties of States, 1949 provides as follows: 'Each State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty'.[25] Again, the provisions of the Article 27 of the Vienna Convention on the Law of Treaties[26] make certain far reaching stipulations when it states that 'a State may not invoke the provisions of internal law as justification for its failure to perform a treaty.' Again Article 46 went further to state that thus:

> a State may not invoke the fact its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.[27]

From an objective stand point, the point is that a State party should not seek to evade fulfilling an international obligation because of the existence or non existence of a provision of its internal law. It is clear that this must be the standard on the international scene if international law is to continue to succeed and to maintain its credibility. These provisions were tested in a number of popular cases that came up before international courts. In the locus classicus of Alabama Claims Arbitration of 1972,[28] the United States objected strenuously when Britain allowed a Confederate ship to sail from Liverpool to prey upon American shipping. It was held that neither the presence nor the absence of municipal or internal legislative provisions can be relied upon as a defence for non compliance with international obligations. Again, the Permanent Court of International Justice, (PCIJ) in the Exchange of Greek and Turkish Populations Case,[29] held as follows: '...a State which has contracted valid international obligations is bound to make in its legislation such modifications as may be necessary to ensure the fulfilment of the obligations undertaken'. The International Court Justice equally amplified the above position in the recent maritime boundary dispute between Cameroon v. Nigeria.[30] From the stand point

[24] Ibid. See the Constitution of France which requires immediate reception into the national legal system of 'self –executing treaties, although all other treaties require legislation.

[25] UN General Assembly, Draft Declaration on Rights and Duties of States, 6 December 1949, A/RES/375, available at: https://www.refworld.org/docid/3b00f1ec54.html Accessed 20 December 2020.

[26] See Art. 27 of the Vienna Convention on Law of Treaties, 1969 particularly at The United Nations. (1969) Vienna Convention on the Law of Treaties, Treaty Series, 1155, 331.

[27] Art. 46, ibid.

[28] J. B. Moore, *International Arbitrations* (New York: 1898) 1 at 495 at 653. See also the *Free Zones* case, (1932) PCIJ, Series A/B, No. 46,. 167.

[29] PCIJ Report, Series A/B, No. 10 (1925) at 20.

[30] See Land and Maritime Boundary between Cameroon and Nigeria (1998) ICJ Report, 275.

of Malcolm Shaw, it was observed that in the context of Nigeria's argument that the Maroua Declaration of 1975 signed by the two heads of state was not valid as it had not been ratified, the court noted that article 7(2) of the Vienna Convention provided that heads of state belonged to the group of persons who in virtue of their functions and without having to produce full powers are considered as representing their state.[31] The Court went further to state that 'there is no general legal obligation for States to keep themselves informed of legislative and constitutional developments in other States which are or may become important for the international relations of these States.'[32] Similarly, in the advisory opinion of the PCIJ in Greco- Bulgarian Communities Case which concerned the Greco- Bulgarian Convention created in the aftermath of the First World War to provide for the reciprocal emigration of persecuted minorities between the Greece and Bulgaria, one of the questions considered by the Court was, in the case of a conflict between the application of an international convention and the national law of one of the two signatory powers, which provision should be preferred? The Court replied by clearly articulating the supremacy of international law in its domain by stating that 'it is a generally accepted principle of international law that in the relations powers who are contracting parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty.[33]

In certain respects, international tribunals can elect to consider the provisions of internal law in matters coming up for adjudication before international tribunals. The domestic laws of a State party may be employed as evidence of that State's compliance or otherwise with the obligations of international law. By considering the provisions of internal law, one may be able to ascertain with some accuracy, what a particular State's stance in international law is on any given point in time. Interestingly, in cases where relevant international law is silent or absent, the international tribunal may make reference to the provisions of internal law. This was the situation confronting the International Court of Justice in the Barcelona Tracton, Light and Power Co. Case,[34] where the court was faced with company law issues and held thus: ''in this field, international law is called upon to recognise institutions of municipal law that have an important and extensive role in the international field...'' It must be emphasized however that expressions of the supremacy of international law over municipal law in international tribunals do not mean that the provisions of domestic legislation are either irrelevant or unnecessary.[35] Malcolm Shaw further amplified the above view thus:

> …it is quite often that in the course of deciding a case before it, an international court will feel the necessity to make a study of relevant pieces of municipal legislation. Indeed, there have been instances, such as the *Serbian Loans* case of 1929, when the crucial issues turned upon the interpretation of internal law, and the rules of international law in a strict sense were not at issue. Further, a court may turn to municipal law concepts where this is necessary in the circumstances.[36]

6. Applicability of International Law in Municipal Courts

The norms of international law are equally applicable in municipal systems. In fact that an act may be illegal in national law does not necessarily mean it is in breach of international law. However, this does not mean that there is no role for national law within the international sphere. However this is more complicated than the applicability of municipal law on international courts and this has given rise to a number of different approaches.[37] The general rule is that States are under an obligation to act in conformity with the rules of international law and to bear responsibility for breaches of same (international law) whether committed by any of the three arms of government (that is the executive, the legislature and the judiciary) and irrespective of the provisions of the internal law.[38] Furthermore,

[31] See M. Shaw, *International Law* 6th Ed (Cambridge University Press: 2008) 134.
[32] Ibid. See also The Polish Nationals in Dazings Case, PCIJ, Series A/B, No. 44, 21, 24, the Court declared that 'a State cannot adduce as against another State its own constitution with a view to evading obligations incumbent upon it under international law or treaties in force.
[33] See the Greco-Bulgarian Communities Case (1930) PCIJ (Series B) No. 17, and also Boas, ibid (n 1) 123.
[34] ICJ Reports, 1970, 3.
[35] See Shaw, ibid (n 31) 136. See also the Anglo-Iranian Oil Co. Case, (1952) ICJ Reports, 93.
[36] Ibid. 136-137.
[37] Ibid. 138.
[38] See Finnish Ships Arbitration, 3 RIAA, 1484.

the provisions of international treaties may require that State parties make domestic legislation,[39] and binding resolutions of the Security Council may require that States take particular actions within their territories[40]. There is additionally an unequivocal move by international law into the domestic system of law together with the domestic courts being more willing to widen their jurisdiction over matters traditionally covered by international law. The effect has been that, the age old difference between the international and municipal systems of law has become less pronounced, the role of international legal rules has been re-evaluated in the light of domestic situations and the heightened readiness of the of domestic courts to interpret the actions of municipal or local governments in the light of international law[41]. It may also be the case that the municipal court could, in certain cases, be called upon to determine questions on the applicability of a rule of international law to resolve a controversy before them[42], or be called upon to resolve conflicts between competing rules of international law such as conflict between human rights treaty rules and binding resolutions of the United Nations Security Council or between norms prohibiting torture and the notion of state immunity. It is in this regard that the paper will examine the role of international law within selected jurisdictions in Africa to adumbrate the views above.

International Law in Nigeria

International law in its various forms does not have a pride of place in the Nigerian constitution.[43] Although constitutions use different languages to indicate that international law is applicable as law of the land of a given country, it is imperative to note that such variations are significant, as this goes to the construction of the domestic constitution, or other relevant rules of national law to determine whether or not a court should treat a particular international rule as part of the national legal order.[44] In States where international law has not been made part of national law, courts will be limited in their possibility to give effect to international law, as is the case with many dualist States which requires implementation of international law in the national legal order.[45] The Federal Republic of Nigeria attained independence from the United Kingdom on October 1, 1960. However, its political and constitutional history was trailed by successive military regimes and incursions before returning to democratic rule in 1999. Nigeria as one of the common law countries which necessarily adopted an approach that is reflective of the common law tradition, and partly by customary and Islamic law.[46]

Accordingly, Section 12(1) of the Nigerian Constitution states that 'no treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.'[47] The interpretation of the above provision can be better appreciated in the case of Abacha and Others v. Chief Gani Fawehinmi.[48] In this case, Chief Fawehinmi was arrested on 30 January, 1996 by the State Security Services (SSS). He argued that the arrest and continued detention without charge violated his rights under the 1999 Constitution and the African Charter on Human and Peoples Right as incorporated in the Nigerian legislation.[49]'Nigeria's apex court, the Supreme Court of Nigeria held that, 'an international treaty entered into by one government of

[39] See decision of Trial Chamber II in the Furundzija Case, 121 ILR, 218 at 248-9.
[40] See essentially the result of measures taken by the Security Council against counter-terrorism and proliferation of weapons of mass destruction.
[41] See A. Nollkaemper, 'Internationally wrongful Acts in Domestic Courts' (2007) 101 AJIL, 760.
[42] See Al-Skeini v. Secretary of State for Defence (2007) UKHL 26; 133 ILR, 693.
[43] D. Shelton, *International Law and Domestic Legal Systems: Incorporation, Transformation and Persuasion* (Oxford University Press: 2011) 148. Needless to say that international law also features in the Nigerian Constitution particularly as part of the Fundamental Objectives and Directive Principles of State Policies in Chapter II of the Constitution, with a directive to respect international law and treaty obligations as well as the seeking of the settlement of international disputes by negotiations, mediation, conciliation, arbitration and adjudication. See s. 19 (d) of the 1999 Constitution and B. Akinrinade, 'Nigeria' in F. M. Palombino, Ed, *Duelling for Supremacy: International Law Vs. National Fundamental Principles* (Cambridge University Press: 2019) 281.
[44] See A. Nollkaemper, 'General Aspects' in A. Nollkaemper and others, Eds, *International Law and Domestic Courts: A Casebook* (Oxford University Press: 2018) 3.
[45] Ibid.
[46] Ibid.
[47] See the Constitution of the Federal Republic of Nigeria, 1999 (As amended).
[48] (2000) 6 Nigerian Weekly Law Reports, 228.
[49] See Nollkaemper, ibid (n 44) 3.

Nigeria does not become binding until enacted into law by the National Assembly. It has no such force of law as to make its provision justifiable in our courts.'[50] As Ejiwunmi, JSC in that case rightly observed, 'it is therefore manifest that no matter how beneficial to the country or the citizenry, an international treaty to which Nigeria has become a signatory may be it remains unenforceable, if it is not enacted into the law of country by the National Assembly.'[51] The above analysis clearly shows that the dualist position of Nigeria vis-a-vis the application of international law in a domestic legal order is that such international treaty becomes binding on Nigerian courts as well as superior to any other statute that is conflict with it save the Nigerian Constitution.[52]

International Law in South Africa

The rise and fall of the Apartheid South Africa paved the way for the first multi ethnic election in 1994.[53] By 1994, South Africa passed an Interim Constitution,[54] expressly recognized international law and the role it had to play in municipal law. It also dealt with issues such as signature and ratification of international agreements and their application in domestic law, the status of customary international law in South African domestic law, as well as the interpretative role of international law.[55] However, the 1996 Final Constitution[56] relates more to the role to be played by international law under the South African Constitution. Section 231 provides amongst others that, the and negotiating and signing of all international agreements is the responsibility of the national executive, and once approved by both the National Assembly and the National Council of Provinces binds the Republic.[57] However, where the international agreement is of a technical, administrative or executive nature not requiring ratification or accession entered into by the national executive, such agreement binds the National assembly and the National Council of Provinces, provided it is tabled before it.[58]

On the interpretation of international law, the South Africa Constitution provides that when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.[59] A litmus test for this provision was in the case of Tsebe and Society for the Abolition of the Death Penalty in South Africa and the Society for the Abolition of the Death Penalty in South Africa (Intervening) v. The Minister of Home Affairs and others,[60] over an arrest warrant for the extradition of Mr. Tsebe for the murder of his wife in Botswana that has not abolished the death penalty. His deportation to Botswana was halted since Botswana has not abolished the death penalty, and will amount to a violation of section 233 and South Africa's international obligations. The court particularly made reference to the need for international to conform to the South African Constitution to be binding on the courts as is contained in section 232. From the above case analysis as well as the case cited in the case of Nigeria,[61] the South African Constitution reception of international law is on all corners considering its elaborate provisions, unlike section 12 of the Nigerian Constitution which barely made reference to the enactment of treaties by the National assembly.[62]

[50] Ibid.
[51] Ibid 356-357.
[52] See Nollkaemper, ibid (n 44) 3-4. See also Akinrinade, ibid (n 43) 279-280.
[53] See generally for the history of South Africa, C. Du Plessis and M. Plaut, *Understanding South Africa* (Hurst & Company: 2019) 5 at 59-92, and F. Wiafe-Amoako, T*he World Today Series: Africa*, 54th Ed (Rowman & Littlefield: 2019) 309.
[54] The Interim Constitution of the Republic of South Africa, Act 200 of 1993 (Assented to 25 January 1994 and became effective 27 April 1994).
[55] See E. De Wet, 'South Africa' in Shelton, ibid (n 43) 568.
[56] The Constitution of the Republic of South Africa, 1996, (As amended) Act 108 of 1996 (Adopted on the 8 May 1996).
[57] See s.231 (1) and (2), ibid) and De Wet, ibid (55) 568.
[58] See s. 231(3), ibid. See also s.232 which also recognizes customary international provided such laws are not inconsistent with the Constitution or Acts of Parliament.
[59] See s. 233 and s. 39 dealing with the Bill of Rights. See also De wet, ibid (n 55) 569.
[60] Judgement of the High Court of Gauteng, 27682/10 ILDC 1782 (ZA 2011) 22 September 2011, South Africa, cited in Nollkaemper, ibid (n 44) 433.
[61] See *Sani Abacha and Ors. v. Chief Gani Fawehinmi*, ibid (n 48).
[62] See generally s. 231, 232 and 233 of the Final Constitution of the Republic of South 1996 (As amended) Act, ibid (n 54), covering negotiation, signing, ratification, customary international law and human rights.

International Law in Namibia

The struggle for control of Namibia began in the 18th Century with the discovery of diamond that saw the influx of Europeans to the region, and South Africa's annexation of the territory.[63] The eventual pressure by the UN and other western nations led to the withdrawal of South from Namibia, thus paving the way for a constituent assembly which passed the first constitution for an independent Namibia and general elections.[64] Namibia is a classic example of a monist country;[65] in other words, the norms of international agreements apply automatically within the municipal system of Namibia without the need of internal legislation to make it enforceable. According to the Constitution of Namibia,[66] all international agreements which are binding on Namibia will be part of the law of Namibia, so long as they are consistent with the Constitution and any statutes passed by Parliament.[67] For any international agreement to be binding on Namibia,[68] the President must consider and sign the international agreement first. Secondly, the text of the agreement is then taken before the National Assembly which must vote and agree to the international agreement, and thirdly, the Namibian government sends a formal notice of Namibia's acceptance of the international agreement to the depositary for that international agreement. From this explanation, it is clear that no further municipal or internal legislation is required before an international treaty or agreement becomes binding on Namibia and enforceable within its courts and judicial system.

7. Conclusion

In practical terms the world order is comprised of two legal systems namely the municipal system and the international system both of which make up the universal system. These two systems of law reinforce one another in the daily ordering of human and social action. While the division of the universal system into monist and dualist frames appear satisfactory for the purpose of theory, it is abundantly clear that in practice the division falls flat on its face since the nations of the earth apply both systems in their legal order. State practice from the examples adumbrated above within the context of applying international law in municipal courts equally revealed application of both systems of law. The essence of this article therefore is to reveal the interconnectedness of both systems of law and to make a case for the realisation of a universalist system which will help in broadening research in this regard.

[63] See Du Plessis and Plaut, ibid (n 53) 304-306. See also M. Wallace and J. Kinahan, *A History of Namibia: From the Beginning to 1990* (Oxford University Press: 2011) 304-306.
[64] Ibid.
[65] See N. Ndeunyema, 'The Namibian Constitution, International Law and the Courts: A Critique' (2020) 9 *Global Journal of Comparative Law*, 271-296.
[66] The Constitution of the Republic of Namibia, Act No. 1 of 1990 (As amended) adopted 21 March 1990, available at: <https://www.refworld.org/docid/47175fd361.html> Accessed 28 December 2020
[67] Article 144 of the Namibian Constitution at <constituteproject.org> PDF generated 14 December 2020.
[68] See International Law and Human Rights Law in Namibia Factsheet Series No. 6 of 6.