Does Formal Rank Matter?

A Framework-Oriented View on the Binding Force of International Human Rights Law on Constitutional Law

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1 Introduction

As is well known, different countries may have a different attitude toward the formal rank of international human rights law[1] in the hierarchy of domestic legal order. While the superiority of international human rights law over national constitutional law is recognized by some legal orders, many if not most countries determine the rank of international human rights law in between the constitution and the statutes or simply as the rank of ordinary statutory law.[2] In those countries that qualify the rank of ratified international human rights law merely as statutory law, the formal rank of international human rights law is often used as an argument against the binding force of international human rights law on domestic constitutional law. For example, in context of the German constitutional order, international law enjoys the same rank as federal statute. Accordingly, the major opinion

[1]In context of this paper, international human rights law primarily refers to international treaties or agreements on human rights. This specification does not imply that this paper argues for an absolute distinction between international treaties and customary international law, but rather results from the fact that international treaties or agreements on one hand and customary international law on the other hand are sometimes ranked differently in the hierarchy of domestic legal order. For example, according to the German Basic Law, customary international law (including those norms qualified as *ius cogens*) enjoys a higher status in the hierarchy of German legal norms in comparison with ordinary international treaties. See, e.g., Talmon (2013, pp. 12–16), Herdegen (2015, pp. 176–180), Tomuschat (2013, Rn. 26–27), Vöneky (2013, Rn. 26), Geiger (2009, pp. 152–153, 160–161), Czerner (2007, pp. 548–549), Rojahn (2001a, Rn. 37–40), Rojahn (2001b, Rn. 37), Krumm (2013, pp. 366–367), Lehner (2012, p. 400) and Payandeh (2009, pp. 471–475, 486).

[2]See Denza (2014, pp. 418–425) and Herdegen (2015, pp. 172–173).

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maintains that the German Constitution is not bound by the international human rights law.[3] On the other hand, however, the case of Taiwan tells another story: Although the Taiwanese Constitutional Court itself ruled that international treaties hold the same status as statutory law,[4] it seems that this determination on the formal rank of international law not at all stops the Court from referring to international human rights law in light of its constitutional interpretation. Moreover, in some rare cases, it seems that the Taiwanese Constitutional Court even recognized the binding force of international human rights law on constitutional law. In view of this contrast between Germany and Taiwan, the following discussion intends to clarify the relationship of international human rights law and domestic constitutional law through exploring why or in what sense the binding force as well as practical influences of international human rights law on constitutional law cannot be totally determined by the formal rank of international law in domestic law. I will argue that, from a framework-oriented point of view, the determination on the formal rank of international human rights law in domestic legal order matters only because it has to do with the determination of a certain constitutional order on the way in which it concretizes international human rights law.

2 The Formal Rank as Well as Normative Role of International (Human Rights) Law in Domestic Law: Lessons from a Comparison Between Germany and Taiwan

2.1 The German Perspective: International Human Rights Law as an Interpretative Tool

As indicated in the introduction, according to the mainstream opinion of the German scholars of constitutional law, international treaties rank as statutory law in German constitutional order. Article 59.2 of the German Basic Law provides, "Treaties that regulate the political relations of the Federation or relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law. […]" Based on this provision, the German Constitutional Court has constantly held in its case-law that international treaties or agreements, "to the extent that they have come into force for the Federal Republic of Germany, have the status of a federal

[3]See Sect. 2.1 for further discussion.

[4]See Judicial Yuan Interpretation No. 329. For an official English translation of this decision, see Justices of the Constitutional Court, Judicial Yuan, R.O.C. (1993). See Sect. 2.2 for further discussion.

statute."[5] It is thus generally accepted that even the international human rights laws are unlikely to override the German constitutional law and constitutional rights (*Grundrechte*). Accordingly, the European Convention on Human Rights only enjoys the same status as statutory law[6] and thereby does not have a normative binding force on German constitutional law. In its famous case of *Görgülü*, for example, the Constitutional Court of Germany held that, while the German public authority is committed to international cooperation, "the Basic Law did not take the greatest possible steps in opening itself to international-law connections." Rather,

> [t]he Basic Law is clearly based on the classic idea that the relationship of public international law and domestic law is a relationship between two different legal spheres and that the nature of this relationship can be determined from the viewpoint of domestic law only by domestic law itself; this is shown by the existence and the wording of Article 25 and Article 59.2 of the Basic Law. The commitment to international law takes effect only within the democratic and constitutional system of the Basic Law.[7]

Under the premise of the supremacy of the Basic Law,

> [t]he text of the Convention and the case-law of the European Court of Human Rights serve, on the level of constitutional law, as guides to interpretation in determining the content and scope of fundamental rights and constitutional principles of the Basic Law, provided that this does not lead to a restriction or reduction of protection of the individual's fundamental rights under the Basic Law – and this the Convention itself does not desire.[8]

In its decision on *Sicherungsverwahrung* in 2011, the Constitutional Court reaffirmed the supremacy of the German Basic Law over the European Convention on Human Rights. As the Court said:

> Invoking the European Convention on Human Rights as an interpretation aid for the provisions of the Basic Law is results-oriented, as is the European Convention on Human Rights itself with regard to its enforcement in national law. It does not aim at a schematic parallelization of individual constitutional concepts, but serves to avoid violations of international law. […] Against this background something similar is true of an interpretation of the concepts of the Basic Law that is open to international law as of an interpretation based on a comparison of constitutions: similarities in the text of the norm may not be permitted to hide differences which follow from the context of the legal systems: the human rights content of the agreement under international law under consideration must be 'reconceived' in an active process (of reception) in the context of the receiving constitutional system.
>
> Limits to an interpretation that is open to international law follow from the Basic Law. In the first instance, such an interpretation may not result in the protection of fundamental rights under the Basic Law being restricted; this is also excluded by the European Convention on Human Rights itself. This obstacle to the reception of law may become relevant above all in multi-polar fundamental rights relationships in which the increase of liberty for one subject of a fundamental right at the same time means a decrease of liberty

[5]See BVerfGE 111, 307 (317). For an official English translation of this decision, see Bundesverfassungsgericht (2004). See also Herdegen (2015, pp. 172–173) and Schweitzer (2010, pp. 179–181).

[6]See only Herdegen (2011, pp. 36–37), Richter (2010, p. 176) and Langenfeld (2002, p. 95).

[7]See BVerfGE 111, 307 (318).

[8]BVerfGE 111, 307 (317).

> for the other. The possibilities of interpretation in a manner open to the Convention end where it no longer appears justifiable according to the recognized methods of interpretation of statutes and of the constitution. Furthermore, even where the Basic Law is interpreted in a manner open to the Convention—just as when the case-law of the European Court of Human Rights is taken into account on the level of ordinary law—the case-law of the European Court of Human Rights must be integrated as carefully as possible into the existing, dogmatically differentiated national legal system, and therefore an unreflected adaptation of international-law concepts must be ruled out.[9]

Following this viewpoint of the Constitutional Court, most German scholars of constitutional law maintain that, while the constitutional significance of international human rights law is fully recognized, it by no means suggests that the international human rights law "trumps" the German Basic Law. This point of view is clearly reflected in the recent debates on the right to strike of civil servants. As is well known, in the cases of *Demir and Baykara v. Turkey* and *Enerji Yapi-Yol Sen v. Turkey*,[10] the European Court of Human Rights declared that Article 11 of the European Convention on Human Rights guarantees the right to collective bargain and does not allow a general ban on the right to strike for civil servants. This interpretation of the European Convention on Human Rights leads to a collision with the constitutional order of the German Basic Law, which, according to the mainstream opinion in Germany, explicitly prohibits the right to strike for civil servants.[11] Nevertheless, in reaction to the incompatibility between the European Convention on Human Rights and the German Basic Law on this issue, many if not most German scholars insist that the general strike prohibition for civil servants is constitutionally fixed and therefore must not be lifted through constitutional interpretation of the courts even in view of the principle of the Basic Law's commitment to international law.[12] This example shows that, while the European Convention on Human Rights serves as a significant interpretative tool in determining the content and scope of constitutional rights guaranteed in German Basic Law, its practical influence on constitutional interpretation is limited due to lack of formal binding force.

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[9]See BVerfGE 128, 326 (369–371). For an official English translation of this decision, see Bundesverfassungsgericht (2011).

[10]See EGMR, Urteil vom 12.11.2008, NZA 2010, 1425; EGMR, Urteil vom 21.4.2009, NZA 2010, 1423.

[11]See only Battis (2011, Rdnr. 71, 73).

[12]*Ibid*., Rdnr. 65, 67. See also Widmaier and Alber (2012, pp. 401–402), Lindner (2011, p. 306), Scholz (2014, pp. 582–583) and Kees (2015, pp. 73–77). This opinion is supported by a series of decisions of the administrative courts, including a recent decision of the Federal Administrative Court of Germany. See only OVG Münster, Beschluss vom 23.4.2012, NVwZ 2012, 890 (892, 898); VG Osnabrück, Urteil vom 19.8.2011, NVwZ-RR 2012, 323 (325); BVerwG, Urteil vom 27.2.2014, NVwZ 2014, 736 (738–742). For an overview of Germany's debates on the right to strike for civil servants, see Seifert (2009), Schubert (2012) and Traulsen (2013).

2.2 *The Taiwanese Perspective: International Human Rights Law as a Symbol of Internationalization*

From a formal perspective, international human rights law has a similar status in Taiwanese legal order. Although there is no specific constitutional provision concerning the rank of international law or international treaties in domestic law, the Constitutional Court of Taiwan ("Judicial Yuan") explicitly held that international treaties "hold the same status as statutes."[13] Interestingly, however, it does not follow from this statement that the Taiwanese Constitutional Court thus has a similar attitude towards the normative role of international human rights law in light of its constitutional interpretation. Rather, both the Taiwanese Constitutional Court and many scholars of constitutional law tend to recognize the special significance of international human rights law based on its international character. As is well known, Taiwan has been isolated from international legal community over the past few decades, while in reality the interaction between Taiwan and the international society has never stopped growing. Against this background, Taiwan has been eager to take part in more international activities, including international agreements on human rights, and thereby tends to regard the reference to international human rights law in light of constitutional interpretation as a symbol of "internationalization" of Taiwanese constitutional order. In this respect, therefore, it is not surprising that, for many Taiwanese scholars of constitutional law, international human rights law is to be classified as supra-positive legal principles and precisely in this sense has a binding force on domestic law.

In comparison with the academic discussions, the Taiwanese Constitutional Court has rarely referred to international human rights law in its constitutional adjudication. Nevertheless, it can be inferred from the 12 cases in which international or regional human rights treaties were mentioned that, from the viewpoint of the Constitutional Court, international human rights law actually plays a significant role in determining the content of the Taiwanese Constitution and especially constitutional rights. For example, in Judicial Yuan Interpretation No. 587, the Constitutional Court held that "A child's right to identify his/her blood filiations was declared by Article 7, Section 1, of the UN Convention on the Rights of the Child, validated on September 2, 1990. The right to establish paternity is concerned with a child's right to personality and shall be protected under Article 22 of the Constitution."[14] Moreover, Judicial Yuan Interpretation No. 710 went one step

[13]See Judicial Yuan Interpretation No. 329.

[14]See Judicial Yuan Interpretation No. 587. For an official English translation of this decision, see Justices of the Constitutional Court, Judicial Yuan, R.O.C. (2004a). See also Judicial Yuan Interpretation No. 372, Justices of the Constitutional Court, Judicial Yuan, R.O.C. (1995a), Judicial Yuan Interpretation No. 392, Justices of the Constitutional Court, Judicial Yuan, R.O.C. (1995b); Judicial Yuan Interpretation No. 582, Justices of the Constitutional Court, Judicial Yuan, R.O.C. (2004b), for similar arguments concerning the normative significance of international and regional human rights law to the constitutional interpretation of the Taiwanese Constitutional Court.

further and indicated that even the special constitutional provisions dealing specifically with the sensitive relationship with the Chinese People must comply with the corresponding international human rights treaties. As the Court said:

> The Preamble of the Additional Articles of the Constitution stipulates, "To meet the requirements of the nation prior to national unification, the following articles of the Constitution are added or amended to the Constitution in accordance with Article 27, Paragraph 1, Subparagraph 3; and Article 174, Subparagraph 1, of the Constitution: […]" Article 11 of the Additional Articles of the Constitution provides, "Rights and obligations between the people of the Chinese mainland area and those of the free area, and the disposition of other related affairs may be specified by law." […] Given that the two sides of the Taiwan Strait are currently governed by different political entities, restrictions are therefore imposed on the freedom of people from the Mainland Area to enter into the Taiwan Area (see J.Y. Interpretations Nos. 497 and 588). However, after formally obtaining permission from the competent authorities and having legally entered the Taiwan Area, the freedom of movement of people from the Mainland Area should in principle be protected by the Constitution (see Article 12 and Paragraph 6 of the General Comment No. 15 of the UN International Covenant on Civil and Political Rights). Except where immediate actions are otherwise required in response to a threat to national security or social order, the mandatory deportation of a person from the Mainland Area who legally entered into the Taiwan Area must fulfill corresponding due process requirements (see Articles 13 of the UN International Covenant on Civil and Political Rights; Article 1 of Protocol No. 7 to the European Convention on Human Rights). In particular, mandatory deportation of Mainland spouses who have been permitted to legally enter into the Taiwan Area requires extra caution because it significantly affects marriages and family relationships.[15]

These examples show that, while international human rights law ranks merely as statutory law in Taiwanese legal order, the Taiwanese Constitutional Court tends to recognize its binding force on domestic constitutional law insofar as the international human rights laws and treaties are generally deemed to be principle- and value-oriented and as such bind the domestic constitutional order.[16]

3 A Human Rights Perspective on the Significance of International Human Rights Law in Domestic Constitutional Order

3.1 International Human Rights Law as "External Law?"

The foregoing discussion shows that, while both in Germany and in Taiwan the international human rights treaties formally rank as ordinary statutory law, the German and the Taiwanese Constitutional Courts as well as constitutional law

[15]See Judicial Yuan Interpretation No. 710. For an official English translation of this decision, see Justices of the Constitutional Court, Judicial Yuan, R.O.C. (2013). For a critical analysis of this decision, see Hwang (2016a, pp. 109–111, 117–118).

[16]See also Hwang (2016a, pp. 111–113) and Chang (2012, p. 22).

scholars construe the relationship between international human rights treaties and domestic constitutional rights in a very different way. As mentioned above, it is generally accepted in Germany that the formal rank of international human rights laws and treaties as statutes already implies their limited normative significance to domestic constitutional order and constitutional norms.[17] On the contrary, it is frequently argued in Taiwan that international human rights laws and treaties enjoy the same rank as statutes and thereby are to be recognized as "part of the law." As such, they serve as the effective and binding norms in domestic legal order. Moreover, according to the general opinion in Taiwan, this recognition usually means that international human rights laws and treaties have a binding force even in relation to domestic constitutional law, as it is important to Taiwan to claim itself to be part of the international legal community. On one hand, the different attitudes towards the binding force of international human rights law on constitutional law in Germany and Taiwan clearly reflect the incomparable international status of these two countries: Many German scholars of constitutional law believe that the standards of human rights protection in Germany and especially through the German Constitutional Court are relatively high in international comparison. To this extent, they resist the overreaching influences of international human rights law on domestic constitutional law because they are worried that Europeanization and internationalization might do harm to the high quality of human rights protection in German constitutional order.[18] By contrast, most Taiwanese are not only fully aware of the fact that Taiwan has been isolated from the international legal community for a long time, but also tend to recognize that the level of human rights protection in Taiwan falls behind the international standards. Accordingly, they feel it necessary to frequently refer to international human rights laws and treaties both from the perspective of international relations and from the viewpoint of human rights protection.[19] On the other hand, though, this contrast between Germany and Taiwan reveals common ground in the sense that the majority opinions in both countries tend to regard international human rights law as "external law."[20] Precisely under this presupposition, international human rights law is either limited to "interpretative tool" in reaction to the fear of invasion by international human rights laws and treaties, or it is automatically classified as something superior and

[17]In contrast with international human rights law, such as the European Convention on Human Rights, the European Union law (primary law in particular) is qualified by most German scholars as "supranational law" based on the highly integrative character of the European Union, so that its human rights norms – especially the Charter of Fundamental Rights of the European Union – are in principle recognized to enjoy superiority over domestic law. Nevertheless, even such superiority (the so-called "primacy in application [*Anwendungsvorrang*]") is never deemed absolute in the opinion of the German scholars as well as the German Constitutional Court. See only Voßkuhle (2010, pp. 3–4), Masing (2015, pp. 477–478) and Peterson (2012, pp. 248–255).

[18]See, e.g., Bäcker (2015, pp. 395, 397–400), Lübbe-Wolff (2010, pp. 198–199), Huber (2008, pp. 194–195), Thym (2006, p. 3250) and Grimm (2013, pp. 591–592).

[19]See, e.g., Kure (2011, p. 153), Chang (2009, p. 260) and Lin (2010, p. 38).

[20]For a more detailed analysis, see Hwang (2016a, pp. 93–98).

progressive and in this respect may replace domestic constitutional law without difficulties.

It follows from these brief observations that, unlike the general impression, the formal rank of international law in domestic legal order does not have much to do with the binding force of international human rights law on domestic constitutional law. Nor is it able to clarify the interaction between international human rights law and domestic constitutional law. This explains why the German Constitutional Court as well as many German scholars cannot but recognize the special significance of the European Convention on Human Rights to German Basic Law even though they insist that international human rights treaties rank merely as statutory law.[21] The decisive factor in determining whether or in what sense international human rights law has a binding force on domestic constitutional law, therefore, lies not in the formal rank of international law in domestic law, but rather in the theoretical presuppositions with regard to the relationship between international human rights law and national constitutional rights. As illustrated above, the majority opinions in Germany and Taiwan distinguish themselves from each other to the extent that they have a different attitude towards the role as well as function of international human rights law in pursuit of the realization of human rights. Nevertheless, a closer look reveals that both the German and the Taiwanese discussions regard international human rights law as external law from the very beginning and on this basis believe that a conflict between international human rights law and domestic constitutional law could only be avoided either by absolutely denying the quasi- or supra-constitutional significance of international human rights law or conversely by simply substituting the international human rights standards for the domestic ones. In this way, however, the human rights issue is inevitably turned into the competence issue (particularly with regard to the relationship between international and domestic courts), whereby the protection of human rights can no longer play the central role.

3.2 International Human Rights Law as a Framework Order

The classification of international human rights law as external law from the perspective of domestic legal order corresponds to the general dualistic impression that international law and national law are qualitatively different. However, even regardless of the question whether this viewpoint on the nature of international and national law is persuasive, the "external law"-presupposition itself triggers human rights concern. First, those who insist that international law and national law are

[21]See BVerfGE 111, 307 (317–318); BVerfGE 128, 326 (368). See also Papier (2006, pp. 2–3), Schaffarzik (2005, p. 867), Schröder (2013, p. 284), Polakiewicz and Kessler (2012, p. 843) and Bergmann (2006, pp. 110–114).

heterogeneous legal norms tend to overlook the potential compatibility between international and domestic human rights law. In other words, they tend to presuppose that the contents both of international human rights law and of domestic constitutional rights norm are predetermined and fixed and thereby resistant to external influences. In this way, however, they neglect that, at the domestic level, even a norm collision with international human rights law could be avoided through constitutional interpretation which takes international human rights laws and treaties into account.[22] From this point of view, the "external law"-presupposition inevitably runs counter to the protection of human rights because it fails to notice the dynamic dimensions of human rights developments. Secondly, and more fundamentally, it seems that this "external law"-presupposition is based on the classic conception of sovereignty, according to which any intervention of international human rights law into domestic constitutional law may threaten the self-determination of national (legal) order.[23] As a result, for (normal) countries like Germany, it is plausible to insist on national sovereignty in cases where national constitutional rights norms are not compatible with international human rights law. On the other hand, even though in reality Taiwan has not been allowed to join or to ratify any international human rights treaties after it left the United Nations in 1971, the mainstream opinion in Taiwan seldom challenges the binding force of international human rights law on the basis of national sovereignty precisely because it is fully aware of Taiwan's special international situation. The cases of Germany and Taiwan thus illustrate that, from the viewpoint of the "external law"-presupposition, the potential conflict between national sovereignty and human rights could only be avoided either by ignoring the former or by sacrificing the latter. Clearly, this point of view misconstrues the relationship between national sovereignty and human rights particularly in the age of internationalization and globalization of human rights protection.[24]

These analyses indicate that, overall, the "external law"-presupposition fails to notice the framework character of international human rights law, that is to say, it neglects that international human rights norms, just like the human rights norms of national constitutions, are usually not fully predetermined provisions, but rather consist of numerous task delegations on the basis of which the national constitutional orders are authorized and at the same time obliged to concretize international human rights norms so as to fulfill the ultimate goal of international

[22]In light of the German debate on the right to strike for civil servants, for example, the alleged conflict between the German Basic Law and the European Convention on Human Rights could have been avoided simply through a more dynamic understanding of Article 33.5 of German Basic Law, where the term "traditional principles of the professional civil service" is apparently open to interpretation. For a detailed analysis of this issue, see Hwang (2017).

[23]See only Grimm (2013, pp. 591–592), Di Fabio (2005, pp. 242–243, 250, 256) and Di Fabio (2013, p. 183).

[24]See only Kelsen (2000, pp. 333–336, 339–343), Kelsen (1966, pp. 573–588).

human rights law.[25] From a framework-oriented point of view, therefore, neither international nor national human rights norms are to be interpreted as content-fixed norms. Rather, in light of the multi-level system of human rights, in which most mechanisms of human rights protection are to be concretized and implemented by the national authorities, the human rights norms both on international and on national level are open to communication, influence as well as dynamic development.[26] Viewed this way, the international human rights law functions not as external law which either threatens or is ready to replace the domestic constitutional order, but rather as delegation norm that needs to be concretized through domestic constitutional law and precisely in this sense calls for cooperation with national law. Moreover, to the extent that international human rights law constitutes a framework order of human rights protection, it is apparent that a monistic view on the relationship between international and national human rights law not necessarily endangers the national sovereignty.[27] On the contrary, the monistic view that recognizes the superiority of international human rights law presupposes and guarantees enough room for national self-determination in the sense that, from a framework-oriented perspective, the superiority of international human rights law does not indicate that all the national mechanisms of human rights protection must be predetermined or completely dominated by international human rights norms.[28] As mentioned before, the framework character of international human rights law already implies the delegated power of national authorities in pursuit of the realization of human rights protection. Accordingly, the national constitutional order is bound by international human rights law only in the sense that it is obliged to contribute to the realization of the goals set by the framework order of international human rights law.

4 Conclusion: The Formal Rank Issue from the Framework-Oriented Perspective

The foregoing analysis not only illustrates that the determination on the formal rank of international law in domestic legal order does not have much to do with the binding force of international human rights law on national constitutional law, but

[25]For the framework character of international human rights law, see Hwang (2016a, pp. 93–105). See also Hwang (2014a, pp. 575–586), Hwang (2013, pp. 307–322), Hwang (2014b, pp. 410–418) and Hwang (2016b, pp. 380–386).

[26]See, e.g., Hwang (2014b, pp. 416–418) and Hwang (2016b, pp. 384–386).

[27]For the contrast between Monism and Dualism within the context of international legal theory, see only Kelsen (1981, pp. 120–241), Herdegen (2015, pp. 168–171) and Schorkopf (2007, pp. 237–240).

[28]This dimension of Monism (with primacy of international law) has been clearly demonstrated by Hans Kelsen's international legal theory. See only Hwang (2014a, pp. 577–586).

also suggests that the contemporary mainstream opinion on the issue of the relationship between international and national human rights norms misconceives the binding force of international human rights norms exclusively as a content-based predetermination because it interprets the human rights norms in an over-materialized way and thereby neglects the cooperative dimension of the interaction between international and national human rights law. As previously argued, from a framework-oriented point of view, recognizing the binding force of international human rights law on national constitutional law by no means indicates that the contents of national human rights norms are to be determined and dominated by international human rights laws and treaties. Rather, the international human rights law has a binding force merely in the sense that, as a framework order, the international human rights law delegates and at the same time obliges the national constitutional orders to concretize international human rights norms and in this way to fulfill the task of human rights protection.

The foregoing discussion does not imply that the formal rank of international human rights law in domestic legal order is not important at all. Rather, from a framework-oriented perspective, the phenomenon that international human rights law ranks differently in different countries reflects the fact that, precisely on the basis of the delegating framework order of international law, the national legal orders are usually delegated to determine the most appropriate rank of international human rights law so as to protect human rights in a way most suitable to domestic interests and needs.[29] As illustrated above, though, the determination on the formal rank does not and should not affect the binding force of international human rights law on domestic constitutional law. Especially in light of the multi-level system of human rights, it is precisely a cooperative interaction between international and national human rights norms that is able to contribute to the maximal realization of human rights. Observed this way, the framework order of international human rights law argues for a monistic construction of the relation of international to domestic law on one hand and yet puts special emphasis on the constructive role of national constitutional law in pursuit of human rights realization on the other hand. For the national constitutional order, therefore, international human rights law is neither external nor heterogeneous law, but rather sets the human rights goals that are to be fulfilled particularly by the national constitutional orders.

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[29]See also Bleckmann (1996, p. 140), Nettesheim (2016, Rn. 173), Ruffert (2007, pp. 246, 249), Stein (2006, p. 506) and Buchholtz (2014, p. 199).

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