

**INTERNATIONAL LAW AND MUNICIPAL LAW: A  
CRITICAL APPRAISAL OF DOMESTICATION OF  
TREATIES**

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**Abstract**

*International law has long debated how international treaties, and international law in general, should be applied within the territorial jurisdiction of sovereign states. There are a lot of more international treaties now than there were before World War I. Nearly 44,000 treaties were signed by the United Nations between 1945 and 2007. The line between local and international law has grown more brittle due to the quickening pace of globalization. As a result of this, States are using treaties more frequently to control actions that were previously only subject to domestic law regulation. States are ratifying many members of treaties related to international human rights law, international refugee law, terrorism, regulation of the environment, and humanitarian law in general. As a result, there is a growing overlap between domestic and international law as a result of the quantity of treaties. This pertinent question concerns the relationship between domestic and international law, which has long been the subject of debate between dualist and monist legal theories, respectively. In the municipal realm, there is no set procedure for putting international law into practice or applying it. Theoretical frameworks, application, implementation, incorporation, workability, interpretation, and the relative importance of treaty commitments vs regular statute legislation are all examined and shown to differ significantly between states.*

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## **1.0 Introduction**

International law has traditionally debated how to apply international law in local spheres. Since World War I, global law has grown dramatically. Between 1945 and 2007, around 44,000 treaties were registered with the UN, according to records. The line between local and international law has become very brittle due to the rapid expansion of globalization. Because of this, nations are using international treaties to control activities that were previously only governed by local laws. Additionally, municipal courts have a significant influence on how international law is interpreted.

Where a state ratifies an international treaty binding on the parties, the next reasonable question to be asked is whether and how the treaty's provisions can be incorporated into the party state's local legislation. For a considerable time, the legal theories of monists and dualists have been at odds on the relationship between international law and municipal law. We shall discuss these theories in detail in this chapter. However, before delving deeply into these two concepts, an evaluation of the conceptualization and history of both domestic and international law will be made. This chapter will also cover the subject of international legislation and state sovereignty.

## **2.0 History and Conceptualization of International Law**

International law upheld the creation and alteration of a global order predicated only on the idea that the only significant actors in the international system are independent sovereign states<sup>1</sup>. Nonetheless, the emergence of supranational entities subject to international law has refuted this notion. The first manifestations of international legislation were the laws of war and diplomatic immunity. The regulations regulating the acquisition of land had to change as a result of the 16th

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<sup>1</sup> Historical development of international law, available at <https://www.britannica.com/topic/internationallaw/Historicaldevelopment>  
Accessed 7 May 2024

and 17th-century era of discovery. Simultaneously, the freedom of the seas concept was established. The need for nations to cohabit gave rise to international legislation<sup>2</sup>. The history of international law determines and evaluates how state behaviour and intellectual knowledge have developed into internationally recognised law. The emergence of secular sovereign states in Western Europe is considered the historical foundation of modern international legal systems. This development of Western political organization during that period is intimately related to current international law<sup>3</sup>, even if its roots may be found in the treaties and agreements made by ancient Middle Eastern peoples. These agreements had their roots in a treaty that dates back to approximately 2100 BCE between the kings of Lagash and Umna (in Mesopotamia) and a summit that concluded in 1258 BCE between the Egyptian Pharaoh Ramses I and Hattusilis I, the Hittite king<sup>4</sup>.

The naturalist and positivist schools of thought represent the two main currents in the evolution of international law. This natural law as it is called had religious undertones. Jurists of this school include Francisco de Victoria, Francisco Suarez, Hugo Grotius, and Samuel von Pufen. On the other side of the divide, the positivists claimed that international law consists merely of norms that states have agreed to obey. This school of thought took root in the 18th century with Cornelius Van Bynkrshock, but it was in the 19th century that it became dominant.

Though the contemporary system of international law has its origins in events that occurred 400 years ago, the notion and practices that form its foundation have their roots in ancient historical politics and connections that occurred thousands of years ago<sup>5</sup>. The commonly recognised historical concept of international rules originates from the Roman legal doctrine of jus gentium and the customs among Greek city-states. Roman citizens and foreigners are subject to laws governing their

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<sup>2</sup> Rebecca M.M, International law, (Sweet & Maxwell, 3rd edn)

<sup>3</sup> Thomas Woods jr. How the Catholic church Built Western Civilization (Regnery publishing Incorporated, An Eagle Publishing Company (2012),141-142.

<sup>4</sup> <[www.Britannica.com](http://www.Britannica.com) Available at <https://www.britannica.com/topic/international-law>> Accessed 7 May, 2020

<sup>5</sup> Ibid

status and interactions, known as the *jus gentium* ("law of nations"). The Romans adopted the Greek concept of natural law and hence felt that the *jus gentium* applied to everyone. This idea of *jus gentium* specifically governed agreements made by Roman citizens and non-Romans. Contrary to what the Romans believed; these ideas were not applicable to everyone. East Asian political ideology was predicated on the Emperor of China's cosmological primacy rather than the equality of states<sup>6</sup>. The creation of international legislation was significantly influenced by ancient Israel's lengthy and rich cultural traditions, which were located on the Indian subcontinent.

It is vital to note that the Roman Empire did not originate all of global law. This is based on the fact that it addressed those areas that were not already a part of the Roman Empire without consulting any external legislation. However, the Romans enacted municipal regulations to manage exchanges between Roman citizens and outsiders. In contrast to the *jus civile*, it regulates interactions among citizens, these rules are referred to as the *jus gentium*, established some fundamental principles of justice and gave some guidelines to an autonomous, objective "natural law". These concepts of natural law and justice from the *Jus Gentium* are still relevant today and are mirrored in international law<sup>7</sup>.

In addition to the aforementioned, a large number of academics helped shape international law. Hugo Grotius was the most significant of these scholars; his treatise *De Jure Belli Ac Pacis Libri Tres* are widely recognised as the foundational texts of contemporary international law. According to Grotius, the fundamental universal reason that all people share is the source of the natural law. More than any other idea, the Dutch jurist Hugo Grotius's work influenced the development of the discipline. In particular, Grotius distinguished between theology and international law and organised the two into a logical framework in *De Jure Belli ac Pacis Libri Tres*<sup>8</sup>. Grotius emphasises the high seas'

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<sup>6</sup> Ibid

<sup>7</sup> RW Dyson, *Natural law and Political Realism in the Political Thought*, Volume 1 (Peter Lang, 2005), 127.

<sup>8</sup> Hugo Grotius, *De Jure Belli Ac Pacis Libri Tres*, 1625

independence, a notion that soon became popular among northern European countries setting out on extensive global exploration and colonisation projects.

International law encompasses the laws, rules, regulations, and general application principles that regulate the behaviour of nation-states and international organisations towards each other as well as towards individuals, whether they be natural or legal. An alternative term for international law is the "law of nations"<sup>9</sup>.

## **2.1 History and Conceptualization of Municipal Law**

The history of municipal law can be found in medieval municipal law, which was first documented as a separate legal sphere in the early thirteenth century with the founding of Freiburg in Breisgau in 1120<sup>10</sup>. Such municipal rules were not yet common in older German-speaking communities. The battle against territorial authority and the early evolution of municipal law was significantly influenced by the assertion of local sovereignty<sup>11</sup>.

Medieval municipal law is made up of regulations that are binding on a state and have legal power. These regulations were often a combination of internal laws and a set of privileges that were granted from the outside. Among the most significant characteristics of a medieval city is the presence and validity of a particular law that is distinct from the laws of the surrounding area.

A variety of additional textual sources shed light on the types and contents of municipal legislation. Among the earliest are charters, such as the one issued by Emperor Frederick I for Augsburg in 1156 or Archbishop Wichmann for Magdeburg in 1188. The beginning of the 13th century saw a significant growth in the number of cities being formed, while other settlements frequently copied the complete legal system of an older city. Soest legislation was likely the first municipal

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<sup>9</sup> Slomanson, William, fundamental perspective on international law (2011 Wadsworth), 4\_5

<sup>10</sup> Gerhard Dilcher: Art. " Stadtrecht", in:HRF Vol 4,1990, Col.1963

<sup>11</sup> Magdeburg Law, A building block of Modern Europe, municipal law (General)

law to be approved. Later thereafter, the laws of Lübeck and Magdeburg were also mainly embraced. As a result of municipal law's widespread acceptance, relationships based on it developed, which unavoidably facilitated communication between cities and the documentation of municipal laws<sup>12</sup>.

Ordinarily, customary laws that were in effect in the area or among the people who once lived there served as the basis for municipal laws. The urban society continued to diversify and grow, and most of all, the demands of merchants—some of whom traveled great distances—made unique legal restrictions necessary. These requirements gradually broke with customary law and gave rise to municipal law. With time, the previously stated charter of rights was accompanied by an increase in independent local law known as *Willküren*, or statutes. Medieval city law introduced advances in numerous areas, including commercial law, labour law, criminal law, and procedural law, which were ultimately incorporated into general national law, even if municipal laws as we know them now no longer exist. A significant influence came from the codification and rationalisation of legal theory that followed the development of municipal law.<sup>13</sup>

The national, local, or domestic legislation of an autonomous nation that clashes with international legislation is known as municipal legislation. State, provincial, territorial, regional, and local laws are among the several tiers of law that are included in municipal law. International law is mostly unconcerned with them, even if the state may see them as separate legal categories. Despite the differences, they are all treated equally. Parallel to this, common law and constitutional law of a state are treated equally under international law.

For this discourse, it is pertinent to note that Article 27<sup>14</sup> stipulates that a state must uphold its responsibilities under an international treaty even

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<sup>12</sup> Ibid

<sup>13</sup> Karl Kroeschell: Art. "Stadtrecht, Stadtrechtsfamilien", in: *Lexikon des Mittelalter*, Vol.8. München 2003, Col. 24 ff.

<sup>14</sup> U.N, the Law of Treaties, (Vienna; Treaty Series,331), 1155

if those obligations clash with local law. Article 46 of the Vienna Convention permits the only exemption in cases when a state expressly breaks a "rule of its internal law of fundamental importance" by agreeing to be bound by a convention. Bilateral or multilateral international treaties signed by sovereign nations are among the most obvious examples of the unquestionable interdependence of state-to-state interactions internationally. States concur on a broad range of topics about their interactions with one another. If the international system's system of agreements and treaties were indicated, the global map would disappear along with the conventional territorial boundaries that have been shown on maps. That is how ubiquitous these agreements and treaties are in the international system. An increasingly significant aspect of regional and international relations is the existence of international treaties. They are important for international trade relations as well as diplomacy.

This is a crucial component of treaties, which set down regulations for every area of international relations. These geographical domains comprise a complicated network of bilateral air service agreements and airspace, which is governed by international agreements, starting with the Chicago Convention in 1944. These also include space, which is governed by a sizable collection of treaties that starts with the Outer Space Treaty; the sea and the deep seabed, which are governed by the United Nations Convention on the Law of the Sea; and the environment, which is currently regulated by a number of treaties overseeing various aspects of international environmental relations. They control other interactions between nations as well, ranging from cooperative relations to territorial relations, which include statehood and territory definition, and political relations including diplomacy and consular contacts<sup>15</sup>. Interactions during conflicts are also governed by humanitarian international law, which is codified in the 1949 Geneva Conventions and its two 1977 amendments. Another area that is supported and advanced by international treaty regimes is the human rights system. This area appears to be the most important contractual regime when

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<sup>15</sup> i.e. the law of peace in international law

considering the implications of violating human rights, including the Holocaust and genocidal<sup>16</sup>.

Principles state that domestic legal systems are not the context in which international law operates; rather, it exclusively operates on an international level. This is in line with positivism, which acknowledges that local and international law are two separate and independent legal systems. However, proponents of natural law also referred to as monist legal theory, contend that international law and local law are part of the same legal framework. Monists contend that two methods—a formalistic, hierarchical method that upholds the existence of a single underlying norm guiding both municipal and international law, and a unified ethical approach that prioritizes universal human rights—could lead to the creation of such a system<sup>17</sup>.

The question of whether and how the provisions of an international treaty that has come into force and is binding on member states arises when a state ratifies it. Specifically, it is unclear how the obligations the state has taken on the international stage, which are essentially for the benefit of the people under its domestic jurisdiction, can be converted into obligations owed directly to those people under the state's domestic legal system. The link between international law and two legal theories—monist legal theory and dualist legal theory, respectively—has been the focus of a protracted discussion.

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<sup>16</sup> Makumi Mwangi, "From Dualism to Monism: The Structure of Revolution in Kenya's Constitutional Treaty Practice," *Journal of Language, Technology & Entrepreneurship in Africa* Vol.3 No. (2011)

<sup>17</sup> *ibid*

## 2.2 State Sovereignty and International Law

State sovereignty serves as the foundation for the relationship between international and local law. In the end, a state's intentions determine how it behaves towards other states. A state has willingly opted to limit its sovereignty if it is subject to international law. This has been done by the state via accepting customary international law and willingly complying with treaties<sup>18</sup>. The constructive exercise of sovereign powers by States is the source that has global law's strength. The strength of international law in certain relevant areas and its weakness in others reflect the willingness of nations to utilise their sovereign powers to uphold or contest a particular international legal norm.

Knowing the state's sovereignty is the first step towards comprehending the role of international law in local affairs. There are several definitions for the phrase sovereignty. It is said by W. Michael Reisman<sup>19</sup>, The definition of sovereignty varies based on the user's goal and the context in which it is used. Therefore, to paraphrase Lassa Oppenheim, "There may not be a concept whose meaning is more contentious than that of sovereignty." This notion has unquestionably never had a definition that is accepted by all political scientists, from the time it was introduced to the field to the present.<sup>20</sup>

The state's ability to govern itself both internally and externally is implied by its sovereignty. Within its borders, a sovereign's ability to wield ultimate and absolute authority is referred to as its internal component of sovereignty. The external aspect of sovereignty is the ability of a sovereign state to manage its internal and external affairs free from intervention or control by any other outside force. The fundamental constitutional idea of the law of nations is represented by this facet of sovereignty, which upholds state equality<sup>21</sup>.

It is also critical to keep in mind that Article 2 of the United Nations Treaty, paragraph 7, serves as the foundation for sovereignty under

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<sup>18</sup> Claude Blumann, Louis Dobois, *op. cit.*, p. 536

<sup>19</sup> Sovereignty and Human Rights in Contemporary International Law " 84:4 AJIL 866 1990

<sup>20</sup> Lassa Oppenheim, *International Law*, Sir Arnold D. McNair Ed., 4th Ed.(1928),66.

<sup>21</sup> Ian Brownlie, *Principles of Public International Law*,4th Edn (1990),287

international law. It clarifies that "the United Nations has no authority to intervene in matters which are within the domestic jurisdiction of any State...." This clause essentially grants each state the equal right to handle its affairs without external intrusion and forbids powerful governments from unduly interfering in the internal affairs of lesser states in their dealings with one another. Being sovereign is a prerequisite<sup>22</sup>. The state's sovereignty is crucial for both bilateral ties and a nation's legal personality around the world. Jean Bodin described sovereignty as "the highest, absolute and perpetual power over the citizens and subjects in the commonwealth" for all of these and many other reasons<sup>23</sup>.

Considering the aforementioned, a state needs sovereignty to engage in international legal interactions and convert them into domestic laws and duties. The only thing that comes from sovereignty is the simple fact that international law exists at all and how it interacts with local law. The mistaken notion that state practice and globalisation have eradicated independent states' long-standing, inalienable power to command and manage their internal affairs is the main cause of the misperception that is presently weakening the line across national and international legal frameworks. The ultimate goal of this unique argument is globalisation or the subordination of national legal structures to international legal systems<sup>24</sup>. The truth is that the extent to which globalisation has permeated local government has been determined by the use of sovereignty and the authority of local law. Benedict Kingsbury explained the issue as such because of this: state sovereignty is being put under pressure from globalisation and democratization, as transnational civil society is becoming more active, international regulations and institutions seem to be becoming more invasive, and unitary state control is becoming less evident. State The idea of sovereignty as a normative construct is facing growing

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<sup>22</sup> Michael Ross Fowler & Julie Marie Bunck, *Law Power and The Sovereign State* (1995), 11

<sup>23</sup> Jean Bodin, *The Six of A Commonwealth*. Kenneth D. MacRae Ed. & Richard Knolled (1962)

<sup>24</sup> John H. Jackson, "Sovereignty -Modern: A New Approach to an Outdated Concept" 97AJIL 782(2003)

challenges, particularly from a functional perspective that attributes normative primacy to the State and places it in competition with transnational commercial and local entities for the best distribution of regulatory authority. On the other hand, ceding sovereignty to a functional approach would result in more inequality, weaken the state's ability to intervene forcefully, and diminish the state's crucial roles as a locus of identity. Despite these drawbacks, the functional approach to managing inequality is still preferable to any available alternative<sup>25</sup>.

### **3.0 Theories of Application**

Theories of the application of international law in local government refer to the various approaches the state has used to determine how international law functions locally. The methods used by states to implement international law in local contexts vary. This inconsistent application arises from the differences between the two legal conceptions regarding the link between municipal law and international law. The unquestionable A state's ability to accept whichever theory it sees fit is strengthened by its sovereignty. The many ideas about how international law should be applied in local contexts vary based on whether a state is dualist or monist; these are listed below;

#### **3.1 Adoption Theory**

The notion or method of adoption used to apply international law in local settings can be understood from two perspectives. Firstly, from the monist legal theory perspective. And secondly, from the dualist legal theories perspective.

Accordingly, according to the monist theory, adoption occurs when international law is ratified and then *\_automatically incorporated\_* into domestic law. This means that the treaty is rendered as automatically applicable within the municipal realm following the provisions of the constitution of the state party<sup>26</sup>. This is the outcome of the monist perspective, which holds that international law supersedes local law and both forms a single, coherent legal system. Because of this, international law's supremacy makes it immediately applicable in the municipal

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<sup>25</sup> Ibid

<sup>26</sup> An example is the Swiss Constitutional law practice.

domain<sup>27</sup>. However, some state constitutions maintain the requirements of legislative implementation for certain treaties before they are applicable.

#### **4.0 Application of International Law within Municipal Realm**

Among the many disputes surrounding international law, the application of law in the municipal sphere has not been overlooked. In a legal void, the effects of international accords cannot be perceived. International treaties after being ratified by state parties need to be enforceable within the municipal realm for their aim and objective to be achieved. Without the effect of the international treaty being felt in the municipal realm, the international treaty is a mere waste of the papers the obligations are being printed on. There is no predetermined philosophy or process for applying international law to local governments. The difference between dualist and monist legal theories is the reason for this lack of a unified strategy. The many perspectives about the implementation of international law in the municipal sphere will be discussed in this chapter. We will go over the distinctions between agreements that self-execute and those that don't in depth.

Apart from the previously mentioned, the state's present conduct implies that specific local circumstances have different implications for international accords and customary international law. Thus, the function of customary international law in the municipal domain will also be severely examined in this chapter. Judges have examined the significance of international legislation in the context of local government through judicial activism. This will be looked at as well as the previously mentioned concerns, enforceable within their domestic realm. These states include Belgium, France, Netherlands, Spain, United States of America. In addition to such legislative implementation, states like Germany and Italy maintain the requirements of 'order of execution' before ratification. For example, through previous legislative approval—also known as quasi-automatic incorporation—the government may bind itself to contractual

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<sup>27</sup> Craven, M.C.R., *The Domestic Application of the International Covenant on Economic, Social and Cultural Rights*. (1993, NILR), 367-404

obligations and incorporate or alter the treaty into the national legal structure.

From the dualist state perspective, the adoption theory is given the literal interpretation of the word adoption. They contend that before international law can be implemented on sovereign states' territory, the party-state to the international law agreement must specifically ratify the law or covenant by legislative enactments. This view is supported by legal positivists. Examples: Under the 1993 Protection of Human Rights Act, India ratified the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social, and Cultural Rights. Thus, adoption varies depending on the meaning given to the word "adoption" by the different legal theories.

#### **4.1 An Evaluation of the Nigerian Practice of Domestication of Treaties**

Nigeria is a sovereign nation that possesses the ability to enter into legally enforceable agreements. This is a result of their admission on October 7, 1960, as the 99th member of the United Nations. Nigeria is a party to several regional and international multilateral accords. Additionally, Nigeria has over the years engaged in several bilateral agreements or reciprocal covenants with certain countries, groups of countries, and international or regional organisations<sup>28</sup>.

Moreover, consenting to the terms of the treaty is one method to acquire duties under international law. Conventionally, signing a treaty is a way to demonstrate that one intends to be bound by its terms. A treaty is a formal, written agreement between states that is governed by international legislation<sup>29</sup>. In line with the Treaties Act<sup>30</sup>, A treaty is a contract that satisfies a duty under international law and is formed between Nigeria and any other nation.

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<sup>28</sup> Available at <http://www.lawnigeria.com/FEDERATION-TREATIES.html>  
Accessed 31st March,2029

<sup>29</sup> Vienna Convention on the Law of Treaties,1969, Art 1(a)

<sup>30</sup> Vienna Convention on the Law of Treaties between State and International Organization or between International Organizations,1986, Art.1(a)

Nigeria interprets international law dualistically, in line with common law jurisdictions<sup>31</sup>. Therefore, merely having Nigeria sign a treaty is insufficient for it to become enforceable and binding in Nigeria; the legislature must domesticate the agreement<sup>32</sup>. This is by enactment of the treaties into law.

### **5.0 Treaties Making in Nigeria**

The legislation and process regarding the ability to make treaties are not specifically specified in the Nigerian Constitution. The constitution clarifies how treaties are to be implemented. The 1999 Nigerian Constitution mentions this in Section 12, Subsection 1. It states that "no treaty between the Federation and any other country shall have the force of law in Nigeria except to the extent to which any such treaty has been enacted into law by the National Assembly".

The provision of section 12<sup>33</sup>, sub-section 1 is not enough. A clear and thorough statute that specifies who is solely responsible for signing treaties with foreign countries when the topic, for example, affects national security should be sufficient. Will it be overseen by the president and the head of state and territory? The Chief of Defence Staff or the Minister of Defence? Nigerian law does not have a structure that deals with this. Throughout the boundaries of the United States of America<sup>34</sup>, For instance, the role is clearly stated. With the advice and consent of the Senate, the President may sign treaties; nevertheless, the Crown retains the authority to mark treaties<sup>35</sup>.

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<sup>31</sup> Treaties (Making Procedure etc). Act, Cap T 20 Vol. 15, LFN 2004)

<sup>32</sup> CA Okenwa, Has the Controversy between the Superiority of International Law and Municipal law been Resolved in Theory and Practice? (Journal of Law, Policy and Globalization, Vol. 35,(2015),116.

<sup>33</sup> s 12(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended. This same approach is upheld in the dualist states like England, Canada, and United States of America.

<sup>34</sup> Art 2, s. ii, paragraph C of the Constitution of the United States of America.

<sup>35</sup> Smith de S and Brazier R., *\_Constitutional and Administration Law\_* 5th Ed. (London (1989), 140. In Britain, a treaty does not become part of British Domestic law unless and until it is specifically Incorporated by a legislative measure an enabling act Wallace, R M " *\_International Law\_*,\_ 3rd Edn., London, Sweet and Maxwell (1997), 35.

In actuality, though, treaty-making often falls under the purview of exterior affairs, which the Constitution's Exclusive Legislative List expressly mentions. Since Nigeria is a federal state, the Federal Government alone has the authority to conduct treaty negotiations on behalf of the nation. This claim was supported by Nwabueze's proposition that:

The President is recognised as the head of state as he is the Chief Executive of the Federal Government. As a result, all of his internationally relevant legal actions are regarded as state actions. In essence, it consists mostly of signing international treaties, declaring war, receiving and advising diplomatic envoys, and<sup>36</sup>.

This point was given judicial flavour in *Attorney General of Abia & Ors. v. Attorney General of Federation*<sup>37</sup> case, decided by the Supreme Court, in which Ogundare, JSC, held that Nigeria, as a sovereign state, is a part of the global community at large, whereas the defendant states are not, neither individually nor collectively. Nigeria regularly demonstrates its sovereignty by signing bilateral and multinational agreements. The management of foreign relations is included in the exclusive legislative list. Thus, irrespective of any political component body inside the federation, the Government of the Federation has the only competence to address such situations<sup>38</sup>.

Oyebode opined that the explanation behind this is not implausible. Avoiding conflicts and confrontations in the area of foreign policy is one of them<sup>39</sup>, the need for a unique external identity in addition to the broad character and purview of foreign policy. Any alternative arrangements would surely be ineffectual and counterproductive,

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<sup>36</sup> Nwabueze B O, *Federalism In Nigeria Under the Presidential Constitution*. (London, Sweet & Maxwell. 1983), 255-6

<sup>37</sup> (2002) 161 WRN.1

<sup>38</sup> *ibid* at p. 75

<sup>39</sup> Oyebode A., *International Law and Politics: An Africa Perspective* (Legos, Bolabay Publishers, (2003), 118.

particularly given that federalism is drawn in part because of its cohesive foreign policy<sup>40</sup>.

It is a reality that almost every federal state has this situation. According to Dinah Shelton, " Legally speaking, national governments can sign agreements as representatives of sovereign nations, so foreign affairs, including those about international law, are generally considered matters in all federal states<sup>41</sup>.

Nigeria's treaty powers, as well as the acceptance and enforcement of certain or chosen treaties, international conventions, or traditions, are also governed by other domestic laws in Nigeria<sup>42</sup>. These legislations include:

- i. Treaties (Making Procedure, Etc) Act, Cap T. 29 Vol.15, LFN 2004;
- ii. International Financial Organizations Act (Which was commended on 30th September, 1990);
- iii. Consular Conventions Act (which commenced on 19th October 1950);
- iv. International Centre for Settlement of Investment Disputes Act (which commenced on 29<sup>th</sup> November 1967).

Three categories are established for treaties by the Nigerian Treaties (Making Procedure etc.), along with the requirements that each one must meet. These prerequisites are:

1. Lawmaking treaties (which alter or amend current laws or the National Assembly's authority). It is necessary to pass these international conventions into legislation;

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<sup>40</sup> *ibid*

<sup>41</sup> 2D L Shelton, 'International' in Dinah L. Shelton (Ed), *International Law and Domestic Legal Systems: Incorporation, Transformation, and persuasion* (Oxford University Press 2011), 21, available at [https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=faculty\\_publications](https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=faculty_publications) (last accessed 31st March, 2020)

<sup>42</sup> *Ibid*.

2. Agreement (that has scientific or technical significance or imposes financial, political, and social duties).
3. This requirement does not apply to people who work with the reciprocal sharing of resources related to culture and education and does not need legislative document approval.

### **5.1 The Extant Practice of Domestication of Treaties in Nigeria**

In Nigeria, the National Assembly plays a major and unique role in the domestication of treaties. Therefore, "no treaty between the federation and any other country shall have the force of law in Nigeria except to the extent that any such treaty had been enacted into law by the National Assembly," in line with the 1999 Constitution's section 12, subsection 1 (as amended)<sup>43</sup>. " The only body is the National Assembly in charge of enforcing and domesticating treaties in Nigeria, as this section makes abundantly evident. The reasoning behind this clause makes sense; according to the Constitution. The only branch of government that can pass laws on behalf of the federal government is the National Assembly. Of course, whether a treaty created by the now-expiring 1963 constitution's Section 74—where this point was expressly stated—amounted to an expropriation of the National Assembly's power of legislation and a serious setback to the principle of the devolution of powers.

Despite the Nigerian government's signature on the International Labour Organization agreement, the National Assembly's passage of the agreement into legislation is not supported by any evidence in court. The International Labour Organisation Convention is not enforceable in Nigeria and is not possible to apply, even if the National Assembly passed it into law. African Charter on the Human and People's Rights (Ratification and Enforcement) Act, incorporated the African Charter into Nigerian domestic law. However, when the African Charter is enacted into law by the National Assembly, it becomes legally binding

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<sup>43</sup> It is important to note that the phrase "any other country" in this provision includes 'any other subject of international law' like international organizations.

and our courts are obligated to uphold it in the same way as all other laws that come under the jurisdiction of the courts<sup>44</sup>.

Domesticated treaties serve to fill in the shortcomings in the Nigerian legal system, encourage consistency in governmental procedures, and expand the reach of the country's legal framework<sup>45</sup>. For instance, Section 11 of the 1979 Constitution, which has been preserved as Chapter II of the 1999 Constitution had some unenforceable provisions that were domesticated by the first National Assembly in 1983. This created the legal basis for the implementation of "people's rights" in Nigerian courts and made such provisions justiciable because the 1999 Constitution and all other current Nigerian laws do not recognise the Executive's ability to enforce "people's rights" without the National Assembly's approval. As a result, it was once stated that "the Legislature has the authority to make laws, not the Executive." As such, the Executive cannot sign a treaty to pass law<sup>46</sup>."

Consequently, for a treaty to be enforceable in Nigerian courts and recognized as law, it must be ratified by the country's legislative body. The policy of domesticating international treaties by enacting these accords into law before their implementation in Nigeria is recognized comprehensively by the constitution.

Section 12(1) of the constitutional amendment of 1999 (as amended), unless and until the Nigerian legislature has enacted the treaty into law, Nigerian law cannot take jurisdiction over an international treaty dispute unless the Nigerian legislature has domesticated any treaties to which Nigeria is a party. The case of *Abacha v. Fawehinmi*<sup>47</sup> supports the needs for international accords to be domesticated. In this case,

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<sup>44</sup> *ibid*, at p. 155-157.

<sup>45</sup> Enabulele A.O. (2009) " International of Treaties in Nigeria and the Status Questions; Whither Nigerian Courts." 17(2) *African Journal of international and comparative Law*

<sup>46</sup> RB Antoine, *Commonwealth Caribbean Law and Legal Systems* (2nd Ed., Routledge,2008),224. Also the dissenting opinion of Hoff man in *Lewis V. AG of Jamaica*; (2001) AC 50.

<sup>47</sup> (2000) 6 NWLR (Pt 660) p 228 at 228

Ogundare JSC ruled that a treaty that the Nigerian government has signed and approved is not legally enforceable until the National Assembly has passed it into law. As a result, in the absence of such law, Nigerian courts cannot hear arguments about the treaty's terms. As a result, they are unenforceable. In a similar spirit, *Medical and Health Workers Union of Nigeria v. Minister of Health & Productivity & Ors.*, decided before the Third Alteration Act, 2010,<sup>48</sup> The Court of Appeal held that unless the National Assembly reenacted the duties of the International Labour Convention, they could not be brought before a Nigerian court. As to the statement, Muntaka Coomassie JCA "makes provisions for the enforcement of people's rights"<sup>49</sup>.

## **6.0 Conclusion and Recommendations**

The link between internal law and municipal law was covered in great detail in the paper. It tackled it from the standpoint of dualist and monist legal systems. After considering the body of previous research as well as particular case studies, the paper's conclusions become clear and compelling. It also revealed the intricate circumstances that the various legal philosophies produced. The present legal frameworks were liberally construed in this research, leading to results that were both legally and logically sound. Therefore, it is advised that the distinction between the monist and dualist legal theories be abandoned, as well as the various strategies used by governments to apply international law domestically. When it comes to applying international law in the municipal sphere, there should be standard guidelines. This is to ensure uniformity both in the application and the command. Once more, as previously said in the paper, the Nigerian Constitution does not specifically address the legislation or process pertaining to the ability to make foreign treaties in Nigeria. The constitution provides for the execution of treaties. This is stated in the Nigerian Constitution of 1999's Section 12, Subsection 1. It states that "no treaty between the federation and any other country shall have the force of law in Nigeria except to the extent to which any such treaty has been enacted into law by the National Assembly." Therefore, since section 12, subsection 1

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<sup>48</sup> (2005) 17 NWLR pt. 953 p. 120.

<sup>49</sup> Ibid

does not enough, it is advised that a complete legislation be written that would specify who is solely responsible for forging treaties with other countries. In some jurisdictions, the definition of treaty-making authority is rather clear. In the United States, for instance, the president may ratify a only with the Senate's approval, recommendation, and backing from two thirds of the senators.<sup>50</sup> Additionally, the crown has the authority to make treaties in the United Kingdom<sup>51</sup>.

An additional proposal is to alter Section 12, Subsection 1 of the Nigerian Constitution of 1999 (as amended). Nigeria accepted international treaties in order to clear the constitutional obstacle in the way of enforcement bodies.

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<sup>50</sup> Art 2, section ii, clause C of the Constitution of the United States.

<sup>51</sup> Wallace, R.M, *International Law*, 3rd Ed., London, sweet and Maxwell (1997),35.