LAHORE LEADS UNIVERSITY

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International Law and Municipal Law

1. Meaning of International Law

• Body of rules and principles that govern relations between:

- States

- International organizations

- Individuals (in limited areas)

• Aims to maintain international peace, security, cooperation, and justice.

• Sources include treaties, customs, general principles of law, judicial decisions, etc.

2. Meaning of Municipal Law

• Also known as Domestic / National Law.

• The law operating within a state's territorial boundaries.

• Regulates:

- Rights and duties of citizens

- Relationship between state and individuals

- Functions of government organs

• Includes constitutional law, administrative law, criminal law, civil law, etc.

3. Key Differences Between International Law and Municipal Law

• Sources

- International law: treaties, customs, principles.

- Municipal law: constitution, statutes, judicial precedents.

• Law-making Authority

- International law: no central law-making body; states collectively create rules.

- Municipal law: legislature creates binding rules.

• Enforcement

- International law: no global police; depends on state consent and international mechanisms.

- Municipal law: strict enforcement through courts and authorities.

• Subjects

- International law: states and IOs are primary subjects.

- Municipal law: individuals and legal persons.

• Sanctions

- International law: diplomatic pressure, sanctions, retaliation.

- Municipal law: imprisonment, fines, penalties.

4. Relationship Between International Law and Municipal Law

Two primary theories explain the relationship:

A. Monism

• International and municipal laws form one unified legal system.

• International law is superior to municipal law.

• Treaties and customary rules automatically become part of domestic law.

• Individuals can directly claim rights under international law.

• States following monism: Netherlands, France, Belgium, Mexico.

Features:

• Unity of legal order.

• No need for transformation or incorporation.

• International law prevails over conflicting national law.

B. Dualism

• International and municipal laws are two separate and independent legal systems.

• For international rules to apply domestically, they must be incorporated or transformed.

• States following dualism: UK, India (partially dualist), Australia, Canada.

Features:

• Different subjects.

• International law does not automatically apply.

• Conflict resolved by referring to constitutional provisions and domestic statutes.

5. Theories Explaining Relationship

(a) Transformation Theory

• An international law rule becomes domestic law only when formally transformed through legislation.

(b) Incorporation Theory

• International law automatically becomes part of domestic law unless inconsistent with statute.

(c) Delegation Theory

• International law operates domestically only when domestic law delegates such authority.

6. Conflict Between International Law and Municipal Law

• Monist states: International law prevails.

• Dualist states: Municipal law prevails unless it incorporates international obligations.

• International perspective: A state cannot use municipal law as a justification for failing to fulfill international obligations.

7. Position of India

• India follows a mixed (primarily dualist) approach.

• Relevant constitutional provisions:

- Article 51(c): State shall respect international law and treaty obligations.

- Article 253: Parliament can make laws for implementing treaties.

- Article 245-248: Law-making power relating to external affairs.

• Treaties require parliamentary legislation for domestic enforcement.

• Customary international law may be applied unless conflicting with domestic law.

8. Judicial Approach (India)

• Courts often rely on international conventions:

- Vishaka v. State of Rajasthan — CEDAW used for protecting women's rights.

- Gramophone Co. v. Birendra Bahadur — Customary law is part of domestic law unless inconsistent with statutes.

• Courts avoid interpretations conflicting with India's international obligations.

9. Importance of Harmonization of International and Municipal Law

• Ensures effective implementation of treaty obligations.

• Helps avoid international responsibility for violations.

• Promotes rule of law, human rights protection, and global cooperation.