SOME REMARKS ABOUT THE RELATIONS BETWEEN MUNICIPAL LAW AND INTERNATIONAL LAW IN NORWAY

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(1) It is a striking fact that Norway is fairly poor in literature touching upon international law. In spite of the importance of foreign trade and international shipping, Norwegian jurists seem to have taken small interest in the general field of international public law or conflict of laws. Still, no Norwegian lawyer would deny that there often is a very strong link between international law and municipal law. First of all, the primacy of international law has been recognized so far that it is quite clear that no state can legally repudiate its international obligations through a reference to internal law. Secondly, the practice of the individual countries contributes to the creation of rules of international law. This is recognized by the Statute of the International Court of Justice, by modern theory and by compilers of international law cases. The great importance of municipal law for international law is proved through the weight attached to matters within the »domestic jurisdiction« of national states. It was given a certain prominence in the League of Nations through Article XV, paragraph 8, of the Covenant. The principle has again — albeit in other words — been recognized expressis verbis by Article II, paragraph 7, of the Charter of the United Nations. Several discussions in the General Assembly and the Security Council show the importance of the problem. However, in spite of its importance, it need not occupy us in this article, which is devoted to the more procedural aspects of the relations between international and municipal law. The same applies to the rule of exhaustion of local remedies so clearly recognized in international law.

(2) Few questions have been more widely discussed in the doctrine than the relationship between international and municipal law. The literature is rich in the field of general international law and special studies abound. It is a truism to state that the conflict resolves itself into a conflict concerning the oneness of law. The monists consider all law to be one and indivisible.
Possible conflicts between international and municipal law must accordingly be solved through a system of a hierarchy of norms. There are two possible solutions. The first is the theory of the primacy of municipal law. According to such a theory, which was well known in Germany, international law becomes merely a kind of »Aussenstaatsrecht«, an appendix to constitutional law. This means in reality the negation of international law.

The opposite theory, namely, the primacy of international law, means that international law is at the summit of all legal norms.

The dualists on the other hand claim that the system of international law and the different systems of municipal law are coexisting in a state of juxtaposition. The result of the dualistic conception is that international law in nearly all cases must be translated into municipal law before it is binding internally in the States. This »transformation« theory is today certainly the most generally accepted theory, at any rate on the continent of Europe.

Public international law has not resolved the conflict between these different schools.

(3) This article is an effort to examine the position of Norwegian law regarding the problems that may arise in this connection. The article is, therefore, an examination of the positive law of one given country. It is, however, hoped that this investigation may throw some light upon the general problems of the application of international law in national courts.

It should be examined whether and in case how the Norwegian courts directly apply international law where there is no conflict between the rules of international law and the rules of municipal law. The other aspect of the question is the position of the Norwegian courts where such a conflict exists. Such conflicts are possible. A treaty concluded according to the rules of international law, but not entirely in accordance with the provisions of the Norwegian Constitution is one example. It is also possible, as stated by the Permanent Court of International Justice, that the foreign minister can bind his government although his act may be ultra vires according to the Constitution. One last example will show the practical character of a conflict. The Norwegian Government occupied a certain district of Greenland which, according to the judgment of the Permanent Court of International Justice, belonged to Denmark. The Norwegian occupation was invalid ex tunc, and not only from the judgment. It is conceivable that a case may arise before a Norwegian Court touching upon the district in question in the time after the occupation.