

## **Book Review – The Intersection of International Law and Domestic Law: A Theoretical and Practical Analysis**

**David Björgvinsson**

**Edward Elgar, 2015, pp 200, ISBN: 9781785361869**

The relationship between international law and domestic law is an active concern in many jurisdictions.<sup>1</sup> Since ancient times, theorists have given significant attention to the nexus between these two forms of law.<sup>2</sup> In the contemporary international legal system, this relationship has become more precarious and unclear.<sup>3</sup> This has generated many conflicting views.<sup>4</sup> Whereas the existing scholarship on this issue mostly analyses theory,<sup>5</sup> David Björgvinsson attempts to address the topic in a more practical way in *The Intersection of International Law and Domestic Law: A Theoretical and Practical Analysis*. The book is a valuable contribution to the relatively small number of empirical analyses of the intersection of international law and domestic law.

Björgvinsson, a law professor at the University of Copenhagen and University of Iceland and former judge at the European Court of Human Rights, demonstrates his expertise in both international law and general legal theory in this 2015 publication. This book is a very fine piece of writing on how domestic law and international law transect in practice, and the consequences of this intersection. One particular strength of the book is Björgvinsson's focus on recent theories, in addition to classical theories.

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<sup>1</sup> See, eg, Visar Morina, Fisnik Korenica and Dren Doli, 'The Relationship between International Law and National Law in the Case of Kosovo: a Constitutional Perspective' (2011) 9(1) *International Journal of Constitutional Law* 274.

<sup>2</sup> See, eg, Fisnik Korenica and Dren Doli, 'The Relationship between International Treaties and Domestic Law: a View from Albanian Constitutional Law and Practice' (2012) 24(1) *Pace International Law Journal* 92.

<sup>3</sup> *Ibid* 93.

<sup>4</sup> *Ibid* 275. See, eg, *Obligation to Prosecute or Extradite (Belgium v Senegal) (Judgement)* [2012] ICJ Rep 422; International Justice Resource Center, 'Extraordinary African Chambers; Hybrid Court to Try Former Chad Director Hissene Habre' 13 February 2013, International Justice Resource Center <<https://ijrcenter.org/2013/02/13/extraordinary-african-chambers-hybrid-court-to-try-former-chad-dictator-hissene-habre/#gsc.tab=0>>; *Singarasa (Nallaratnam) v Attorney General* (2006) SC SPL (LA) No 182/99 (Sri Lanka Supreme Court).

<sup>5</sup> See, eg, Janne Nijman and Andre Nollkaemper, *New Perspectives on the Divide between National and International Law* (Oxford University Press, 2007).

For instance, Björgvinsson examines socio-psychological<sup>6</sup> and positivist theories<sup>7</sup> as well as monist and dualist theories.<sup>8</sup>

The book is well structured, consisting of two parts. Björgvinsson analyses the theoretical aspects of the intersection between the two forms of law in the first part, and practical aspects in the second part. The first part begins with a brief analysis of the nature of international law, and discusses how international law and national law can intersect. This ensures that the book is accessible to any reader even with a basic knowledge of international law. Björgvinsson then analyses theoretical frameworks relating to this intersection. In the second part, Björgvinsson analyses the practical impact of monism and dualism using six country case studies: France, Germany the United Kingdom, Denmark, Norway and Iceland. In this section Björgvinsson identifies a number of approaches that have emerged in the selected countries. His examination of approaches related to monism and dualism is comprehensive, and includes parliamentary participation in the treaty making process and ratification of treaties,<sup>9</sup> the doctrine of automatic incorporation,<sup>10</sup> and the doctrine of transformation.<sup>11</sup>

Björgvinsson's central argument is that there is, in practice, no absolute monism or dualism. As a result, in any state – whether it claims to be monist or dualist – a mixed system will emerge.<sup>12</sup> For instance, Björgvinsson argues that rules relating to the ratification, incorporation and creation of treaties rarely fit pure monism or pure dualism.<sup>13</sup> A comparative analysis of the six case studies (which represent both European and Nordic backgrounds) demonstrates this view.

The book has several shortcomings. One major issue is that Björgvinsson focuses primarily on the dualist tradition. Compared to the principles and concepts he discusses in relation to dualism, Björgvinsson only analyses a handful of principles related to monism. The analysis is thus unbalanced. This is also evident from the case study selection. Four out of six case studies presented are from the dualist tradition. Additionally, the analysis of the monist states is less comprehensive than the other analyses. Notably, Björgvinsson gives particularly significant attention to (dualist) Iceland.

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<sup>6</sup> David Björgvinsson, *The Intersection of International Law and Domestic Law: A Theoretical and Practical Analysis* (Edward Elgar, 2015), 21.

<sup>7</sup> *Ibid* 23.

<sup>8</sup> Cf, eg, Dinah Shelton, *International Law and Domestic Legal Systems: Incorporation, Transformation and Persuasion* (Oxford University Press, 2011).

<sup>9</sup> *Ibid* 43.

<sup>10</sup> *Ibid* 56.

<sup>11</sup> *Ibid* 60.

<sup>12</sup> *Ibid* 16.

<sup>13</sup> *Ibid*.

One other shortcoming is Björgvinsson's analysis of sector monism. Sector monism is a system of automatic incorporation which is prevalent in monist states, whereby international obligations in a certain field automatically become part of national law under statute.<sup>14</sup> Norway and Iceland are states with sector monism, and are included in Björgvinsson's analysis. However, despite his focus on Norway and Iceland, Björgvinsson only briefly touches on sector monism. The book could have been enhanced by extending this analysis.

Despite these shortcomings, the book is a valuable contribution to the small number of empirical analyses of the intersection of domestic law and international law. It has a clear and logical sequence that is easy to follow. Its introduction to international law and the theories used is a particular strength, allowing the book to be used both as a beginners' guide and as a more thorough analysis of the intersection of domestic law and international law. Although the analysis on some issues could have been extended, compared to other titles in this area, the book is comprehensive.<sup>15</sup> Björgvinsson's analysis of more recent theories is an especially welcome contribution. Given these strengths, *The Intersection of International Law and Domestic Law: A Theoretical and Practical Analysis* is warmly recommended.

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<sup>14</sup> Ibid 85.

<sup>15</sup> Cf, eg, Shelton, above n 10.

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