Implementing Customary International Law in Domestic Contexts: A Comparative Study with Special Reference to Sri Lanka

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Abstract

Principles of Customary International Law (CIL) has been a primary source of international law, which has had a profound impact on the development of international law particularly at the early stages of its development. Due to the unique nature of its formation, it is complex to understand the way that the CIL principles can be implemented in a domestic context since international law does not provide a mechanism as to how a country should deal with its obligations arising out of CIL at the domestic sphere. Also, the theories of monism and dualism have failed to capture the realities of state practices pertaining to the implementation of CIL at the domestic contexts. In this backdrop, this study argues that a constitutional provision would be helpful in implementing CIL in a domestic context. Using a qualitative methodology followed with a comparative analysis of the constitutional provisions of India, United Kingdom, United States and South Africa, this paper submits a proposal for a suitable constitutional provision for the recognition and implementation of CIL in Sri Lanka. The findings reveal that a constitutional provision that provides a formula to incorporate CIL principles to the domestic law would allow not only the implementation of the CIL principles , which are formulated through the state practices and the *opinio juris* of a State concerned and also advance the separation of powers and the rule of law since the said formula would help to define the respective roles of the three branches of the government on how CIL principles should be absorbed into the domestic sphere and it will help to make CIL principles certain and achievable in the domestic context. The outcome of such a provision will lead to uphold the rights and duties of individuals in par with the international CIL obligations of a country.

Key Words: *International Law under Domestic Law; Monism and Dualism; Constitutional Recognition of International Law; Customary International Law*

Introduction

At the beginning of stages of international law customs played a significant part in the progressive development of international law. One of the main reasons for this was that at the international level, there was no legislature who could legislate for the entire world and concluding treaties were not a common occurrence (Klabbers, J. 2017).. Dixon (Dixon, M. 2013) refers to customary international law as the foundation of modern law of nations. A 'custom' in general refers to a practice of individuals which in certain circumstances acquires the force of law (Bederman, D. 2010). At the international level, it is not the individuals but states who are mainly responsible for the development of customary international law (CIL) through their practices. CIL, unlike treaties are limited in their scope. CIL is formed without any formality by mere state practice alone and states become bound by those rules of CIL when they start to practice them. These practices must not be based on mere convenience and there must be some belief that practicing in a certain way is something which the law obliges a state to do. This element is referred to as the *Opinio Juris Sive Necessitatis* which is translated as 'an opinion of law or necessity'.

In the contemporary international law, CIL has lost some of its prominence. Friedmann (n.d.), in his book Changing Structure of International Law (2nd ed.), published by Columbia University Press, points out that since CIL is clumsy and slow moving, it has lost its relevance and the hold it had on international law. One reason is that most customary rules have been codified by treaties. The Vienna Convention on Diplomatic Relations of 1961 is a prime example of this. On the other hand, writers such as D'Amato (D'Amato, A. 1971). points out that, CIL are still relevant due to its dynamic nature and universal application. While we may have to concede that CIL might have lost its former glory as being the primary source of international law, but to say that it is of no relevance is something which would not be acceptable since in order to develop international law CIL would always remain relevant as CIL is the main basis for

the creation of international treaties which for the most part has codified the existing CIL.

Constitutive Elements of Customary International Law

Article 38 (1) of the Statute of International Court of Justice (ICJ) lists international customary law as a source of law. Article 38 (1) (b) provides that 'international custom, as evidence of a general practice accepted as law' is a source of international law, which the ICJ has to consider in pronouncing its judgements. Therefore, in order to establish an existing CIL, one must prove that, the practice is accepted as law. Higgins (Higgins, R. 1995). comments on the rather unsatisfactory nature of the provision. She argues that the provision speaks of a custom as evidencing a practice. However, it is generally the other way around where a practice would establish a custom. Further, practice alone will not be able to establish a custom unless it is accepted as law.

In order to establish the existence of a CIL there are two elements that must be proved. Firstly, the material element, which refers to the behavior and practice of states. Secondly, the psychological element, commonly referred to as the *Opinio Juris Sive Necessitatis* must also be proved. The second element requires a state to continue with its practice because it feels that doing so is mandatory or is sanctioned by law and not something which is discretionary (Wallace, R., & Ortega, M. 2013).

The Material Element

This refers to the behavior of a state regarding their dealings at the international level. In establishing this element, there are three general requirements which must be met. Firstly, the duration of the practice must be evidenced. Unlike in domestic law, international law does not require the proof of prolonged state practice. In the *North Continental Shelf Caes (1969I. C.J Reports 3)* held that, even

if the duration of the state practice in question only amounted to a short period of time, it would not bar a claim for recognition of a CIL.

What is required is that, the practice must have been extensive and uniform. Secondly, the extent to which the state practice has been carried out is a vital consideration. In the *Asylum Case* Colombia v Peru the ICJ held that (1950 I.C.J Reports 266), what is required to be shown is a 'constant and uniform usage' practiced by the sates. It further held that when there is too much variance in the practice it does not give rise to a practice which results in a CIL. Thirdly, in providing evidence of sate practices, concluding treaties, exchange of diplomatic correspondence, statements of state officials at the domestic and international forums and even domestic legislations may be used to evidence state practice. In the ***Continental Shelf Case,*** Libya v Malta ICJ concluded that (1985 I.C.J Reports 13), the material of CIL must be ascertained from looking at the actual state practice. Further, the court held that in determining the existence of a CIL, the practice of a state must be considered as a whole and not in isolation.

The Psychological Element

In order to establish a CIL, state practice must be such that, it is persuaded not because it is more convenient, but that a state feels a legal obligation to do so and this 'state of mind' is important to constitute a valid CIL. Therefore, it becomes important to distinguish between practices which the states themselves feel as being legally obligatory from those that they believe which are discretionary. Kelsen states that (Kelsen, H. 1952), this second element requires the states be convinced that their conduct, either in doing something or refraining from doing something is either a right or a duty which the law has imposed upon them. A practise that states follow as a matter of convenience is not capable of creating any binding CIL. In *Military and Para Military Activities in and Against Nicaragua*, Nicaragua v USA ICJ held that (1986 I.C.J Reports 14), the practice of states must be accompanied by *Opinio Juris Sive Necessitatis.* State

practice must have resulted in a belief that their actions or omissions were obligatory than discretionary and this subjective requirement is the very essence of the idea of *Opinio Juris Sive Necessitatis*.

Compared to treaties, rule creation under CIL is little more complicated. However, when it comes to the application of CIL at the domestic level, the question as to the existence of a CIL is mostly not a question of domestic law and it falls under the realm of international law. The real question for the domestic legal system is to find the proper place of CIL within the domestic sphere.

Constitutional Guide to Implementing Customary International Law

The constitution, whether written or unwritten is considered as the supreme law of the country and from a rule of recognition perspective, it would be the ultimate rule upon which every other rule will derive their recognition and authority. Therefore, it is argued that having a constitutional provision for the recognition and implementation of customary international law is an important aspect since such constitutional recognition will in turn help to keep the legal certainty regarding the applicability of CIL at the domestic law which falls under the broader domain of rule of law. When one considers the actual practice of states, they have given more prominence to treaty law instead of CIL in their domestic constitutions. It can be argued that, since customs and general practices are unwritten sources of international law which may lack clarity, precision, and security. Therefore, countries may be a bit reluctant to give them a place in the constitution. However, it is argued that the above-mentioned concerns do not warrant an ouster from the constitutional provisions a place for CIL, which has been recognized as a part of the law of the country by countries such as Germany, Greece, USA, and Switzerland and somewhat recently in South Africa.

Need for Constitutional Provisions

The need for constitutional recognition of CIL remains in the fact that, even at some depreciated level, the importance of CIL at the international level cannot and should not be ignored. In particular, where undertaking treaty obligations may not be in the best interest of a country or such cannot be undertaken with reservations that a particular country desires and yet adhering with some of its provisions are in the best interest of the state and its individuals. Therefore, countries can use CIL to be bound by such provisions at both the international and domestic level. The flexibility and the non-rigidity of CIL allows for more maneuverability when it comes to the use of CIL at both the international level and domestic level. For example, if a state decides to opt out of a CIL, they can use the persistent objector rule. This rule allows a state to avoid adhering with a norm of CIL by persistently objecting to accept and act by such a norm (Green, J. (2016).

When one considers the role played by the executive branch regarding concluding treaties, the executive plays a significant role in the conclusion of a treaty. When it comes to CIL, the executive branch has almost no role to play in it. Most of the time, executives may be unaware of the CIL principles applicable to their state. Therefore, it may also be difficult to bind the executive to the rules and principles of CIL. However, if the constitution is to recognize CIL as a part of the law of the country and since an executive is, in most cases bound to protect and advance the constitution, she/he would not be allowed to disregard the principles of CIL in managing her/his conduct as the executive (Prakash, S. 2006).

Specifying the Role of the Judiciary Regarding CIL

Judicial activism in general is appreciated as advancing and protecting human rights in the domestic context. Where a judiciary adopts international standards (mostly found in CIL) over domestic ones in their decision making referring to

international law, sometimes they do this by violating the constitutional fundamental of separation of powers, whereby in reality they make laws which is exclusively reserved for the legislative branch. There is also the danger of setting a bad precedent which may have irrevocable adverse consequences. However, by recognizing and implementing CIL through a constitutional provision and, demarking the limits of the judiciary and by providing for their competence concerning CIL at the domestic sphere, the role of the judiciary can be made more certain.

This argument is more valid in countries where they use a monistic approach in incorporating CIL into domestic law without any enabling legislations. Under such circumstances, it would be the judiciary who would have to decide on the applicability of such CIL at the domestic level. However, by providing a constitutional guide as to what is required of the judiciary in such a situation, a country can strive to protect the constitutional fundamentals of separation of powers and the rule of law. This can be achieved by providing a constitutional provision as to the effect and status of CIL under the domestic sphere.

The following section discusses the respective constitutional provisions which provide for the recognition and implementation of CIL under constitutions of Sri Lanka, India, United Kingdom, United States of America, and South Africa to discern the respective provisions and practices.

Sri Lanka

The 1978 Constitutions of the Democratic Republic of Sri Lanka does not have a provision for the recognition and implementation of CIL at the domestic sphere. While Article 27(15) which requires the State to both foster and respect for its international obligations, not being made justiciable, hints that the country should respect CIL, since it refers to both international law and treaties. One can logically argue that if international law meant both treaty law and CIL, a separate mention of treaties would become superfluous. Therefore, it can be

logically concluded that, the need to respect and foster CIL is embedded under the state directives of the country. However, the matter ends then and there, as state directives are made non-justiciable. Therefore, it is not possible to sanction any disregard of CIL by any organ of the government.

The proviso to Article 13 (6) also refers to CIL when it comes to creating an offence that did not exist under the laws of the country. The crux of Article 13 (6) is that, no person shall be punished for an offence which did not exist when the person committed an act or omission which constituted the offence by implementing retrospective penal legislations or provisions. However, the proviso states that, where such an offence was a crime, according to the general principles of law recognized by the international community of states, that the general rule will not apply. The term 'general principles of law' denotes that it also includes CIL since, CIL falls within the generality of the phrase 'general principles of law'.

A similar provision is found under the Article 11(g) of the Canadian Charter of Rights, where it provides that, any person who is charged with an offence has the right not to be found guilty, unless such an offence is recognized under Canadian or international law or that it was criminal according to the 'general principles of law' recognized by community of nations. Since the Canadian Charter refers to both international law and general principles of law recognized by the community of nations, the latter part clearly refers to CIL (Currie, J. 2008). However, since the Sri Lankan provision only contains 'general principles of law' recognized by the community of nations, one must conclude that it should include both treaty law and CIL.

In the case of *Sepala Ekanayake v Attorney General* Article 13 (6) came into question (1988 1 Sri L R 46). In this case the Mr. Sepala was accused of hijacking an aircraft which was not an offence under the domestic law when he committed the act. However, he was later convicted, according to the Offences against Aircraft Act No, 24 of 1982 which was enacted after this incident and as a direct result of it as well. The government took the decision to implement this

legislation since it had ratified several conventions relating to aircraft related offences. When the conviction was challenged based on Article 13 (6) which prohibits enacting retrospective penal legislations, the court took the opposite view and relied on the proviso that allowed retrospective legislations to be made regarding offences which are recognized under the 'general principles of law' recognized by the community of nations.

When one considers the judicial application of CIL in the domestic sphere, the results that have been yielded are both inconsistent and unsatisfactory (Seneviratne, W. 2020). Some of this can be linked to the non-availability of a proper constitutional guide for the recognition and implementation of CIL at the domestic sphere. Therefore, including such provisions would be of importance, especially in the sphere of human rights at least since many of the substantive human rights are found under principles of CIL. This would be important for the individuals of the state in the absence of incorporated treaties which provides for the same.

India

Article 51 (c) of the Indian constitution is considered as the guiding stone regarding Indian state practice concerning CIL. Article 51 (c) is phrased in similar terms to that of Article 27 (15) of the Sri Lankan Constitution. Article 51 (c) provides that the state shall foster respect for international law and treaties, where the separate use of international law denotes CIL as with the case of Sri Lanka. Article 51 (c) of the Indian constitution comes under the directive principles which is also identical to Sri Lanka. However, the similarities end there, since under the Indian Practice, state directives are not considered as mere decorations to impress the eye, instead they are meant to create legal obligations that binds the state (Singh, G. 2015). In the case of *Annakumaru Pillai v Muthupayal* the court upheld the CIL norm concerning the existence of the historic title by virtue of prescription and acquisition of other states (1907 ILR

Mad 551). However, to the shock of many international lawyers, in *ADM, Jaipur v Shivakant Shukla* the court held that (1907 ILR Mad 551), the Universal Declaration of Human Rights (UDHR) did not form a part of the Indian municipal law. Justice Beg observed that, it was not possible to wave in ethical considerations to the fabric of the constitution under some disguise and the final test of recognition and validity of a law must depend on the constitution itself and not on some extraneous considerations.

In commenting on this decision, G. P. Singh states that the decision is not correct on the merits (Singh, G. 2015). He argues that according to Article 372 of the constitution, which validates the laws that existed prior to the commencement of the constitution is only subject to the limitation where there is a conflict between such existing provision with a provision of the constitution, where the constitution provision shall remain valid and this was held in the decision of *Sunil Kumar Bose v State of West Bengal* (1950 AIR Cal 274). Further, the phrase 'law in force' coming under Article 372 refers not only to statutory law, but also includes common law of the country.

Therefore, according to the common law, where an international custom was not inconsistent or repugnant with the provisions of domestic statutory law, such international custom must be enforced. This was also reflective of the dissenting judgement of Justice Khanna, in *ADM, Jaipur v Shivakant Shukla* (1976 2 SCC 521) where the learned justice concluded that, where there is a conflict between domestic law and international law, the courts must give primacy to the domestic legal provisions and if there is no such conflict, then the courts are required to arrive at a harmonious interpretation so as to enable the state of India to fulfil its obligations arising under Article 51(c) of the constitution. Further, in the case of *Vellore Citizens Welfare Forum v Union of India* (1996 5 SCC 647) the court held that, the precautionary principle and polluter pays principles, as recognized under CIL are part of the domestic law of India since there is no conflict between those principles and the provisions of the domestic law.

When one considers the constitutional provisions found in India and Sri Lanka relating to the position of CIL as envisaged under the respective constitutions, they are placed in equal footings. However, when it comes to the overall effect, the Indian state practice is at a much more acceptable level, since they have considered directive principles coming under the constitution as being creating obligations rather than mere decorations. Therefore, while the same constitutional provisions have worked in India, they have certainly not worked in Sri Lanka.

United Kingdom

In the United Kingdom, in the absence of any specific constitutional provisions relating to the recognition and implementation of CIL under the domestic legal system, the rules of common law apply to the recognition and implementation of CIL. Brownlie (Crawford, J. 2012) states that, according to the wisdom of the common law approach, CIL becomes a part of the domestic law through 'incorporation'. This accords with the monistic school of thought, where they argue for a direct application of international law without any interventions from the legislature. Under the premise of incorporation of CIL in the domestic legal system, a rule found under CIL will be held valid unless it does not come into conflict or is otherwise repugnant with the provisions of the domestic law. However, Wallace (Wallace, R., & Ortega, M. 2013) states that this is a somewhat of an oversimplification. In the case of *West Rand Central Gold Mining Company v, The King* (1905 2 K.B. 391) Lord Alverstone commented that, where a rule of international law has received the common consent of the community of civilized nations, such would become applicable in the United Kingdom. Such international rules will be applied by the courts of the country when the occasion arises. However, where such international law has not been accepted by the courts of the country, or if the state practice is not universal, then such an international law would not form a part of the laws of the United Kingdom.

In this judicial pronouncement, Lord Alverstone emphasised the need of assent to any alleged rule of CIL.

In the case of *Chung Chi Cheung v, The King* (1939 A.C. 160) *Lord* Atkins held that, international law will have no validity until such are accepted and adopted by the domestic law of the country and this can be done either by legislative enactments or through judicial pronouncements as long as such international laws do not conflict with the existing laws of the country (both statutory law and common law).

These decisions are based on the doctrine of stare decisis, where a principle of international law to be generally applied, it would at least have to be recognized under the doctrine of precedent where, once such an international law is recognized, it will become binding according to the doctrine of precedent. However, in the case of *Trendtex Trading Corporation v Central Bank of Nigeria* (1977 Q.B. 529) Lord Denning held that, the only workable method in bringing CIL into the domestic sphere is through incorporation and not through the doctrine of precedent. He stated that, international law knows nothing about the doctrine of precedent and where a CIL has changed over the past 50 or 60 years, under the doctrine of incorporation, the courts in the country can bring that change in the CIL to the domestic sphere without having to wait for the House of Lords to do it.

The very broad interpretation given to the reception of international law at the domestic legal system above was somewhat restricted in the decision of *R v Jones* (2006 UKHL 16) where the court held that, domestic incorporation of CIL was subject to the constitutional process of United Kingdom and according to which new crimes could not be introduced in to the domestic legal system without Parliamentary legislation.

Under the current state practice of the United Kingdom, CIL will be given effect where it does not come into conflict with the existing statutes and judicial pronouncements. Further, the limitation imposed upon the grounds of

constitutional process will also become applicable and save possibly with the exception provided in *Trendtex* (Wallace, R., & Ortega, M. 2013).

The system adopted in the United Kingdom which is based on common law can be appreciated for using the method of incorporation to bring CIL provisions into the domestic legal system as CIL develops in a rather sporadic manner. However, subjecting such method of incorporation to the ridges of stare decisis takes away the possibility for any incorporation of progressively developed rules of CIL. Therefore, form a Sri Lankan perspective, adopting the method of incorporation, where CIL is allowed to be a part of the domestic legal system where there is no conflict with the existing norms of the domestic legal system is a point to be taken note of, except for subjecting it to the doctrine of precedent.

United States of America

With respect to the status of CIL in the domestic sphere, the constitution of the USA surprisingly does not make any specific reference as it does with treaty law. The constitution only speaks of domestication of international law through legislation when it comes to international treaties and not principles of CIL. Dubinsky (Dubinsky, P. 2011). States that, the practice of the USA regarding recognition and implementation of CIL in the domestic sphere is closer to being monist. He further states that, the utility of CIL in the USA will depend on such considerations as whether the CIL in question creates private rights for individuals, do the individuals have *locus standi,* or are there any procedural barriers for the recognition and implementation of CIL at the domestic sphere. Due to these barriers, he claims that the USA is less monist than other countries when it comes to the incorporating CIL in the domestic sphere.

The true position of CIL within the USA legal system was laid out in the case of *Paquete Habana* (1900175 US 677) where the Supreme court pronounced that, CIL is a part of the law of the USA and in the absence of a treaty, executive or

legislative act or a judicial decision, recourse must be made to the customs and usages of civilized states. However, when there are qualifications such as the availability of a treaty or an executive or legislative act, then where there is a conflict between CIL and such other provisions, the latter will prevail over CIL. In *United States v Fawaz Yunis* (1991 30 I.L.M) the court held that**,** the duty of the court is to enforce the constitution of the country, its treaties, and laws. It does not include a duty to confirm with the norms of CIL. It further went to state that, where there is a conflict between a domestic statue and a rule of CIL, the former will prevail and the CIL will be modified to the extent of the inconsistency with the statute at the domestic sphere.

In the final analysis, CIL is accepted as part of the legal system of the USA if such does not conflict or is not repugnant with provisions of national legislations or judicial decision. It must be mentioned that, compared to the status enjoyed by international treaties which are considered on an equal footing with federal statutes, CIL on the other hand stands below treaties in the legal system of the USA. The practice of USA is also very much similar to that of the United Kingdom, except may be for the more liberal approach shown towards the CIL by the courts.

When one looks at the practice of the USA regarding the recognition and implementation of CIL at the domestic level, there is not much difference in the system adopted in the United Kingdom. Therefore, when one considers these practices from a Sri Lankan perspective, it can be argued that would need a better constitutional arrangement than what we find under the USA constitution where there is a lack of reference made to the role of CIL in the domestic sphere.

South Africa

The 1996 South African Constitution has constitutionalized the common law approach found in other countries that were discussed above. Article 232 of the constitution provides that, CIL is a part of the domestic law of South Africa

unless it conflicts with a provision in the constitution or a provision of a statute. This is suggestive of a more monistic approach in incorporating CIL into the domestic sphere. Dugard opines that, by constitutionalizing the common law practice, it has added more weight to it (Dugard, J. 2005). He also states that, CIL is placed above subordinate legislation and that, a rule of CIL is only subordinate to an Act of Parliament or the constitution. It is also to be noted that, unlike in the United Kingdom and the USA, CIL is not subordinate to judicial pronouncements. This further elevates the status of CIL in the domestic legal system of South Africa.

Dugard is of the view that, Article 232 of the constitution dealing with the status of CIL in the domestic sphere is not a complete Article (Dugard, J. 2005). He argues that, in order to determine which rules of CIL would apply and how to prove the existence of such CIL would have to be done by looking at previous judicial pronouncements. Since CIL falls within the ambit of common law, which the courts have judicial notice of, they can look for its own decisions and decisions of foreign jurisdictions, as well as decisions of international tribunals in determining the existence of a CIL.

In this regard, South African courts initially used a very stringent method in determining whether a CIL was part of the South African law or not. In *Du Toit v Kruger* (1905 22 SC 234) the court held that, to prove the existence of a CIL in the South African legal system, one must prove that such CIL is universally accepted. This stringent method was somewhat relaxed in the case of *Inter-Science Research and Development Services (Pvt) Ltd v Republica Popular De Mozambique* (1980 2 SA 111) where the court held that, universal recognition of a CIL was not an absolute condition that had to be met and where a CIL becomes a general rule of international law, every state who did not oppose of such a rule would be bound by that.

Erika de Wet opines that, CIL has not found prominence in court practice and where reference is made, it is done mostly to inform the reasoning or the interpretation of the decision already made by the courts (De Wet, E. 2011).

Thus, CLI is not used to form the basis of the decision. The judicial attitude has also not been enthusiastic in recognizing and implementing CIL at the domestic level. For example, in the case of *Harksen v President of the RSA* (1998 2 SA 1011) while the High Court accepted the definition provided for a treaty under the VCLT, in the Constitutional Court, it was held that Article 46 of the VCLT which restricts the ability of a state to evade treaty obligations by claiming that such treaties were concluded without the consent of the state, was not universally accepted so as to consider such as a part of the CIL.

Proposed Constitutional Provision

Chapter XX International Law			
International Law	**Article 1**		The state shall be bound by its international obligations both at the international and domestic level. It shall foster respect for the obligations arising out of, either international agreements or principles of customary international law in good faith and must keep to its obligations.
	Article 2		International obligations, whether arising from international agreements or principles of customary international law which are either made a part of the domestic law or shall be deemed to have been made a part of the domestic law as provided in the preceding Articles shall be justiciable and enforceable at the hands of the citizens of the country.
Customary International Law	**Article 3**	**(A)**	Customary international law shall become a part of the law of the state as to the extent which is not inconsistent with the provisions of the constitution or any enacted statutory provisions of the Parliament.
		(B)	In determining the existence and application of a customary international law under the domestic legal

	system, the courts must apply the criteria found under international law for such determination.
(C)	The Supreme Court may recommend to the Parliament, the need for enacting a statute on a specific principle of customary international law considering its usage under the domestic legal system, the importance of such a statue for the fulfilment of international obligations of the country and the surrounding circumstances of each case which may warrant such enactment.

Source; Robinson, n .d.

Conclusion

In the contemporary international framework, the prominence of customary international law has whittled down with the emergence of treaties. However, this is not to suggest that customary international law has lost its vigor altogether. This is evident from the number of new international legal principles that are developed under customary law. In this setting it becomes vital to have a proper system in which these developments in customary international legal principles can be absorbed into the domestic legal system and the above analysis indicates that the best viable solution lies in the Constitutional recognition and implementation of customary international law. In this regard, when compared to other jurisdictions discussed above, South African Constitutional provisions, though it only codifies the principles found under the common law regarding recognition and implementation of CIL under the domestic legal system, provides for the most effective constitutional provision for such an endeavor.

Considering the matter from a Sri Lankan Perspective, these provisions are very much capable of being employed in the domestic sphere and such would for sure enhance and promote the rights and duties of individuals through the domestic incorporation of CIL in areas where there are no constitutional or statutory provisions.

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