

Summary

Interactions of International Law and Constitution in the Interpretation of Treaties

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1. Interactions of international law and constitution in the interpretation of treaties arise both from the position of domestic agencies of interpretation and from the relationship between treaty provisions and substantive domestic law.
2. In evaluating decisions involving treaty interpretation it is imperative not to restrict one's focus to the reasons given by a decision-maker but to look also for non explicit motives.
3. The constitutional framework for the incorporation of treaties in a particular country is a possible contributing factor to the behaviour of domestic agencies of interpretation.
4. The courts of the countries examined in this paper (Federal Republic of Germany, Austria, Switzerland, England) usually subscribe to a method of interpretation which takes due account of international law.
5. An incorporation of treaties by specific legislation requires an agency of interpretation to seek a compromise between the requirements of statutory interpretation and those of treaty interpretation.
6. Problems arising with the interpretation of treaties, which are authentic only in a language (in languages) other than the official language of the forum, can only be resolved through a reasonable compromise between strict adherence to the authentic text(s) and the linguistic capabilities of the agencies of interpretation.
7. Informal understandings between governments concerning questions of treaty interpretation, which are neither incorporated nor duly promulgated, are to be regarded by applying organs not as binding agreements but as part of the wider context of subsequent practice.

8. The practice of international judicial organs in interpreting treaties is an important aspect for domestic agencies of interpretation. In evaluating this practice it is not helpful to concentrate on the question of its binding force. Its legal relevance is determined by a number of factors contributing to a higher or lower degree of authority.
9. Deference must be given to decisions of certain international institutions which have been endowed with powers to adopt official authoritative interpretations, irrespective of their incorporation into domestic law.
10. In interpreting treaty terms domestic legal terminology has to be treated with much caution. Experience with the European Convention on Human Rights shows clearly the dangers of projecting domestic legal concepts into treaties.
11. Apart from the well-known phenomenon of treaty interpretation in conformity with the constitution of the forum, the practice in many States displays a tendency towards interpreting treaties in the light of the local legal and social systems.
12. The practice of domestic decision-makers, especially courts, in interpreting treaties, cannot be explained exclusively by reference to the prescriptions of domestic law providing for the application of treaties.