

The Effects and Application of International Law on National Tribunals

**Prepared by Vladimir Paul
Justice of the Constitutional Court of the Czech Republic**

Three important factors in the legal sphere of every state form the framework of this significant International Judicial Conference, i.e., criminal law, commercial law and effective courts. I take it as quite natural that the fourth panel should devote its attention to the questions of international issues and obligations.

If today's discussion should concern the effects and the application of international law on national tribunals as a logical consequence of all the legal topics and questions raised in the previous panels, I feel we have to begin with the basic question of how international law becomes a part of the internal legal system of any state concerned.

When we discuss international law, we understand naturally both sources of it, i.e. valid international customary law and international treaties. The way through which they become effective in the sphere of national law may, however, differ according to the will of the state concerned.

In the Anglo-Saxon legal systems, it can be characterized as usual that, when making their decisions in cases, judges of the domestic courts always apply the rules of customary international law directly, and in some cases they apply treaty rules directly as well. In the continental legal systems, we can see two different ways forming the basis for the application of international rules. In the first way, the rules of international law are transformed into some form of national legislation, e.g. such as laws, and so become obligatory for all subjects of national laws and apt for application by national courts. The second way may be called incorporation, which is actually found and used in the sphere of international treaties. The advantage of such a procedure is that a rule of international law will be moved into or will be absorbed into the national legal order without losing the form which it has or had acquired in the sphere of international law.

After this short introduction, we may come over to the problems which may arise in the application of international law by national tribunals. In the first situation, i.e. where international law, both customs and treaties, is transformed into national laws or other legal regulations, the courts have at their disposal the corresponding legal norm, valid within the state and adopted in accordance with the laws of the state. In the case of international treaties, the text of them is usually published as a part of that legal norm or