Examining International Treaty Governance within the Iraqi Legal Framework: Ratification, Implementation, and Constitutional Challenges

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ABSTRACT

The term "treaty" as defined in Article 1(2) of the Vienna Convention on the Law of Treaties encompasses any written agreement in international law, irrespective of nomenclature, adhering to principles of international law and intended to be legally binding. This broad definition provides states with a framework to establish international relations and uphold their international commitments. However, conflicts may arise between international treaties and national legal systems. Therefore, this study aims to explore the position of international treaties within Iraq's legal framework, specifically examining conflicts between treaties and domestic laws, as well as discrepancies between the Iraqi Constitution of 2005 and Treaties Conclusion Law No. 35 of 2015 (TCL). The investigation focuses on the legislative and executive bodies responsible for ratifying and implementing treaties. While Iraq's legal system adheres to the Dualist Theory to resolve conflicts between domestic and international law, a discordance exists between the constitution and treaty conclusion law. Under the Iraqi Constitution, parliamentary approval is mandated for all international treaties, while Law No. 35 categorizes treaties, granting the prime minister discretion over some types without parliamentary oversight.

KEY WORDS: International treaties, Iraqi legal system, Treaty implementation, Constitutional provisions, Conflict resolution.

1. [1]INTRODUCTION

International treaties give a major part in the evolution of international relations, sovereignty, the fields of international law, and the principles on which they are based. This leads to attention being paid to the influence of these international treaties on the situation of states. To legalise these international treaties, the international community has adopted the Vienna Treaty on the Law of Treaties of 1969. This enables states to establish relations and work with each other on a legal basis, in addition to preventing any conflict between them by not resorting to the use of force to resolve conflicts. According to legal principles, when states enter into an international treaty, it becomes binding after signing and ratification. In addition, states must respect international obligations. However, in terms of implementation, conflicts between international treaties and domestic legal systems are possible because states pay more attention to the sovereignty of their domestic legal systems. Undeniably, states determine the position of international treaties within the framework of their domestic legislative system through their domestic laws, represented by their constitutions, and therefore provide a solution to any conflict between the treaty and the law or constitution. The significance of this study lies in addressing conflicts between international treaties and the Iraqi legal system, with the aim of offering solutions within this complex context. Notably, conflicts may arise between the Iraqi Constitution of 2005 and Treaties Conclusion Law No. 35 of 2015 (TCL) concerning the delineation of executive and legislative powers in the ratification of international treaties. Consequently, several crucial questions emerge: in cases where conflict

Koya University Journal of Humanities and Social Sciences (KUJHSS)
Volume 6, Issue 1, 2023.
Received 23 December 2023; Accepted 8 April 2024
Regular research paper: Published 10 June 2024
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arises between an international treaty and Iraqi domestic law during the treaty's implementation: which of them takes precedence? How can the discord between the Iraqi Constitution of 2005 and Treaties Conclusion Law No. 35 of 2015[1] be identified regarding legislative and executive powers in the ratification and implementation of treaties? What legal foundation can the study rely on to address these inquiries? Thus, it is necessary to conduct the present study to address the gap by conducting a critical analysis and providing suitable recommendations. To investigate these issues, the present study first provides a literature review on the subject, as well as an exploration of the concept and understanding of the impact of international treaties on domestic legal systems, along with an evaluation of the degree of compliance with them. Subsequently, this article identifies the position of international treaties within the Iraqi legal system regarding legal and constitutional matters and their implementation.

2. RESEARCH METHODOLOGY

In this study, a research methodology blending legal analysis with qualitative research is selected. Firstly, a thorough literature review was conducted to delve into existing scholarship concerning international law, treaty implementation, and the legal structure of Iraq. This involved examining a range of sources including scholarly articles, legal texts, governmental publications, and case law, thereby laying the groundwork for the study. Secondly, legal analysis techniques were employed to scrutinize key legal documents such as the Iraqi Constitution of 2005 and TCL. Through this analysis, the legal framework governing the ratification and implementation of international treaties within Iraq was clarified, with particular attention paid to identifying any ambiguities or inconsistencies present. Thirdly, a documentary analysis was undertaken, involving the collection and examination of official documents such as parliamentary records, government publications, and legal opinions. This documentary analysis provided valuable contextual insights into the procedural aspects of treaty ratification and implementation within the Iraqi legal system. Additionally, the perspectives of legal experts were sought to gain further understanding of the challenges, successes, and opportunities associated with the implementation of international treaties in Iraq. Through this multifaceted approach, this research aims to provide a comprehensive understanding of the complexities surrounding treaty implementation in the Iraqi legal context.

3.LITERATURE REVIEW

International treaties serve as a fundamental legal mechanism for articulating a nation’s intentions in the field of international relations, with the aim of safeguarding its national interests. Simultaneously, within the domestic legal framework, the procedures governing the ultimate adherence to treaties have implications for the global reputation of the nation.

Given the aforementioned circumstances, the literature review will be divided into the conceptual aspect of the position of international treaties in national law and the aspect of the position of international treaties in the Iraqi legal system in order to enhance the focus and organisation of the literature review.

Malcolm N. Shaw, a renowned international law scholar, has extensively written on various aspects of international law, including the status of international treaties in domestic laws. In his influential work "International Law," Shaw discusses the significance of treaties in both international and domestic legal systems. One perspective Shaw presents is the dualist approach, which distinguishes between international law and domestic law. According to this view, international treaties do not automatically become part of domestic law upon ratification but require incorporation through domestic legislation. Shaw emphasizes the importance of this dualist approach in preserving the sovereignty of states and ensuring the separation of international and domestic legal systems. Likewise, Shaw discusses the role of national courts in interpreting and applying international treaties within domestic legal frameworks. While treaties are binding on states in the international arena, their implementation and enforcement within domestic legal systems depend on the willingness of national authorities to give effect to international obligations (Shaw, 2008). Shaw's perspective on the status of international treaties in domestic laws can be regarded positively due to its comprehensive analysis and recognition of the significance of both international and domestic legal systems. His emphasis on the dualist approach acknowledges the sovereignty of states while also underscoring the necessity for cooperation between international and domestic authorities in fulfilling treaty obligations. Furthermore, Shaw's discussion of the role of national courts in interpreting and applying international treaties demonstrates a pragmatic understanding of the complexities inherent in reconciling international commitments with domestic legal frameworks. Hence, Shaw's insights offer valuable

guidance for policymakers and legal practitioners navigating the interaction between international law and domestic legislation.

The study by Verdier & Versteeg, sheds light on the dynamic interaction between international law and national legal systems. In other words, how international laws interact with laws within different countries. They found that the rules about making treaties and how these treaties are seen in national laws have changed over time. They say that the conventional method of categorizing countries into 'monist' or 'dualist' theories, which entails incorporating international law directly into a state's legal system without the requirement of domesticating the enabling treaty or convention, and the Dualist Theory, which distinguishes between national laws and international legal instruments such as treaties and conventions at a fundamental level (Mutubwa, 2019), doesn't truly encapsulate the entire scenario. The study also says that it is hard to measure how much international laws really affect countries' daily lives because there are other factors involved, like politics, economics, and culture. Despite these challenges, the study suggests that looking at how countries deal with international laws can be helpful to understand why they make certain choices. It also raises important questions about how countries decide to follow international laws and how this affects the way they interact with other countries (Verdier & Versteeg, 2015). However, the study offers a comprehensive dataset and raises important questions about the practical impact of international law and the factors influencing countries' choices in adopting certain legal approaches. It also has its limitations. One such limitation is the inherent difficulty in quantifying the actual influence of international law on domestic legal systems, as non-legal factors such as politics, economics, and culture play significant roles. For example, consider a country that ratifies an international treaty prohibiting discrimination based on gender. Although the treaty may seem straightforward in its intent, the actual implementation within the country's legal system could be influenced by various non-legal factors. Moreover, the study acknowledges the shortcomings of traditional monist-dualist classifications but does not provide a clear alternative framework for categorizing legal systems. Additionally, the study's focus on empirical data and quantitative analysis may overlook qualitative aspects of legal systems, such as the role of judicial interpretation and enforcement mechanisms.

According to a study by the "Palestinian Center for the Independence of the Judiciary and the Legal Profession", which aims to compare international treaties and domestic laws as well as identify mechanisms for implementing international law and localising it into Palestinian law, there is a heavy burden on the national judiciary regarding the application of international treaties. The study mainly focuses on two main axes, the first is the impact of domestic law on the process of consenting to comply with international treaties, and the second is the implementation of international treaties in domestic law (Bakhtanm, 2014). However, Kelsen scholar have another idea about the localization of international law in domestic law, stating, "In order to clarify that these two laws are separate and independent, or form a unified system, we must consider what causes them to be independent of a particular law, and why several concepts should form a unified system." On the other hand, Brownlee raises a different issue regarding the unity of the two laws or their independence. He believes that the two laws can work together on a common basis, but the problem lies in determining which is superior. These opinions highlight the complexity of the relationship and the different theoretical perspectives on integration or separation, between international law and domestic legal systems. Kelsen focuses on the primacy of international law as a direct consequence of its basic standard over all laws, which is the principle that gives legitimacy to all laws. This means that the state must behave as they have customarily behaved. Therefore, he believes that international law is superior to national law, because this law originated in the practice of states, but the internal law is the law derived from states, which is included in international law. Unlike Kelsen, however, Brownlee argues that both are two independent laws, and that in the event of a conflict between them, the national court must apply domestic law according to dualistic theory. According to this theory, domestic law is the internal law of the state that regulates the relations of citizens within the state, while international law is the sovereignty of states, so he absolutely says that neither of these two laws can change each other's systems. (Cited from Omiti, 2012) The Bakhtanm's study underscores the significant burden placed on national judiciaries when reconciling the application of domestic laws with the requirements of international treaties. Particularly noteworthy is the study's dual focus on the impact of domestic law on the consent to comply with international treaties and the mechanisms for implementing international treaties within domestic legal frameworks. This dual perspective sheds light on the complexities involved in harmonizing international legal obligations with national laws. Besides, by contrasting the perspectives of Kelsen and

Brownlee, the synthesis presents an original contribution to the discourse on the relationship between international law and domestic legal systems. Kelsen's argument regarding the primacy of international law highlights the foundational principle that legitimizes all laws, emphasizing the hierarchical superiority of international law over national laws. This perspective introduces a novel interpretation of the hierarchical relationship between international and domestic legal frameworks, suggesting that international law derives its legitimacy from state practice. Conversely, Brownlee's assertion of the independence of both international and domestic laws and the application of the dualistic theory underscores an alternative perspective on the relationship between these legal systems. This perspective challenges the notion of hierarchical superiority and instead advocates for the coexistence of international and domestic laws on equal footing, subject to the principles of dualism. These analyses contribute to the ongoing scholarly discourse on the localization of international law within domestic legal frameworks, enriching understanding of the complex relationship between these legal spheres.

Meanwhile, Al-Akour, Hasan, and Baydoun outline in their article that countries are subject to a variety of international treaties, and it may occasionally appear that those treaties' provisions conflict with applicable domestic laws. The authors offer valuable insights into domestic legal systems by examining situations where the national judge encounters contradictory or conflicting legal circumstances when determining the efficacy of such systems. Is the international treaty effectively fulfilling the state's obligation? Is the application of domestic law according to the laws of a country and the principle of respecting its sovereignty? However, international courts, in many of their judgements, have recognised the primacy of international treaties over domestic law, since those judgements have emphasised that a state might not resort to its domestic law to evade its universal responsibilities (Al-Akour et al.,2013). Therefore, the authors concluded that some countries have given international treaties a higher rank than their domestic law, others have placed them below the national rules, and some others tend to grant them the force of ordinary law. Likewise, the international judiciary has established, in many of its rulings, the principle of the supremacy of the international treaty over the applicable domestic law, as the international courts have emphasised the impermissibility of invoking domestic law to evade international obligations, as seen in the Alabama case between the United States and Britain (Alabama claims of the United States of America against Great Britain, 1871). While Al-Akour, Hasan, and Baydoun's article provides valuable insights into the varying approaches of countries towards the hierarchy of international treaties and domestic laws, it may lack depth in analyzing the specific legal mechanisms and institutional frameworks involved in resolving conflicts between these norms. In contrast, this study aims to build upon their findings by offering a more detailed examination of how Iraq specifically reconciles conflicts between international treaties and domestic legislation. By delving into legal frameworks within Iraq, this study addresses the criticism by providing insights into the practical application of legal principles governing such conflicts. Additionally, it explores the roles of legislative and executive authorities in ratifying and implementing international treaties, thereby contributing to a deeper understanding of the dynamics between international law and domestic legal systems in Iraq. However, this article should include any possible recommendation to balance the binding principle between the legal system of international treaties and the legal system of countries.

However, Saadi argues that while there is a general consensus that public international law takes superiority over domestic laws in matters of international jurisdiction, certain constitutions still adhere to the duality doctrine, which maintains the complete separation and independence of international law and domestic law. Regarding the inconsistency between international and domestic law on international treaties, Saadi concluded that constitutional legislators in many countries can classify their positions on the status of international treaties into two main groups: first, countries that consider international law in a position that transcends the constitution; second, countries that tend to consider international law as an intermediate between the constitution and law; Saadi considers Egypt to be one of these countries(Saadi,2016). Saadi's analysis sheds light on the differences in approaches to the relationship between international law and domestic legal systems, particularly concerning international treaties. Despite the prevailing view favoring the supremacy of general international law over domestic law in matters of international jurisdiction, Saadi identifies the persistence of the dualistic doctrine in some constitutions. This study builds on Saadi's insights by examining how Iraq manages the discrepancy between international and domestic law regarding international treaties. By examining the classification of

countries' attitudes toward the status of international treaties, particularly whether they consider international law to transcend the Constitution or act as intermediaries between the Constitution and domestic law, this study provides valuable insights into the legal frameworks adopted globally. Furthermore, through a comparative analysis with countries such as Egypt, this study offers a nuanced understanding of how different legal systems manage conflicts between international obligations and domestic law. Consequently, this analysis contributes to a deeper understanding of the dynamics between international law and the domestic legal system, offering insights into it.

On the position of international treaties in the Iraqi legal system, Ali mentioned in his article that, within the framework of rigid constitutions, it is meaningless to discuss the oversight of the constitutionality of international treaties before examining first the legal value of the treaty. In other words, the need to overcome the constitutionality of international treaties appears when the legal value of national and international legislation varies; otherwise, what is the purpose of implementing this control if the legal value of both options is identical? Consequently, Ali holds the opinion that the Iraqi Constitution of 2005, being a constitution characterised by inflexibility, falls among the category of constitutions that do not establish the legal significance of treaties. The author further noticed that the constitutions could be distributed in their identification of the authority competent to ratify treaties between four directions: one approach delegates this task to the head of state; another entrusts it to the legislative authority; a third involves both the legislative authority and the head of state; and the final approach places it in the hands of the people, either as an expression of popular democracy or due to its significant implications, such as determining the fate of the state or addressing a matter of great importance. The author's writing brings significance to the fact that the current Iraqi Constitution of 2005 has taken the fourth direction; the treaties are accepted by the House of Representatives and the head of the state (Al-Shukri,2008). However, it can be said that the House of Representatives plays a decisive role in the process of ratifying international treaties, and the president has only an official and protocol role in this (See Iraqi Constitution, Art. 61, Sect. 4, Art. 73, Sect. 2, 2005 in the references list). Ali's analysis offers valuable insights into the position of international treaties within the Iraqi legal system, highlighting the importance of considering the legal value of treaties before discussing their constitutionality. This study extends Ali's argument by exploring how the rigidity of the Iraqi Constitution of 2005 influences the significance attributed to treaties. By examining the distribution of authority to ratify treaties among different directions identified by Ali, including delegation to the head of state, legislative authority, or a combination thereof, this study provides a nuanced understanding of the Iraqi legal framework. Furthermore, by emphasizing the decisive role of the House of Representatives in the ratification process, as outlined in the Iraqi Constitution, this paper underscores the importance of parliamentary oversight in treaty ratification. Through this analysis, the study contributes to a deeper understanding of the dynamics between international treaties and domestic legislation in Iraq, particularly regarding the distribution of authority and the role of parliamentary institutions in the treaty-making process.

In his study, Said also discusses the mechanisms of resolving international treaties in domestic law, comparing Iraqi and Jordanian legislation. He believes that Jordanian law puts international treaties above ordinary law, but not the constitution. At the same time, the Iraqi legal system adopts the Dualist Theory mentioned below, which requires the adoption of a new law to implement international treaties in domestic laws. The author asserts that the most secure approach is to transform a legal or bilateral international treaty into internal legal documents, and adopting this technique ensures the consistency of judicial decisions. Consequently, the Iraqi legislator has adopted this approach, thereby suggesting that the Jordanian legislator should emulate the Iraqi legislator's course of action (Said,2020). This article presents a valuable comparative analysis of the legal frameworks of Iraq and Jordan, elucidating how each country approaches the incorporation of international treaties into domestic law. A significant insight from this study is the assertion that the Iraqi legal system, post-2005 Constitution, does not anticipate clashes between domestic law and international treaties, thanks to the adoption of the Dualist Theory. This observation is particularly significant given the ongoing debate surrounding the alignment of international obligations with national legal systems. One notable aspect of this work is the comparison between Jordanian and Iraqi legislation regarding the status of international treaties. While Jordanian law prioritizes international treaties over ordinary law but not over the constitution, the Iraqi legal system, as described by the author, employs the Dualist Theory, necessitating the enactment of new laws to integrate international treaties into domestic legislation. This comparison highlights the nuanced approaches taken by different legal systems and underscores the importance of understanding the specific context within which international treaties are implemented. Additionally, the author's suggestion that the adoption of Iraq's approach by Jordan could lead to more consistency in judicial decisions is thought-provoking. By advocating for the transformation of international treaties into internal legal documents, the author

emphasizes the need for a structured and systematic approach to ensure legal coherence. However, while this study offers valuable insights into the general principles governing the incorporation of international treaties into domestic law, there are areas open to further exploration and debate, particularly regarding the implications of recent legislative developments. For instance, the enactment of TCL in Iraq introduces legal controversies that warrant deeper examination, especially in terms of their impact on the relationship between international treaties and the Iraqi legal system. Thus, while the author's work provides a solid foundation for understanding the broader legal principles at play, there remains a need for continued research to address the specific challenges arising from recent legislative changes.

Upon reviewing the existing literature, it becomes evident that the position of international treaties within the Iraqi legal system is subject to considerable debate and complexity. Previous studies have highlighted various perspectives on the relationship between domestic law and international treaties, as well as the mechanisms for reconciling conflicts between them. Notably, the literature underscores the tension between the Iraqi legal system and international treaties, particularly regarding the legislative and executive powers in ratifying and signing treaties. While some scholars argue for the supremacy of international treaties over domestic law, others advocate for the primacy of domestic legislation. Additionally, comparative analyses with other legal systems, such as those of Jordan, shed light on the different approaches to incorporating international treaties into domestic law. However, what sets the present study apart from the existing literature is its focus on the specific conflicts between the Iraqi Constitution of 2005 and Treaties Conclusion Law No. 35 of 2015 (TCL). By delving into these legal controversies, this study aims to provide a nuanced understanding of how recent legislative developments impact the relationship between international treaties and the Iraqi legal system. Moreover, the study offers recommendations for balancing the binding principles between the legal system of international treaties and the legal system of Iraq. In conclusion, while previous studies have laid the groundwork for understanding the complexities of the Iraqi legal framework regarding international treaties, this study contributes novel insights by examining the implications of recent legislative changes. By addressing the gaps identified in the literature and offering practical recommendations, the study will advance scholarly discourse on this important subject matter.

4. DEFINING INTERNATIONAL TREATIES: Legal Interpretations, Critiques, And Contemporary Challenges

Undoubtedly, elucidating the notion of international treaties is vital for the goal of this study's endeavour. The term "treaty" is often used broadly to refer to various types of agreements, including conventions, arrangements, protocols, covenants, charters, and acts. However, not all of these instruments strictly qualify as treaties. The defining characteristic of a treaty is its binding nature. For instance, whereas the United Nations (UN) Charter of 1945 is a treaty because it creates a legally binding agreement, the Charter of Paris of 1990, which established the Organization for Security and Co-operation in Europe (formerly the Conference on Security and Co-operation in Europe), does not create binding obligations and therefore is not officially considered a treaty. Treaties are anticipated to be carried out in a spirit of honesty and sincerity, aligning with the principle of pacta sunt servanda, meaning "agreements must be kept" in Latin, which is arguably the oldest principle in international law. This principle, explicitly referenced in numerous agreements, is essential for treaties to possess binding force and enforceability (Shaw, 2024). Therefore, a comprehensive understanding of international treaties is imperative for navigating their complexities and implications in global affairs. By recognizing the diverse nature of agreements encompassed by the term 'treaty' and the crucial distinction of binding obligations, stakeholders can better comprehend the legal framework governing international relations.

The definition of an international treaty is a subject of legal interpretation and has been discussed and defined by various jurists and scholars over time. According to Hersch Lauterpacht, an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation, constitutes a treaty (Lauterpacht, 2004). Abdel Hamid, in his book, defines the international treaty as every written international agreement concluded in accordance with the formal procedures drawn up by the rules of international law regulating treaties. Thus, the description of obligation is acquired only through the intervention of the authority that the constitutional system gives each of the party states the authority to make treaties. Similarly, Sabarini, in his book, defines it as bilateral or collective legal texts concluded by states or international organizations and subject to an international agreement on the provisions of international law. The treaty must express the will of at least two parties (Cited from Shehab,2017). Echoing similar sentiments, Ian Brownlie emphasizes the legally

binding nature of treaties, underscoring their embodiment in written documents as a hallmark of enforceability within the framework of international law (Brownlie, 2012). Conversely, Oppenheim, a seminal figure in international legal scholarship, accentuates the requirement for treaties to be both legally binding and formalized in written instruments, a prerequisite for their recognition and implementation under international law. (Oppenheim,2008). These perspectives illuminate the multifaceted nature of treaties, highlighting their pivotal role as instruments of international cooperation and governance while emphasizing the importance of written documentation and adherence to legal norms.

According to Article 1(2) of the Vienna Convention, "the "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation" (Vienna Convention, 1969). This article underscores the formal nature of treaties but is also not without criticism. The focus solely on agreements concluded between states neglects the growing importance of non-state actors in international relations. The Paris Agreement, adopted in 2015 under the United Nations Framework Convention on Climate Change (UNFCCC), is a notable example that involves the participation of both states and non-state actors. While it is primarily an agreement between states, it also recognizes the important role of non-state actors (Danzo,2018). Therefore, this definition fails to account for treaties involving non-state entities which can have significant impacts on global governance.

Another criticism is that the requirement that treaties be in writing may exclude important agreements made orally or otherwise, but the validity and enforceability of unwritten agreements, which can still bind states under international law, may be as effective as written agreements. For instance, the Iran Nuclear Deal, formally known as the Joint Comprehensive Plan of Action (JCPOA), is an agreement reached in 2015 between Iran and the P5+1 group of countries. While the JCPOA is a written agreement, it also involves unwritten understandings and commitments between the parties, particularly regarding the interpretation and implementation of certain provisions. It includes detailed technical annexes and schedules outlining Iran's obligations to limit uranium enrichment, dismantle centrifuges, and allow for international inspections of its nuclear facilities (Mills, 2023). Therefore, this article neglects to acknowledge that unwritten agreements, which retain the ability to bind states under international law, are valid and enforceable.

It can also be argued that the strict definition of a treaty provided in Article 2(1) of the Vienna Convention may hinder the evolution and adaptation of international law to contemporary challenges. The requirement for a treaty to be concluded between states in written form may not reflect emerging forms of cooperation and agreements in international relations, such as informal understandings, customary practices, or soft law instruments. This rigidity could impede the development of new norms and frameworks for addressing pressing global issues such as climate change, cybersecurity, and human rights, as states may be reluctant to formalize agreements that do not fit the traditional treaty format. The Kyoto Protocol, an international agreement aimed at reducing greenhouse gas emissions, serves as an example of how the rigid definition of a treaty can hinder the evolution of international law. Unlike traditional treaties, the Kyoto Protocol did not impose binding emissions reduction targets on all countries but instead established commitments for developed nations while allowing developing countries to participate voluntarily (Tardi, 2023) This flexible approach enabled broader participation but diverged from the traditional model of treaty-making outlined in the Vienna Convention, potentially limiting its legal standing and effectiveness within the international legal framework.

It becomes clear that the distinguishing feature of the treaty as a kind of international agreement is that it is a formal agreement made only in writing and following certain procedures. On the other hand, it requires the approval and consent of the party to whom the state constitution gives treaty power (Al Busaysi,2008). Although it carefully emphasizes written documentation and procedural formality as essential features, there's room to delve deeper into treaty analysis. For instance, detailing the importance of written documents in ensuring clarity, accuracy, and longevity of treaty obligations would be beneficial. In addition, it's crucial to discuss the requirements for ratification by relevant authorities, but a deeper investigation into the complexities and potential challenges associated with obtaining such approval is necessary. For instance, some countries have specific legal requirements for treaty ratification, including parliamentary approval, constitutional amendments, or public referendums. Meeting these requirements can be time-consuming and sensitive, especially if treaty provisions conflict with existing laws or constitutional principles. Furthermore, examining the role of treaty-making powers within different governmental structures and their influence on negotiation and ratification processes is essential. In the U.S., for instance, the Constitution divides treaty-making power between the President and the Senate. According to Article II, Section 2 of the U.S. Constitution[2], the President has the authority to negotiate and sign treaties, but they must receive ratification by a two-thirds majority vote in the Senate to become binding law. This division of powers reflects the system of checks and balances inherent in the U.S. government, where the executive branch negotiates treaties while the legislative branch provides oversight and approval.

Original Article |**DOI:** https://doi.org/10.14500/kujhss.v6n1y2023.pp332-353

In light of the above, the analysis of international treaties underscores their nuanced nature and significance in shaping global relations. An international treaty, a formal agreement typically in written form, concluded between states or international organizations, is governed by international law and embodies binding obligations between the parties. However, alongside various legal interpretations that provide insights into their binding nature, criticisms and contemporary examples also highlight the necessity for adaptability and inclusivity in treaty-making processes. Understanding the complexities of treaty definitions, ratification procedures, and distribution of powers is essential for navigating the evolving landscape of international cooperation.

5. UNDERSTANDING THE IMPACT OF INTERNATIONAL TREATIES ON DOMESTIC LEGAL SYSTEMS

International treaties wield significant influence within domestic legal systems, shaping laws, policies, and judicial decisions. This section delves into the multifaceted impact of international treaties on domestic governance, structured into two key aspects: Assessing the Authority of International Treaties in Domestic Jurisdictions and The Crucial Role of International Treaties within Constitutional Frameworks, as elaborated below.

5.1 Assessing the Authority of International Treaties In Domestic Jurisdictions

The question of the authority of international treaties, their supremacy over domestic legal systems, and their subsequent enforceability in domestic legal systems raises several legal problems, particularly with regard to international jurisprudence. Jurists of international law have been divided on this issue through the emergence of two theories as mentioned earlier: the first is the Monist Theory, which entails the direct incorporation of international law into a state's legal system without requiring the enabling treaty or convention to be domesticated. The other is the Dualist Theory, which draws a clear distinction between national laws and international legal instruments like treaties and conventions at a foundational level (Mutubwa, 2019). This division is between advocates of the supremacy of international law over domestic legal systems and advocates of the supremacy of domestic legal systems over international legal systems. However, a burgeoning school of thought proposes a middle-ground theory, recognizing the significance of international treaties as pivotal sources of international law. ("The Legal Value of International Treaties", 2023). This nuanced approach acknowledges the intricate process of incorporating these treaties into domestic legal systems, emphasizing the need for thorough examination in this critical and sensitive realm.

The Dualist Theory is principally clear between domestic law and international law, as there is no judicial effect of contractual international law in domestic law except with the licence of national law, where it must be taken in particular by the legislator or, at other times, by the executive authority, which can issue it in several forms. Proponents of this theory believe that public "international law" and "domestic law" are two equal, independent, and separate legal systems and have several arguments for this (Hani,2009).

One argument emphasises that the common will of sovereign states, which is called legal treaties, is the source of international law. In addition to the prevailing and followed custom among states, legislation and custom within the state are the source of domestic law; this law also regulates the relations between individuals with each other or with the authorities of the state, while international law regulates relations between states. Furthermore, the persons addressed by the provisions of international law are states and other international persons, whereas the persons addressed by the provisions of domestic law are natural and legal persons (Al-Omran, 2017). However, the argument's emphasis on legal treaties as the primary source of international law overlooks the significance of customary international law, which is exemplified by consistent state practice accepted as law, such as the customary prohibition of torture and the principle of state immunity (De Wet, 2004 & Caplan, 2003). Additionally, while it distinguishes between international law governing states and domestic law governing individuals, it fails to acknowledge the increasing interconnectedness between these realms. For instance, international human rights treaties like the European Convention on Human Rights directly impact individuals' rights within domestic legal systems, shaping legislation and judicial decisions through supranational courts like the European Court of Human Rights (Caligiuri & Napoletano, 2010). Furthermore, the argument's narrow focus on legal persons in domestic law neglects the evolving role of non-state actors such as international organizations, multinational corporations, and non-governmental organizations, which often operate within the framework of international law, influencing state behavior and global governance.

Another argument points out a difference in the legal structure between internal law and international law. The internal law includes judicial bodies that apply and interpret the law and impose penalties on violators, an

executive authority that ensures the application of the law and the implementation of judicial rulings by force when necessary, and a legislative authority that enacts laws. In the circle of international law, the legal structure does not exist except at a later stage, as the various international organisations are considered a legislative authority, an executive authority vested in the various bodies entrusted with this task, and a judicial authority represented by the International Court of Justice. Therefore, it follows that judges, whether domestic or international, are bound to uphold the provisions of their law even if they violate it, because they derive their authority and jurisdiction from that law. However, some countries adopt the Dualist Theory, such as Kuwait's Constitution of 1962, Qatar's Constitution of 2003, and Bahrain's Constitution of 2002, where measures are required by the legislative authority or the president of the state to implement it into the internal legal system (Allam, 2014 & Hani,2009). However, characterizing international law as lacking a complete legal structure may oversimplify its complexity. Even though it operates differently from domestic legal systems, international law encompasses various institutions, treaties, conventions, and customary practices regulating state behavior. For instance, institutions like the United Nations (UN) and the International Court of Justice (ICJ) play significant roles in interpreting and enforcing international law (UN, n.d). Also, the argument assumes a uniform approach to international law across all states, disregarding significant diversity in how states incorporate international norms into their legal systems. The mention of countries adopting the Dualist Theory, such as Kuwait, Qatar, and Bahrain, highlights this point. These states require specific measures to implement international law into their domestic legal frameworks, indicating that the relationship between international and domestic law is precise and subject to sovereign decisions. Moreover, the argument implies that judges, both domestic and international, are bound to uphold the provisions of their respective laws, even if they contradict international law. However, this overlooks the principle of the supremacy of international law in cases of conflict with domestic law, as recognized in many legal systems and affirmed by international treaties and customary practice. For instance, the African Court on Human and Peoples' Rights adjudicates cases where domestic laws in African states conflict with regional human rights instruments.

In contrast to the Dualist Theory, advocates of the Monist Theory assert the concept of legal unity, positing that both international and domestic law form a singular legal system that cannot be disentangled due to their inherent interconnectedness. This perspective is grounded in the belief that the rules governing this theory are issued in a precise and successive manner. This may sometimes lead to conflicts between those rules, but the issue of hierarchy has created two currents with differing views on determining which of the two laws is superior to the other. One adopted the idea of the supremacy of international law over domestic law, and the other adopted the idea of the derivation of international law from domestic law, that is, the supremacy of domestic law over international law. However, this view was criticised as unrealistic and contrary to the linking of treaties to domestic law. If the treaty were based solely on the Constitution, it would not be binding in the event of changes or modifications to the Constitution. Recognising the rule of domestic law leads to widespread international chaos, proving the reason a country does not fulfil its international obligations in accordance with its domestic legal system. Therefore, this trend will inevitably reject international law (Al-Smadi, 2020). The argument presents the Monist Theory as contrasting with the Dualist Theory, emphasizing legal unity between international and domestic law. However, it oversimplifies the relationship between these legal realms. Despite the Monist Theory's emphasis on the interconnectedness of international and domestic law, it overlooks the complexities of their interaction. For example, as mentioned earlier, in the United States, international treaties become part of domestic law only if ratified by the Senate and implemented through legislation, highlighting a clear distinction between the two legal orders. Moreover, while the argument acknowledges debates about the supremacy of international law over domestic law, it fails to provide a comprehensive analysis of these debates. For instance, in the European Union, the principle of primacy of EU law over national law is established through decisions of the European Court of Justice("Primacy of EU law," n.d), indicating a nuanced approach to the hierarchy between international and domestic legal norms. Likewise, the assertion that recognizing the rule of domestic law leads to widespread international chaos lacks evidence and overlooks instances of effective harmonization between domestic and international legal obligations. For example, countries often enact legislation to incorporate international treaties into their domestic legal systems, ensuring compliance with both domestic and international law. An example of this is the United Kingdom's Human Rights Act, which incorporates the European Convention on Human Rights into domestic law (Equality and Human Rights Commission, 2028),

demonstrating a successful alignment between domestic and international legal frameworks.

With regard to international jurisdiction, numerous judicial decisions and advisory opinions have been issued through practice, jurisprudence, and international arbitral tribunals. It is worth noting that international jurisdiction operates with an emphasis on the supremacy of international law over domestic legal systems and constitutional law, depending on each case and its circumstances. For instance, in the case of Philippines v. China (2016) before the Permanent Court of Arbitration, the Court ruled in favor of the Philippines, concluding that China's claims to historical rights over maritime areas in the South China Sea were inconsistent with the United Nations Convention on the Law of the Sea (UNCLOS) (Philippines v. China, 2016). Despite arguments based on domestic law and constitutional provisions, the tribunal held that international law prevailed in resolving the dispute. Similarly, in the Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius, the International Court of Justice affirmed the applicability of international law, including the right to self-determination, over domestic colonial-era agreements concerning territorial sovereignty ("Legal Consequences of the Separation of the Chagos Archipelago from Mauritius," 2019).These cases illustrate the continued adherence to the supremacy of international law in resolving disputes involving conflicting domestic legal systems and constitutional provisions.

The assessment of the authority of international treaties in domestic jurisdictions reveals a complex landscape shaped by competing legal theories, judicial interpretations, and practical realities. In contrast, both Monist and Dualist perspectives offer differing views on the integration of international law into domestic systems, yet both encounter challenges in reconciling conflicting norms and ensuring compliance. Amidst varied approaches among states, the principle of international law's supremacy often prevails in resolving disputes, as evidenced by key judicial decisions. This underscores the importance of recognizing international legal norms in navigating conflicts arising from divergent domestic laws and constitutional provisions, emphasizing the need for nuanced understanding and effective implementation mechanisms to address contemporary legal complexities.

5.2 The Crucial Role of International Treaties within Constitutional Frameworks

Legislation occupies the forefront in the hierarchy of the legal hierarchy, including internal and international legal practitioners, where the constitution represents the top source of internal legislation, particularly in countries with rigid constitutions. The constitution shows the rights and obligations of the three internal authorities: executive, legislative, and judicial. Usually, the executive authority is concerned with concluding international treaties, but the constitution may stipulate the need for parliament to approve the treaty, hence the necessity for the national judiciary to ensure that the international treaty has completed all the legal conditions required by the constitution for its validity within the country, whether those conditions are related to its publication in the Official Gazette in accordance with the law or related to the need for parliament to approve the treaty(Morshedy, 2023). However, the interaction between the executive's authority to conclude international treaties and the requirement for parliamentary approval, as mandated by the constitution, highlights a potential conflict present in various countries' legal systems. For instance, in Japan, while the Prime Minister holds the power to negotiate and sign treaties under Article 73 of the Constitution[3], the actual ratification necessitates approval by the National Diet. This process involves both the House of Representatives and the House of Councillors, providing a democratic check on the executive's treaty-making powers. Hence, such a system may lead to delays or disagreements between branches of government, impacting the ratification process and potentially influencing international commitments.

However, an issue arises: can a national judge interpret an international treaty as long as the judge is bound to apply it? This issue has sparked a major debate between supporters and opponents of the judge's right to interpret. There is a viewpoint which asserts that judges possess the authority to enforce the treaty, as they are also vested with the power to interpret it for the purpose of resolving disputes brought before them. Others opposed this but believed that the national judge only has the right to interpret because the judge's interpretation and implementation of the treaty may lead to international problems and the objections of the treaty states. Furthermore, in practice, states that determine the value of treaties do not agree on a single rule. Some, such as Egypt, afford the judiciary power to interpret treaties, while others, such as France, do not allow the judiciary to interpret treaties. Thus, what is the

current state of affairs in jurisdictions that do not explicitly include the legal standing of treaties they enter into inside their domestic laws? (Almaqrahi, 2022). However, the lack of consensus among nations on the interpretation of international treaties further complicates the situation. For instance, consider a scenario where countries sign a new treaty on climate change. Some countries integrate the treaty into their domestic law, allowing their judiciary to interpret and enforce it, while others do not, leaving interpretation and enforcement to the executive branch. If a dispute arises between citizens of these countries over treaty compliance, the lack of consensus on interpretation complicates legal proceedings. This disparity raises significant questions about the treaty's legal standing in jurisdictions that do not explicitly incorporate it into domestic law. Consequently, it highlights the need for standardized approaches to treaty interpretation to ensure coherence in addressing global challenges. Generally, the debate highlights the intricate balance between upholding international obligations and respecting domestic legal systems, emphasizing the necessity for careful consideration in treaty implementation.

Almaqrahi questions whether the conclusion of the treaty must be correct and comprehensive, taking into account all constitutional requirements, in order for it to be effective within the state and binding on the internal authorities and people, or whether it is sufficient in itself for it to have the rule of law. Therefore, states often work to incorporate treaties into their domestic systems, so that a provision in their laws determines the methods and conditions of their implementation (Almaqrahi, 2022). This article raises questions about the effectiveness of treaties within states and their incorporation into domestic legal systems. However, it overlooks the variability in treaty content, assuming that all treaties must meet specific constitutional requirements for implementation. For example, as mentioned earlier, the United States Constitution requires that treaties receive the advice and consent of two-thirds of the Senate for ratification. This standard may not apply universally, as some treaties might have different procedural requirements or may be implemented through executive action rather than legislative approval. Furthermore, this oversimplifies the process of treaty implementation by suggesting that it primarily involves the enactment of laws to determine methods and conditions. However, the reality is more complex, as treaty implementation often involves multiple branches of government, judicial interpretation, administrative regulations, and even changes to existing laws. For instance, the implementation of the North American Free Trade Agreement (NAFTA) involved not only the passage of implementing legislation but also the establishment of new institutions and dispute resolution mechanisms to enforce its provisions (NAFTA Implementation Act, 1993). Additionally, the provision fails to recognize the effects of domestic politics on treaty implementation. Political factors such as party priorities, public sentiment, and bureaucratic hurdles can significantly shape how treaties are integrated into a country's legal framework. In Iraq, for example, the ratification and implementation of the US-Iraq international security agreement have been hampered by political divisions and concerns about national sovereignty. The debate over the retention of US troops and their role in Iraqi security does not have an absolute national voice from the Iraqi government (Pettyjohn, 2020). Therefore, it is essential for analyses of treaty effectiveness and implementation to consider the variability in treaty content, the complexities of the implementation process, and the influence of domestic political dynamics.

Nevertheless, it is imperative to acknowledge a situation wherein the constitutional text or ordinary legal text of a state does not directly refer to the treaties entered into by that state. Therefore, jurists are divided in two different directions. The first direction, which includes the majority opinion, argues that although the treaty limits the state to ratification in its entirety, it does not bind individuals and does not affect their rights or amend their obligations unless a law is passed by the treaty-bound state and assumes guarantees of the implementation of the treaty. Otherwise, the treaty does not acquire a description of binding force in the domestic sphere, and it remains merely an international regulation with no relevance to domestic law. On the contrary, supporters of the second direction believe that the conclusion of the treaty in accordance with the constitutional conditions provides it the force of law within the state, meaning that its validity on the internal level does not need a specific procedure to transform it into an internal law. Thus, the treaty is binding on the internal authorities and has an impact on individuals (Almaqrahi, 2022). The first direction advocates for the primacy of domestic legislation in actualizing treaty obligations within the constitutional domain. However, this inadvertently erects barriers to swift compliance, potentially impeding timely adherence to international commitments. For example, the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada faced delays in ratification due to concerns raised by some member states (Darcy, 2021). Moreover, by the efficacy of treaties to domestic legislative processes, there is a palpable risk of selective enforcement or outright non-compliance, undermining the integrity of international agreements. For

instance, the EU's Common Fisheries Policy (CFP) sets out rules for managing fisheries resources, but member states have been criticized for inconsistent enforcement and non-compliance with CFP regulations (Soto-Onate & Lemos-Nobre, 2021). Proponents of the second direction argue that treaties should automatically become domestic law once they meet constitutional requirements, but they raise concerns about potential conflicts between international obligations and domestic laws. For example, within the European Union, treaties and regulations are directly applicable in member states without the need for national transposition ("Direct applicability and direct effect," n.d) However, this direction may lead to challenges in reconciling conflicting legal obligations and interpreting the hierarchy of laws within domestic legal systems. Moreover, automatic integration may bypass necessary legislative scrutiny and public discourse, potentially diminishing accountability and transparency in the legal process. Therefore, a balanced approach is necessary to address these challenges effectively.

In light of the above, the value of international treaties in constitutions is a critical aspect of the interaction between international law and domestic legal systems. Constitutions serve as the supreme law of the land, defining the rights and obligations of the executive, legislative, and judicial branches of government. The incorporation of international treaties into constitutional frameworks highlights the importance of treaty obligations within domestic legal orders. Whether through explicit provisions requiring parliamentary approval for treaty ratification or through principles of constitutional supremacy, constitutions play a significant role in shaping the implementation and interpretation of international treaties. However, challenges such as conflicts between international obligations and domestic laws, varying approaches to treaty interpretation, and the need for standardized approaches to treaty implementation underscore the complexities inherent in reconciling international treaties with national constitutions. Therefore, a nuanced and context-specific approach is essential to ensure the effective integration of international treaties into constitutional frameworks while upholding the principles of sovereignty, legality, and accountability.

6. THE POSITION OF INTERNATIONAL TREATIES IN THE IRAQI LEGAL SYSTEM

It is obvious that the constitution of each country represents its domestic legal system, which determines the position of international treaties within the domestic legislative system and explains the remedies to be followed in the event of conflict between international treaties and law, whether constitution or ordinary law. In this context, this section explains the position of international treaties in the Iraqi legal system in the event of conflict between the treaty and Iraqi domestic law, as well as the contradiction between the Iraqi Constitution of 2005 and TCL regarding the legislative and executive powers in ratifying and implementing treaties. Therefore, the section covers the legal framework of international treaties and their implementation in the Iraqi legal system, as elaborated below.

6.1 The Legal Framework for International Treaties in Iraq

Like any other country, Iraq has defined a legal basis for the conclusion of international treaties and their status. In addition to the Iraqi Constitution of 2005, TCL determines the lawful foundation for the conclusion of treaties and how they are implemented in several articles. Article 4(1) defines "The competent authorities shall present the draft bilateral treaty before negotiating on its conclusion in an appropriate period to the relevant authorities of the treaty and to the Ministry of Foreign Affairs to study it and express an opinion on it and submit it, along with the views of the relevant authorities, to the State Consultative Council to provide legal advice in this regard. It is then shall be presented to the Council of Ministers for its opinion." Although this Article outlines the procedural steps involved in negotiating and contracting bilateral treaties in Iraq, it suffers from significant shortcomings. The Article is overly complex and convoluted, with a single sentence attempting to cover multiple stages of the treaty-making process. This lack of clarity may lead to confusion among stakeholders regarding the sequence of actions required. For instance, government officials tasked with treaty negotiations may struggle to decipher the steps involved, leading to potential confusion and inefficiencies in the process. Additionally, the involvement of multiple authorities, including the Ministry of Foreign Affairs, the State Shura Council, and the Council of Ministers, suggests a fragmented decision-making process that could impede efficiency and coherence in treaty governance. Furthermore, the absence of clear timeframes or mechanisms for expediting the review process may result in unnecessary delays and administrative bottlenecks. Therefore, this Article requires revision to streamline procedures, clarify decision-making roles, and enhance the efficiency of the treaty negotiation process.

Article 11 states that "it should include final provisions that refer in various articles to the following issues: the

procedures by which the treaty enters into force, the date the treaty enters into force, the duration of the treaty's validity and the method of its extension, the method of amending or reconsidering the treaty, the method of terminating the treaty, the method of settling disputes arising from the application or interpretation of the treaty and the language in which the treaty was documented, and a statement of its authenticity, taking into account the provisions stipulated in Article 7 of this law". Despite the critical importance of including provisions regarding the entry into force, duration, amendment, termination, dispute settlement, language, and authenticity of the treaty for ensuring clarity and legal certainty, the provision's broad and encompassing nature may result in overly detailed and cumbersome final provisions, potentially complicating treaty negotiation and implementation. For example, two countries negotiating a trade agreement may become bogged down in drafting excessively detailed language for each provision during negotiations, trying to anticipate every possible scenario and contingency. As a result, the negotiation process becomes protracted, and the likelihood of misunderstandings and disputes increases.

The issue of compliance with international treaties is emphasised in the Iraqi legal system. Articles 15 and 16 of the TCL therefore emphasise the ratification, documentation, and compliance with treaties. Article 15 states, "The commitment of the Iraqi Republic shall be expressed, according to the detailed provisions contained in Articles 16 to 20 of this Law, by one of the following means: 1) Exchange of documents of ratification in bilateral treaties; 2) inclusion of ratification documents in multilateral treaties signed within the specified period for signature; 3) deposit of documents of accession to multilateral treaties after the expiration of the period specified in their text for signature or after their entry into force." Despite this, the Article sets forth the means through which the Iraqi Republic expresses its commitment to international treaties. However, it lacks specificity regarding the procedures and timelines associated with each method, which could lead to ambiguity in the treaty-making process. It mentions the exchange of documents or deposit of accession documents as means of expressing commitment, yet it fails to provide clear instructions on the necessary steps involved in each process. Clarifying such steps, such as the authentication of signatures and the submission of relevant legal instruments, would help ensure smoother treaty negotiations and facilitate compliance with international obligations. Therefore, a more detailed outline of the required steps for each method would be beneficial to ensure that parties involved in treaty negotiations understand their obligations clearly.

Article 16 states, "First, the treaty may be binding from the start on the Republic of Iraq once it is signed by its authorised representative in the following cases: 1) If the exchanged documents stipulate that their exchange shall have this effect; 2) If it is expressly agreed that the exchange of documents will have this effect; 3) If the authorisation document of the Iraqi representative, issued in accordance with this law, states that this effect should be added to his signature. Second, commitment to the treaty represented by the exchange of documents is subject to the ratification procedures stipulated in Article 17 of this law." However, the language used in this article is somewhat convoluted, making it difficult to discern the exact conditions under which a treaty becomes immediately binding. For instance, phrases such as "expressly agreed" and "authorization document... states that this effect should be added" introduce ambiguity and may lead to differing interpretations among legal experts. The term "expressly agreed" does not specify who must agree or how this agreement should be expressed, while the reference to an "authorization document" lacks clarity regarding its contents and how they determine the effect of treaty signing. This lack of clarity could create confusion among parties involved in treaty negotiations or legal experts interpreting the text, potentially undermining the effectiveness and reliability of the treaty-making process. Therefore, clarifying these terms and providing more explicit guidelines in Article 16 would enhance transparency and facilitate a clearer understanding of the conditions for treaty binding, thereby promoting more effective international engagements for the Iraqi Republic.

Article 17 states, "The commitment of the Republic of Iraq to treaties concluded in accordance with the provisions of this law is subject to the approval of the House of Representatives on the law ratifying the treaty or the law of accession to it by an absolute majority of the number of the members of the House, with the exception of the following treaties that must not be approved by a two-thirds majority: 1) Border treaties and treaties affecting territorial sovereignty; 2) Treaties of reconciliation and peace; 3) Political, security, and military alliance treaties; 4) Treaties relating to the establishment of regional organisations." While it is crucial to have a mechanism for democratic oversight of treaty ratification, the requirements outlined in this article may pose challenges to the timely approval of agreements critical to Iraq's international relations. For

instance, the requirement for an absolute majority for most treaties and a two-thirds majority for specific types of treaties could lead to political gridlock or delays. In practice, if there is political disagreement or partisan divisions within the House, it may delay or even block the ratification of treaties essential to Iraq's international relations. This could potentially jeopardize diplomatic efforts and strain relationships with other nations, as exemplified by the difficulty in garnering sufficient support for treaties falling under the category requiring a two-thirds majority, such as political, security, and military alliance treaties. To address this, implementing mechanisms for transparent debate and decision-making within the House, such as establishing bipartisan committees or introducing expedited procedures for urgent treaties, could help mitigate political gridlock and ensure timely approval of critical agreements. Moreover, the article does not adequately address the potential for political manipulation or obstructionism in the ratification process, which could undermine the effectiveness of Iraq's treaty-making efforts. Therefore, addressing these challenges and incorporating safeguards against political manipulation or obstructionism is crucial to ensuring a more efficient and effective treaty ratification process for Iraq.

It is noteworthy that Article 26 of the Vienna Convention[4] emphasises the principle of compliance with any treaty in force and ratified by the parties to the treaty to be implemented in good faith. However, Article 17 of the TCL is incompatible with Article 80(6) of the Iraqi Constitution of 2005, which gives the Council of Ministers the power to argue and sign international treaties or whoever authorises them. Likewise, Article 110(1)[5] deals with the special powers of the Federal Authority, which emphasises the negotiation and signing of international treaties. Since these articles do not allow any treaties to be excluded, like Article 17 of the TCL, even in the entire constitution, the prime minister is given only the power to negotiate and sign. Thus, the potential consequence of this conflict is a power struggle between the executive and legislative branches over the signing and ratification of international treaties. This could lead to uncertainty and instability in the legal framework governing international relations for Iraq. Therefore, it may be necessary to review and reconcile these conflicting provisions to ensure the effective functioning of the government and adherence to constitutional principles. This could involve amending the TCL to align it with the constitutional framework or clarifying the respective powers of the executive and legislative branches regarding the negotiation, signing, and ratification of international treaties.

On the other hand, Article 5(1, 2) of the TCL states that "the President of the Iraqi Republic shall officially represent the Iraqi Republic without the need to produce a document of authorization in order to carry out activities related to the implementation of the Treaty." The second paragraph states that "the Minister of Foreign Affairs is considered the representative of the Republic of Iraq without the need to submit certificates for the purpose of negotiating the treaty." However, under Article 80(6) of the Iraqi Constitution of 2005, the prime minister has been excluded from the authorisation document. Here, it can be seen that the power to negotiate and sign treaties is exclusively in the hands of the Council of Ministers. The consequence of the conflict between Article 5(1, 2) of the TCL and Article 80(6) of the constitution is another possible imbalance of power and uncertainty in the process of treaty negotiation and signing. However, this conflict may lead to confusion and disputes regarding who holds the ultimate authority to negotiate and sign treaties on behalf of Iraq. It could result in challenges to the legitimacy of treaties negotiated by individuals other than those explicitly authorized by the Constitution. In addition, such conflict can lead to legal challenges when the Iraqi state signs and ratifies international treaties.

According to Article 7(2)[6] of the Vienna Convention, heads of state, prime ministers, foreign ministers, and heads of diplomatic missions have the authority to sign treaties and agreements on behalf of their states. Conversely, Article 80(6) of the Iraqi Constitution of 2005 concentrates the power to sign and implement agreements only in the hands of the prime minister. However, it should be noted that Iraq is not a signatory to this Vienna Convention, so it can be excluded from this article (United Nations Treaty Collection, 1969). As a result of this conflict, there is uncertainty about Iraq's treaty-making power on the international stage. This may also cause diplomatic complications and legal challenges if the Iraqi constitutional framework diverges significantly from internationally recognized practices. Moreover, the fact that Iraq is not a signatory to the Vienna Convention further complicates matters because it cannot rely on its provisions to resolve disputes or guide treaty-making practices.

On the position of the Iraqi Constitution of 2005 regarding international treaties, Article 8 states that "Iraq shall observe the principles of good neighbourliness, adhere to the principle of non-

interference in the internal affairs of other states, seek to settle disputes by peaceful means, establish relations on the basis of mutual interests and reciprocity, and respect its international obligations". Accordingly, the Iraqi state is bound by international treaties, whether bilateral agreements between Iraq and another country, multilateral agreements or treaties, or even any agreement approved by the international community.

The Iraqi legislature regulates the ratification of treaties through domestic law so that the treaty becomes part of Iraqi domestic law. Article 61(4) of the Constitution states that "Regulating the ratification process of international treaties and agreements by a law, to be enacted by a two-thirds majority of the members of the Council of Representatives". However, as mentioned above, the Iraqi parliament therefore passed TCL by a two-thirds majority to regulate the process of ratification of international treaties concluded by the Iraqi government.

Tariq Harb, a legal expert believes that this law empowers the prime minister to conclude executive agreements, memoranda of understanding, and contracts that do not require the approval of parliament because they are considered effective when the prime minister or minister signed them under Article 3 of TCL .The expert added that because Article 5 of this law considered the prime minister to be the official representative of the Iraqi Republic, this is in line with Article 78 of the Constitution of 2005,[7] which held the prime minister directly responsible for the public policy of the state. As for the official treaties as stated in Article 2 of the law[8], concluded in the name of the Iraqi Republic or its government with a country or other countries or its government or an international organisation or any other international legal person recognised by the Iraqi Republic, they need the signature of the president after the ratification of Parliament under Article 61(4) of the Constitution. Accordingly, agreements, contracts, and memoranda of understanding are not considered treaties ("Harb clarifies the powers of the Prime Minister to sign international agreements and treaties," (Mawazin News, 2020).

However, Abdulfattah Abdulrazaq Mahmood, another legal expert in his article commented on the law, saying that the legislature provides the Iraqi executive branch with special powers to conclude some international agreements in their simplified form without the approval of the House of Representatives. The legislature has excluded some possible international agreements from the approval of the House of Representatives. Therefore, this is considered a violation of the Iraqi Constitution, which subjects all international treaties, without distinction, to the approval of the House of Representatives. He is widely argued that there exists a consensus regarding the nature of executive agreements as being distinct from independent international agreements, hence the need for approval from the House of Representatives. However, a pertinent question arises: what if the executive agreement incorporates novel provisions that were not originally present in the treaty? Mahmood contends that TCL does not address this issue and therefore recommends that such agreements be subject to legal review by relevant authorities, such as the State Shura Council, to notify the government or ministry concerned that such an agreement requires the approval of the House of Representatives to include, especially if it includes a financial commitment to Iraq (Mahmood, 2020).

In assessing the viewpoints of legal experts Tariq Harb and Abdulfattah Abdulrazaq Mahmood on TCL, it becomes evident that both present compelling arguments worthy of consideration. Harb argues that the law confers upon the prime minister the authority to conclude executive agreements, memoranda of understanding, and contracts without parliamentary approval, citing provisions within the law itself designating the prime minister as the official representative of the Iraqi Republic. While Herb's interpretation aligns with the text of the law, it also raises concerns about potential executive overreach and the circumvention of parliamentary oversight. In contrast, Mahmood criticizes the law for potentially violating the Iraqi Constitution, which requires parliamentary approval for all international treaties. Mahmood advocates for stricter adherence to constitutional requirements and suggests subjecting executive agreements to legal review to ensure compliance. While Mahmood's position underscores the importance of upholding constitutional principles, it may also introduce bureaucratic hurdles that impede diplomatic negotiations. Ultimately, the debate between Harb and Mahmood underscores the delicate balance between executive authority and parliamentary oversight in international treaty-making, emphasizing the need for careful consideration and possibly further legal clarification in navigating these complexities.

Article 73(2) of the Constitution of 2005 states that "to ratify international treaties and agreements after the approval by the Council of Representatives, such

international treaties and agreements are considered ratified after fifteen days from the date of receipt by the President". Therefore, it can be seen that the approval of the President of the Republic and his ratification of treaties is a subsequent approval with the approval of the House of Representatives. However, according to the third paragraph of the same article, the President has no power to appeal against the treaty, and his competence is limited to ratification of the treaty within fifteen days; otherwise, the treaty shall be deemed ratified after that period. Despite Article 7(2) offering a clear and structured framework for the ratification of international treaties and agreements, the restriction that the President must sign the treaty within fifteen days of receipt is crucial. Although this timeframe aims to streamline the ratification process and prevent unnecessary delays, it may inadvertently limit thorough treaty review and analysis by the President. The short period allocated may not provide sufficient time for a comprehensive evaluation, especially for complex agreements with far-reaching implications. Therefore, the necessity for an unchanged or extended timeframe for the President's approval of agreements may warrant reassessment to ensure adequate scrutiny and coordination with the legislature.

6.2 Implementation of International Treaties

International treaties regulate the interactions between nations on the international stage as a mechanism of international law. It is essential to note, however, that the effects of these treaties are limited to the relationships between states and do not extend to the domestic legal systems of individual nations. Instead, implementing the treaties in accordance with their respective domestic legal systems is the responsibility of the individual nations, which must ensure that the treaties are effectively incorporated into their own laws and legislation. Therefore, this section presents the procedures involved in incorporating international treaties into the Iraqi legal system before describing any potential issues that might arise from their interaction.

A treaty's implementation does not happen immediately after state representatives ratify it. Instead, it necessitates a legal process that encompasses both national and domestic dimensions for its execution. This procedure entails the initial approval of the treaty through the passage of legislation prior to the publication of the agreement in the Official Gazette. In terms of the Iraqi Constitution of 2005, as mentioned earlier, according to Article 61(4), international treaties are ratified by a two-thirds majority of the members of parliament. Article 73(2) states that the president may ratify or sign international treaties and agreements after obtaining the approval of the House of Representatives. Articles 80(6) and 110(1) also empower the Council of Ministers to negotiate and sign international treaties with anyone designated by the Council. However, it does not mention how the treaty will be implemented in the Iraqi legal system. Therefore, considering the absence of constitutional provisions relating to the implementation of treaties in Iraq, TCL has addressed this issue.

TCL more specifically devotes Article 19 to the application of treaties in international law without reference to how treaties are incorporated into Iraqi law. In practice, however, bilateral or multilateral treaties concluded by Iraq enter into force in international law by the enactment of an act of ratification under Article 17 mentioned earlier or accession after publication in the Official Gazette under Articles 31 and 32 of TCL[9]. If ratification is a necessary procedure at the concluding stage of international treaties for them to become internationally binding, publication in the Official Gazette is a necessary domestic procedure for treaties to acquire the force of applicable domestic law because treaty publication guarantees the linking of information about individuals and authorities to the legal rules agreed upon within the national framework. At the same time, it is a tool for the courts to examine the extent to which different authorities conclude treaties in compliance with constitutional rules and requirements (Hussein, 2013). However, Article 129 of the Iraqi Constitution of 2005 emphasises the publication of laws in the Official Gazette: "Laws shall be published in the Official Gazette and shall take effect on the date of their publication, unless stipulated otherwise." Nonetheless, the law of treaties could benefit from a more critical examination of the broader implications and challenges associated with treaty incorporation. For instance, it does not explore the potential consequences of non-compliance with treaty publication requirements, such as the risk of legal uncertainty or the possibility of violating international legal obligations. For example, if Iraq fails to publish a treaty it has signed with neighboring countries to regulate water usage from a shared river, it may be considered in breach of its international legal obligations under the agreement. This could lead to diplomatic tensions and a loss of credibility on the international stage. Therefore, while the law effectively outlines the procedural aspects of treaty incorporation in Iraq, it could enhance its analysis by considering the broader implications and challenges

associated with non-compliance with treaty publication requirements.

In addition to the criticisms outlined in both sections above, it is clear from the constitutional text that the procedure of approving international treaties is executed by a law that is legislated with the approval of a two-thirds majority of the members of the House of Representatives, which means that these treaties acquire the status of ordinary internal legislation according to that law issued by the House of Representatives. At the same time, TCL provides the prime minister with full powers to approve and conclude certain types of agreements, such as executive agreements, memoranda of understanding, and contracts that do not require return to parliament, which has been criticised as unconstitutional because the constitution makes parliamentary approval a condition for the agreement of treaties without discrimination. Thereafter, the law of ratification of the treaty shall be published in the Official Gazette. However, it is important to acknowledge that the Iraqi Constitution of 2005 and the TCL do not specifically tackle the issue of reconciling conflicts between domestic law and treaties during the implementation process. Consequently, the question arises as to how such conflicts are handled within the Iraqi legal system.

There are two cases to answer this question: first, in the event that there is an express provision establishing the primacy of the treaty over domestic law; in this case, the judge applies the provisions of the treaty and ignores the text of the domestic legislation. Second, in the absence of an explicit text, jurisprudence differentiates whether the treaty is precedent or subsequent to the internal law. Therefore, in the case where the treaty is precedent, the judge distinguishes between two cases: the situation of the silence or ambiguity of subsequent legislation as to the treaty in terms of its position on the treaty, and the situation of clearly and explicitly proving the intention of the legislator to violate the provisions of the treaty to which it is precedent (Abudar,2018). In cases where there is an express provision establishing the primacy of the treaty over domestic law, the approach seems straightforward and in line with international legal norms. However, this could potentially lead to conflicts with domestic laws that are not easily overridden by treaty provisions. For instance, if a treaty guarantees certain rights that conflict with deeply entrenched cultural or religious norms within Iraqi domestic law, the absolute primacy of the treaty could raise questions of judicial activism versus respect for local values. Therefore, while prioritizing treaties is crucial for ensuring compliance with international obligations, it must be done judiciously, considering the broader societal context.

In the case of silence, the judge assumes that the legislator did not intend to violate the treaty, which is precedent, but rather that the judge implicitly wanted to preserve and apply it, along with applying the provisions of the subsequent legislation. The judge then endeavours to reconcile the treaty with subsequent legislation. The judge achieves this on the basis that every piece of legislation that conflicts with a previous treaty leaves room for its actions, and the means of these actions is to exclude the case in which the treaty can be applied from the ruling of subsequent legislation. This is applied to foreigners whose country is not a party to that treaty. In cases where there is a clear intention of the legislator to violate the provisions of the treaty for which it is precedent, the judge cannot reconcile the treaty with the later laws, so the judge is forced to apply the later laws and ignore the provisions of the previous treaty. However, when the treaty is after the domestic law, the judge creates no obstacle as the provisions of the treaty are applied and the domestic law is ignored, based on the principle that the conflict of laws governs in terms of time (Abudar,2018). Although the differentiation based on whether the treaty is precedent or subsequent to internal law introduces a nuanced approach to handling conflicts, relying on judicial assumptions about legislative intent in cases of silence or ambiguity regarding a treaty's precedence within subsequent legislation could lead to inconsistency and uncertainty in legal outcomes. For instance, imagine Iraq ratifies an international treaty on trade that explicitly states its superiority over domestic laws concerning trade regulations. Subsequently, the Iraqi legislature passes new domestic legislation concerning trade that remains silent on the status of the treaty. In this scenario, judges must determine whether the treaty takes precedence over the new trade regulations. One judge might interpret the silence in subsequent legislation as implicit approval of the treaty's provisions, another might view it as an oversight or deliberate omission. This discrepancy could lead to inconsistent rulings and uncertainty in legal outcomes, especially concerning trade disputes involving foreign investors. Moreover, the notion that silence implies legislative intent to preserve the treaty might not always hold true. It is possible that the legislature did not address the treaty's precedence due to oversight or lack of awareness rather than a deliberate intention to maintain it. Regarding the principle that subsequent treaties override domestic law seems to align with the notion of evolving international

legal norms. For instance, imagine Iraq enters into a series of subsequent treaties related to environmental protection, imposing stringent regulations on industries to mitigate climate change. However, this alignment with evolving international legal norms could undermine legal stability and certainty within the domestic legal system. The abrupt override of domestic laws without adequate mechanisms for integration or adaptation could create confusion and inconsistency in legal interpretation and application. Moreover, this approach could raise concerns about the sovereignty of the state and its ability to enact laws consistent with its national interests. Therefore, acknowledging the importance of international obligations, there needs to be a balance struck between adherence to treaties and the autonomy of domestic legal systems, ensuring mechanisms for integration that preserve legal stability and respect national sovereignty.

In Iraq, however, as mentioned earlier in Articles 61(4) and 73(2) of the Constitution, the treaty comes into force when a new law is approved by two-thirds of the members of the House of Representatives, approved by the President, and then released in the Official Gazette as provided for in Article 129 of the Constitution mentioned earlier. In order to be published and come into force on a specified date, unless otherwise specified, the treaty shall be deemed to be an applicable law that replaces and repeals the old law to which it contravenes.

In summary, the Iraqi legal system, guided by the Dualist Theory, requires the enactment of new laws to integrate international treaties into domestic law. With the enactment of the Iraqi Constitution of 2005 and the TCL, predicting contradictions between national law and international treaties becomes challenging. This approach ensures that treaties acquire the status of applicable law, replacing and repealing conflicting domestic legislation. However, though this process streamlines the incorporation of treaties into Iraqi law, it also raises questions about the handling of conflicts between domestic laws and treaties. Despite the legal framework's emphasis on adherence to international obligations, achieving a balance between treaty compliance and respect for domestic legal autonomy remains essential. Therefore, mechanisms for integrating treaties into the domestic legal system must be carefully crafted to preserve legal stability and uphold national sovereignty.

7. CONCLUSION

This study has thoroughly examined the landscape of international treaties within the Iraqi legal system, shedding light on the processes of treaty ratification, implementation, and the resolution of conflicts between international obligations and domestic laws. Through an analysis of the Dualist and Monist theories, it became evident that international and domestic laws are distinct entities, often requiring specific procedures for integration into domestic legal frameworks. The Iraqi Constitution of 2005 and the TCL serve as critical pillars in governing international treaties within Iraq. Whereas the constitution outlines the process of treaty ratification by parliament and the president's role in the ratification process, the TCL grants the prime minister considerable authority in approving certain agreements without parliamentary oversight. This discrepancy has sparked debates over the constitutional validity of such practices, highlighting the need for clarity and alignment between legal frameworks. Moreover, the judiciary plays a pivotal role in determining the supremacy of treaties in cases of ambiguity or silence within domestic legislation, providing a framework for resolving conflicts and ensuring the harmonious coexistence of international obligations and domestic laws. Addressing the identified shortcomings in the ratification and implementation of international treaties is imperative for the Iraqi legislature as it moves forward. Clarifying distinctions between types of treaties requiring parliamentary approval and those that do not, especially concerning financial commitments, is crucial for upholding constitutional principles and ensuring accountability in treaty-making processes. Additionally, the incorporation of international treaties into the Iraqi legal system necessitates careful consideration of not only procedural aspects but also broader implications for national sovereignty and legal stability. While the existing legal framework provides a mechanism for treaty integration, challenges remain in reconciling conflicts between domestic laws and international obligations. The nuanced approach taken by the judiciary underscores the importance of judicial discretion in upholding the rule of law. Therefore, to ensure consistency and effectiveness in treaty governance, there is a pressing need for legislative reforms that enhance transparency and accountability in the treaty-making process. Furthermore, fostering dialogue and cooperation between government institutions, legal experts, and civil society stakeholders can facilitate a more inclusive and participatory approach to treaty governance, ultimately bolstering Iraq's standing in the international community while upholding the integrity of its domestic legal framework.

By embracing a forward-thinking approach to legal refinement and adaptation, Iraq can navigate the complexities of treaty governance with confidence and assert its role as a responsible member of the global community.

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NOTES

1. Treaties Conclusion Law No. 35, 17 September 2015, available at: https://www.moj.gov.iq/uploaded/4383.pdf. This law was passed by the Iraqi Parliament, based on Article 73 of the current Iraqi Constitution of 2005, due to the shortcomings of the previous Treaties Contract Law No. 111 of 1979.

2. US Constitution, Art. 2, Sect. 2, 1878. Article 2(2) states, "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator, representative, or person holding an office of trust or profit under the united states shall be appointed an elector." https://uscode.house.gov/static/constitution.pdf .

3. Japan Constitution, Art. 73, 1947.It states "The Cabinet, in addition to other general administrative functions, shall perform the following functions: Administer the law faithfully; conduct affairs of state. Manage foreign affairs. Conclude treaties." https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html#:~:text=Article%2073.,Conclude%20treaties.

4. United Nations, Vienna Convention on the Law of Treaties. Art. 26, 1969. It states "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." https://www.refworld.org/legal/agreements/un/1969/en/73676 .

5. Iraqi Constitution, Art. 80, Sct. 6 & 110, Sct. 1, 2005. Article 80(6) states, "The Council of Ministers shall exercise the powers to negotiate and sign international agreements and treaties, or designate any person to do so". Article 110(1) states, "Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing, and ratifying debt policies; and formulating foreign sovereign economic and trade policy."https://www.constituteproject.org/constitution/Iraq_2005 .

6. United Nations, Vienna Convention on the Law of Treaties, Article 7(2) states, "In virtue of their functions and without having to produce full powers, the following are considered as representing their state: (a) Heads of State, Heads of Government, and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty; (b) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting state and the state to which they are accredited; (c) representatives accredited by States to an international conference or to an international organisation or one of its organs, for the purpose of adopting the text of a treaty in that conference, organisation, or organ." https://www.refworld.org/legal/agreements/un/1969/en/73676 .

7. Iraqi Constitution, Art. 80, 2005. It states "The Prime Minister is the direct executive authority responsible for the general policy of the State and the commander-in-chief of the armed forces. He directs the Council of Ministers, presides over its meetings, and has the right to dismiss the Ministers, with the consent of the Council of Representatives."https://www.constituteproject.org/constitution/Iraq_2005.

8. Treaties Conclusion Law No. 35, Art. 2., 3., 5. Article 2 states, "official treaties concluded in the name of the Iraqi Republic or its government with a country or other countries or its government or an international organisation or any other international legal person recognised by the Iraqi Republic are the treaties to which the provisions of the Treaties Act apply." Article 3 states, "The provisions of this law do not apply to the following: 1) An executive agreement that is concluded to implement the provisions of legally ratified treaties and whose validity is subject to the approval of the competent minister or the head of an entity not linked to a ministry if it does not include a financial commitment to Iraq and to the approval of the Council of Ministers if it includes this commitment. 2) Memoranda of Understanding concluded between ministries and entities not associated with a ministry and their counterparts in other countries, whatever the name of these memoranda, and their validity is subject to the approval of the Prime Minister or whoever he

authorises, and whoever the Prime Minister delegates this authority may not delegate it to someone else. 3) Agreements and memoranda of understanding concluded by the Republic of Iraq represented by the Ministry of Foreign Affairs and the government of the contracting country represented by its Ministry of Foreign Affairs, which are concluded in accordance with the principle of reciprocity of rights and obligations, and their validity is also subject to the approval of the Prime Minister or his authorised representative." Article 5 states, "The Prime Minister represents the Republic of Iraq ex officio without the need to present credentials for the purpose of carrying out the work related to the conclusion of the treaty."

9. Treaties Contract Law No. 35, Art. 19., 31. Article 19 states "For the entry into force of the treaty towards the Republic of Iraq on the date stipulated in the treaty, it is required based on: 1) bilateral authentication, according to the provisions of this law; the exchange of ratification documents; or the exchange of notes supporting the ratification; 2) ratifying or adhering to the multilateral treaty in accordance with the provisions of this law and depositing the necessary document or notifying it in accordance with the provisions stipulated in the treaty with the depositary in accordance with the final provisions of the treaty; 3) in accordance with the final provisions of the treaty, as of the time of the adoption of its text with regard to organising the documentation of its texts, and proving the agreement of states to be bound by it. The method or date of its entry into force, and no reservations thereon, and the functions of the depository, and other matters that take place before its entry into force." Article 31 states, "First, regulations may be issued to facilitate the implementation of the provisions of this law, and second, the Minister of Foreign Affairs may issue instructions to facilitate the implementation of this law." Article 32 states, "This law shall be implemented from the date of its publication in the Official Gazette."