

Comparison between international law and national law

Law



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Compare and contrast the strengths and weaknesses of national and international law. To what extent can they be said to be similar or different?

Introduction The world has witnessed the development of law since times immemorial in response to growing interaction among the individuals resulting in a need for a framework to regulate their interactions in the territories they live in. Similarly, ever since the interaction between the states has increased, the evolution of International Law has evolved accordingly side by side the National Law regulating the relations among the states.

The growing role of both National Law and International Law in their respective spheres and in intersecting spheres has given rise to a debate over their relation to each other. International Law: International Law is the law that governs the relations among states and other international legal persons, and regulates relations between states. The sources of International Law are customs grown up among states and lawmaking treaties concluded by them.

There is no “black or white” answer, the most agreed upon common ground for the description of sources is found, although not exhaustively, in article 38 of the Statute of the International Court of Justice. Stating that treaties are the main source, then come customs, after those general principles of law recognized by civilized countries, and finally judicial decisions and teachings of the most highly qualified publicist of the various nations. National law: National law is the law of a state, which governs the domestic affairs of the state.

The sources of Municipal Law are customs grown up within the boundaries of the state concerned and statutes enacted by the law giving authority. Municipal Law regulates relations between the individuals under the sway of a state and the relations between the state and the individual. Strengths and Weaknesses of International Law and National Law: 1. National law is conditioned by the fundamental principle or rule that state legislation has to be obeyed, while International Law is conditioned by the principle “*pacta sunt servanda*” i. . agreements between states are to be respected—which leaves International Law helpless as to the implementation of its rules and regulations over the states in the absence of any enforcing body vis-a-vis National Law which has the state apparatus at its disposal for its implementation in the form of legislature, executive, and judiciary. Moreover, each nation can opt out of international treaties if it deems that it is not in line with its national interest, which exposes the major weakness of International Law. 2.

International Law is slow to adapt to the changes that are taking place in the world and even slower to absorb changes and encompass them into its existing framework. To add to its problems, the states act individually in accepting any changes in its framework and have the option of not complying with the law if they do not agree to do so. Whereas the national law keeps on improving in response to the changing requirement of the society thus it is in sync with the cultural, economic, and political developments of the states. 3.

The technological advancement and globalization have spawned new problems beyond the capacity of National Law to be solved such as the

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regulation of outer space, the division of the deep sea ground, the protection of human rights, anti-terrorist actions, the control of international finances system, the prevention of global warming etc. These issues have increased the relevance and importance of International Law in the contemporary world due to its wide range of jurisdiction as compared to the limited jurisdiction of National Law. 4.

Question of priority: Scholars belonging to Dualist point of view assert that the two laws are not to supersede, but to coordinate with each other; therefore, there is no conflict between the two. If a case in which conflict arises between International Law and municipal law before an International Tribunal, the practice is to prefer the International Law over the municipal law. Where conflict arises in a case before a municipal Court (except where the state has adopted the International Law to supersede, by constitution or law), the national law is preferred. 5. Where does primacy reside: in International Law or in national law.

If International Law has drawn its validity only from state constitution, it would necessarily cease its validity when authority rested upon disappears. But valid operation of International Law does not invalidate its importance and regard. For example, after Belgium became independent state, treaties had not lost their force despite internal constitutional changes. The International Law also asserts its supremacy when new states enter in international society and International Law binds them without their consents. Every state is duty bound to bring not only its laws but also its constitution in accordance with International Law. . In states, the practice as to apply International Law by municipal courts is different from each other.

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Some states have interpreted in their constitution to apply International Law and therefore, their courts are bound to apply International Law such as Germany, Korea, USA, etc. But in most states, the courts apply International Law conditioned upon the precedence and the practices of the state. Similarities Scholars belonging to the Monist view consider both the laws as a single unity composed of binding legal rules whether those rules are obligatory on states, on individuals, and on entities other than states.

If it is generally accepted that International Law is a true law then there is no doubt to deny that the two systems constitute part of that unity. In the view of Kelson and other monist writers, there cannot be any escape from the position that the two systems, because they are both systems of legal rules, are interrelated parts of one legal structure. It is the duty of state to enforce the International Law as the state law in its jurisdiction. Just as National Law aims at building and maintaining an orderly society within a state, International Law aims at maintaining a peaceful stability of the global community.

Differences There are two basic differences between the two systems: 1. Subject of law: In national law subjects are individuals whereas states are solely and exclusively subjects of International Law. 2. Juridical origin: In state, source of law is will of the individuals for which they are concerned while in international law source of law is common will of the states concerned. Thus this provides a base to the Positivist scholars to claim that the two systems are entirely different.

National law mainly is based on judge made law and the statutes passed by legislature whereas International Law is comprised of the customary rules <https://assignbuster.com/comparison-between-international-law-and-national-law/>

and treaties among the states. Malcolm Shaw delineates this difference by describing the legal apparatus of law as having a legal order enunciating that laws are created by a recognized legislating body, there is a hierarchical system of courts which sees to their enforcement, and there is an overarching executive governing entity above all citizens.

This makes national law inherently hierarchical, and the organization of authority vertical. As for international law, it does not operate within the same legal order. It is not always created by a unique legislative body (although the UN General Assembly may create nonbinding multilateral agreements), nor tried in a unified judicial body with the power to apply legally binding sentences (even if there is the International Court of Justice and many other international courts), neither applied by an overarching international executive body.

Additionally, it has no unified system of sanctions, other than the existence of certain circumstances in which the use of force is regarded as justified and legal (chapter VII of the UN Charter). Reinforcing this point, Article 2 of the UN Charter states: The Organization is based on the principle of sovereign equality of all its Members, which means that there is no overarching authority recognized over them. The fact that all states are theoretically equal, makes the international system horizontal, as opposed to the vertical one of the national level.

In this sense, if there is no overarching international authority to impose international law. Every state must give its consent in order to be bound by it. By doing so, a consenting state lets the international community know that it will follow the principles and directives of that law. Contrary to this, <https://assignbuster.com/comparison-between-international-law-and-national-law/>

citizens are automatically bound by domestic law. No citizen needs to let other citizens know he will follow the rules. Conclusion: Each and every system is supreme in its own field and neither has dominance over the other. Arguments offered just provide a background to the complex relations between the two systems.

Three factors operate on the subject matter: Firstly, to what extent state organs are willing to apply rules of International Law internally and externally. Secondly, the difficulty of proving the existence of particular rules of International Law. In case of difficulty municipal courts may rely on advice from the executive or existing internal precedents, and the result may not be in accordance with an object appreciation of the law. Thirdly, courts, both municipal and international, will often be concerned with the more technical question as to which is the appropriate system to apply to particular issues arising.