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RECONCILING CONSTITUTIONAL RULES AND INTERNATIONAL LAWS: A DOCTRINAL STUDY ON THE INNOVATIVE ROLE OF CONSTITUTIONAL RECONCILIATION IN IRAQ AND EGYPT

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ABSTRACT

This research employs a doctrinal study methodology to investigate the conflict between constitutional rules and international rules, emphasizing the emerging jurisdiction of constitutional reconciliation. Through case studies in Iraq and Egypt, the study seeks to identify crucial criteria for addressing conflicts within the legal framework. A systematic analysis of legal principles, precedents, and existing literature provides a comprehensive understanding of the intricate dynamics involved in resolving conflicts between constitutional provisions and international rules. The research delves into nuanced conflicts arising in the absence of specified applicable laws in constitutional provisions, particularly where international treaties intersect with or deviate from domestic legislation. It aims to elucidate

the mechanisms employed by domestic judges, utilizing constitutional reconciliation, when confronted with conflicts between provisions in domestic law and those in treaties. The central inquiry focuses on determining the prevailing legal framework—domestic law or international treaty—with constitutional reconciliation emerging as a novel jurisdiction to rectify such conflicts. In addressing the conflict between constitutional rules and international rules, the study aims to develop an effective resolution mechanism, underscoring the importance of constitutional reconciliation to harmonize international law with domestic legal frameworks. Grounded in a comprehensive understanding of international law regarding the authority of constitutional judges, the analytical method is complemented by the doctrinal study. By integrating the jurisdiction of constitutional reconciliation into the methodology and employing Iraq and Egypt as case studies, this research contributes to a nuanced comprehension of how constitutional judges can navigate and harmonize the interplay between domestic and international legal frameworks. This approach ensures the preservation of both sets of rules without compromising either, advancing our understanding of the complexities involved in addressing conflicts between constitutional and international rules through the innovative lens of constitutional reconciliation.

Keywords: Constitutional reconciliation, constitutional judiciary, international law, constitutional block, legal conflict.

INTRODUCTION

Most countries uphold the principle of state sovereignty. It involves the independence of the state and its control over its entire territory. It organizes its affairs by itself. Other countries are not allowed to interfere in its affairs. However, at the same time, sovereignty may collide with international law. It linked the state through treaties or international agreements, which in most countries enjoy constitutional value equal to or higher than domestic law. This research examines the international stance on reconciling conflicting constitutional components. It focuses on countries that consider international rules as one of the constitutional components. This is important when there is a conflict between a constitutional provision and another international obligation. It raises the question of the constitutional

judge's stance on such conflict. A judge might be confronted with the dilemma of whether to give priority to constitutional provisions as the supreme laws in the country or to uphold international laws and give them higher constitutional value within the constitutional hierarchy. The present study seeks to address this question: what is the recourse when in the absence of a specific legal regulation to be followed, especially in the context of when to apply international law and when to apply the constitutional provisions?

The constitutional judge, in this case, is obligated to consider both international and domestic law without excluding either of them. The exclusion represents a waste of interests and rights included in the excluded provision. Therefore, most countries have emphasized the value of international treaties. Some countries have made treaties of equal value to the constitution. Other countries have made treaties superior to the constitution. Meanwhile, some constitutions have not stated the value of treaties, which gives the constitutional judge the authority to assess which provision is more appropriate to apply. It balances between them without neglecting either of them in case of any conflict between international obligations and any constitutional provision or principle that falls within the framework of the constitutional hierarchy.

RESEARCH SIGNIFICANCE

This study highlights the stance of international law regarding the authority of constitutional reconciliation as an innovative and emerging authority. The study is significant because the issue of reconciliation has not been subject to independent legal regulation. Instead of excluding some rules and wasting the interests and included rights, countries can legislate a law that clarifies the mechanism of dealing with the problem of conflict between legal rules in general, not just constitutional rules. This mechanism is represented through the authority of reconciliation between conflicting rules. It preserves the rights and interests included in the conflicting rules. The issue of constitutional reconciliation is a new topic. It undoubtedly contributes to enriching the practical and academic aspects by providing a unique study in the field of hierarchy between international and domestic rules.

RESEARCH PROBLEM

The relationship between international law and domestic law presents several legal challenges, particularly concerning the hierarchical structure of legal rules. Countries diverge in defining the legal status occupied by international treaties and agreements within the legal hierarchy. The primary issue addressed by this study is to determine whether these international treaties have been granted constitutional value and subsequently establish their position within the constitutional block in both Egypt and Iraq. Subsequently, the study aims to identify the optimal solution to be followed by constitutional judges, examining whether there is any conflict between these international treaties and constitutional provisions within the constitutional block. The goal is to reconcile them without attributing superior constitutional value to one over the other or stripping either of its constitutional value.

METHODOLOGY

This research, centered in Egypt and Iraq, employs an analytical design and a doctrinal study methodology to investigate how conflicting constitutional provisions and principles are reconciled, with a focus on international jurisprudence and judiciary in these specific contexts. Through an analytical method, the study provides a detailed examination of how international jurisprudence navigates and addresses constitutional conflicts in both Egypt and Iraq, offering insights into the unique legal landscapes of each country.

Incorporating a doctrinal study methodology, the research systematically analyzes legal principles and precedents in the constitutional contexts of Egypt and Iraq, highlighting the theoretical foundations guiding decision-making by the international jurists and judiciary in these jurisdictions. Within the doctrinal study, a comparative approach is applied to identify similarities and differences in the constitutional judiciaries of Egypt and Iraq. This approach aims to provide nuanced insights into the strategies employed by each country to reconcile conflicting constitutional provisions.

Organized into two sections, the study first explores the stance of international jurisprudence on reconciling international and domestic

law in Egypt and Iraq. The second section focuses on the role of the international judiciary in these countries in addressing conflicts between the rules of international law and domestic law. This targeted approach aims to contribute specific insights to the constitutional law and international jurisprudence of Egypt and Iraq.

LITERATURE REVIEW

This study addresses a critical gap in the existing constitutional and international literature by delving into the intricate relationship between international laws and domestic legal systems. While previous studies have made valuable contributions regarding the integration of international laws into domestic frameworks, they have fallen short in providing insights into the strategies available to constitutional judges when faced with conflicts between international laws and constitutional rules. This research serves as a pivotal starting point, examining whether international treaties hold constitutional significance and subsequently, determining their roles within the constitutional frameworks of both Egypt and Iraq.

The primary aim of this study is to identify the optimal approach for constitutional judges in resolving conflicts between international treaties and constitutional provisions within the constitutional block. The emphasis is on achieving reconciliation without bestowing superior constitutional value to either set of norms or diminishing their constitutional significance. This research stands out as the first comparative monograph, offering a much-needed exploration across the two legal systems of both Egypt and Iraq.

Moreover, the current investigation seeks to uncover the evolving role of constitutional courts, shedding light on their innovative functions in reconciling international treaties and constitutional provisions. The central objective remains avoiding the attribution of superior constitutional value to either set of norms, ensuring the preservation of their respective constitutional significance. This study contributes significantly to the literature by providing a comprehensive account of these dynamics and offering insights into the transformative role of constitutional courts in managing the interplay between international and domestic legal norms.

THE INTERNATIONAL JURISPRUDENCE STANCE ON CONSTITUTIONAL RECONCILIATION

International jurisprudence has differed in determining the relationship between international law and domestic constitutional law. This variation can be seen as taking up the following two vantage points. The first is based on the theory of dualism. It denies any connection between international law and domestic law. Each has an independent scope of application. The second is to adopt the theory of unity of laws. It recognizes a close relationship and permanent interconnection between the two laws. This theory requires the predominance of the rules of one over the other in case of a conflict between them. Therefore, it is important to clarify the direction of jurisprudence by stating its stance on constitutional reconciliation. We will dedicate the first subsection to clarify the legal basis of the international and domestic law relationship. Meanwhile, we will dedicate the second requirement to clarify the stance of international rules within the constitutional block, as follows:

The Legal Basis for International and Domestic Law Relationship

A. Theory of dual laws

This theory fundamentally states that the rules of international law are independent of the rules of domestic law. So, international law is part of a legal system that differs from the system to which domestic law is related (Al-Attayah, 2010). Consequently, this idea constitutes that the rules of international law will not be applied and enforced within a country unless they become part of the domestic law issued by the legislative authority. As we have previously stated, many constitutions have considered international treaties as part of their domestic legislation. For example, the Iraqi constitution was issued in 2005 and some constitutions have made international treaties. It focuses on the law of the country alongside the constitution, such as that of the United States of America. Some other countries give superiority of the rules of international law over ordinary law but lower than the constitution, and so on. This is the ranking of international law rules in the constitutions of countries. However, contrary to this theory, there are cases where a close relationship can be established between international and domestic law. The most important of these cases are as follows:

Referral

Referral happens when domestic laws refer to international laws or legal characteristics to describe foreigners. This includes legal rules for diplomacy, war, territorial sea, and high seas, as well as specific legal adjustments (Abu-Sameh, 2017). The English judiciary has acknowledged and referred to the concept of referral in several decisions. In the well-known case of *Collier v. Rivaz* in 1841 (*Collier v. Rivaz* (1841) 2 *curt*, 855), the circumstances involved a British citizen who passed away in Belgium, having made a valid will under English law that was considered invalid according to Belgian law. The English court applied the Belgian conflict of laws rules, placing itself as if it were in Belgium. According to the English conflict of laws principles, the will should be governed by the law of the deceased's domicile (Belgian law in this case) (Rogerson, 2013). However, the Belgian conflict of laws rules stipulated that the will for foreigners should be governed by the law of nationality (Khan et al., 2018). In this case, the English court applied the English law (the law of the deceased's nationality) in accordance with the Belgian conflict of laws rules. However, the theory of *renvoi* became more explicit and evident after the *Forgo* case, in which a decision was issued by the French Court of Cassation in 1878 (Cowan, 1938). The *Forgo* case involved *Forgo*, a natural-born Bavarian citizen who moved to France with his mother at the age of five. He lived in France until his death at the age of sixty-eight, without obtaining naturalization documents. According to French law at that time, a foreigner would not be considered domiciled in France without the required certificate of naturalization, despite the extended period of residence (TEKİN, 2023).

Under French law, the state inherits for a natural-born child, while Bavarian law gives inheritance rights to relatives on the maternal side. The French conflict of laws rules determined that Bavarian law should be applied as the law governing nationality, and according to the Bavarian conflict of laws rules, French law should apply as the law of the deceased's domicile and the law governing the assets subject to inheritance. This case illustrates the complexity of determining applicable laws in cross-border situations and the evolving nature of legal doctrines, particularly the *renvoi* doctrine. The Iraqi Civil Code explicitly rejects the concept of referral, as stated in Article 31/1, which reads: "If it is determined that a foreign law is applicable, only its substantive provisions shall apply, excluding those related to private

international law.” This rule is a general principle that encompasses all civil, commercial, and personal status matters. It is essential to note the distinction between referral and delegation. Referral involves invoking a conflict of laws rule that directs to another jurisdiction’s law, while delegation implies that the foreign law referred to is composite, meaning that the laws within that country are multiple. In this case, that law serves as a reference in determining the applicable law or legal system.

For example, English law comprises two legal systems – English law in England and Scottish law in Scotland. If Iraqi law refers to the application of English law, the latter becomes the reference in determining which law (English or Scottish) applies to the dispute. Furthermore, the Iraqi Civil Code annulled, in the third paragraph of Article 1381, the first article of the Law of Personal Status for Foreigners No. 87 of 1931, which used to adopt the theory of referral. However, the Iraqi legislator adopts the theory of referral in Article 424, the second paragraph of the repealed Commercial Law No. 149 of 1970, which states that the applicable law for determining the capacity of the person obligated under a negotiable instrument is the law of the state to which the person belongs by nationality. If this law refers to the law of another state, then the law of that state is the one to be applied. The legislator reiterated the adoption of the theory of referral in the Iraqi Commercial Law No. 30 of 1984 in Article 48/2 concerning the determination of the capacity of the obligor under a transfer. In this context, the legislator follows the theory of referral, which applies to both the negotiable instrument and the order document.

Transformation

Transformation occurs when the international law orders are integrated into the internal legislation of a state. Transformation limits the internal powers of the country. It also obligates individuals to abide by these rules (Al-Suwaidawi, 2022). The question arises as to whether the international rules become effective and applicable within the state’s jurisdiction immediately upon issuance and completion of the legally prescribed procedures, or if specific legal measures are required to achieve this effect or applicability. Does the self-executing integration of these rules into domestic law occur automatically after their ratification, or does it necessitate internal procedures to accomplish this? In the majority of countries, there is no explicit provision for the

automatic self-execution of international treaties into domestic law after ratification. This is based on the premise that ratification is an act that only affects states and that ratified treaties are not recognized by domestic law until they are received and incorporated through internal acts issued by the state, often in the form of a decree or law (Carter Jr, 2009). This necessary step for integrating international agreements into the domestic legal system and endowing them with legal force requires either a decree or a law declaring the treaty's validity and publishing it in the state's official gazette. According to this principle, the authority to conclude treaties falls under the executive branch, while legislative authority lies with the parliament (Vázquez, 2008). This makes it challenging for the executive branch to unilaterally impose the treaty-making power, hiding behind its authority to conclude treaties, without infringing on legislative authority. The self-execution of rules of customary international law does not pose such a problem (Ginsburg et al., 2008).

While this justification may hold for many states, it is not universally applicable. There are specific states where the power to conclude treaties is not solely within the executive branch, but is shared with the legislative branch, as seen in France and Switzerland. In these countries, internal legal texts specify how international treaties apply to their territory, known as the reception system (Hathaway et al., 2012). This system ensures the incorporation of the written international rule into domestic law, following specific procedures that vary from one country to another, based on their legal and political systems. After the integration process according to the designated internal procedures, questions arise about the regulation of the relationship between domestic law and the incorporated international conventional rule (Nafziger, 2013). The legal systems differ in organizing this relationship based on the constitutional structure in each country. Possible solutions to this relationship can be categorized into the following models (Knop, 1999).

Granting the international conventional rule, the force of ordinary law: This involves recognizing the international rule as having the force of ordinary law, with the same characteristics and effects as laws regulating ordinary relationships (Strauss, 1995). The international rule can modify or annul previously existing domestic laws, and domestic laws in violation of the international rule can be amended or annulled before the international rule takes effect. However, this approach places an international responsibility on the state, similar

to customary rules. Elevating international treaties above ordinary laws: This entails giving the international conventional rule a higher status than ordinary laws. The international rule can amend or annul previously existing domestic laws, and laws conflicting with the international rule are prohibited (Nafziger, 2013). This approach often includes judicial oversight to ensure compliance. Placing the treaty in a higher position than the constitution: This involves giving the international treaty a status superior to constitutional laws, requiring the modification of constitutional provisions to align with the treaty. This model is exemplified by the current Dutch constitution.

In summary, the relationship between international law and domestic law is crucial, and the strength of this relationship reaches the point of legal system unification. The robustness of this relationship depends on the formation of a legal system where the two laws coalesce into a unified legal framework (De Mestral & Fox-Decent, 2008). The legal systems employ various models for the integration of international and domestic rules, guided by the general principle of the supremacy of international law over domestic law. The interaction between these laws is shaped by the dual considerations of state sovereignty and the importance of upholding the supremacy of international law, with potential consequences for non-compliance. The balance between these considerations is determined by the state's internal and international legal context, highlighting the need for harmony and interaction between these dual considerations. Therefore, the relationship of international to domestic law is closely interwoven. Dualism theory suggests some aspects where the relationship interferes. It motivates countries to integrate international law into their domestic legislation. This results in a potential conflict between laws. Consequently, it becomes obligatory to resolve this conflict and achieve reconciliation. Yet, a constitutional judge cannot ignore or disregard the rules of international law if his country's constitution mandates its integration with domestic legislation. Simultaneously, the judge cannot neglect national sovereignty. Therefore, the judge must strive to strike a balance between the international and domestic legal systems (Al-Musawi, 2017).

B. Theory of unity of laws

Advocates of this theory have adopted a different approach than those who support dualism. According to them, domestic law and international law are interconnected and form a unified system.

However, they disagree on the fundamental basis of this unity. Debates revolve around whether the primary rule is established in domestic or international law. Proponents of this theory have also disputed whether international law rules should take precedence over domestic law rules, or vice versa. They have supported their perspective in two ways, as follows:

The first perspective is that the fundamental basis of unity lies in domestic law. Supporters of this view believe that domestic law and international law should be merged. Domestic laws take precedence over international law. Proponents of this theory require that international treaties be explicitly stated in the constitution of the state. It is considered the supreme law within the country. It determines the competent authorities to conclude such treaties. This would result in international law becoming a branch of domestic law within the state (Saeed, 2020). However, critics of this perspective argue that directly linking international treaties to constitutional provisions makes them vulnerable. It undermines them in the event of any changes or amendments to the Constitution. This is a significant disadvantage as international law requires stability and consistency.

This paper argues that when a conflict arises between the provisions of a country's constitution and an international treaty it has ratified, judges are left with no choice but to find a way to harmonize the principles expressed in both. This approach is necessary because resolving such conflicts would require amending the constitution and laws. It results in legal complications and intricate procedures, particularly in the case of inflexible constitutions. Moreover, this would entail engaging in time-consuming deliberations and referendums. The constitutional judge can use these challenges to innovate and exercise their authority without violating international rules. This frees the country from the complexities of amending constitutions and legal difficulties. This paper also argues that countries have been bound by numerous international treaties in the past. It then will continue to abide by them in the future. The state cannot revise or amend its constitutional texts to comply with international law or treaty provisions. Resolving the differences between constitutional provisions and international treaties can be achieved through reconciliation. In countries with decentralized constitutional oversight, such as the United States, this can be done through constitutional courts. In countries with centralized constitutional oversight, the constitutional judge can play a constructive role by referencing international law and treaties when the constitution is silent on a specific matter.

This demonstrates that international legal norms cannot be disregarded on the grounds of the constitution or domestic law (Goldsmith & Levinson, 2008). First instance courts can also remove conflicts by refraining from applying laws that violate the constitution or international law. This is because the constitution is supreme over domestic laws. It is reasonable and logical that international law should be superior to ordinary laws, systems, and regulation (Al-Suwaidawi, 2022).

The second approach maintains that the fundamental basis lies in general international law. Therefore, proponents of this approach argue for the unity of law with the supremacy of general international law (Jackson, 1992). Consequently, international law encompasses a broader scope of application. For example, family law is subject to village law. Village law is subject to city law, and so on, gradually leading to the state law. It, in turn is subject to international law. However, this approach is criticized for making international law a mechanism that nullifies any conflicting domestic laws (Al-Nahal, 2008). This is despite acknowledging the overlap between the two legal systems in terms of regulating certain matters. This does not imply a complete cancellation of all conflicting provisions with international law.

According to this approach, resolving conflicts is left to the general rules of interpretation. It involves interpreting the provisions of both laws and favoring one over the other. This approach treats the two legal systems as separate and denies any connection between them. Consequently, the supremacy of domestic law over international law is upheld. It leads to non-compliance or the future dissolution of international obligations by states based on the supremacy of domestic law. This argument is supported in the judgment of the International Court of Justice (ICJ) in the 1932 dispute between France and Syria. In this case, the Court affirmed that France cannot govern based on its national legislation and restrict its international obligations (Al-Nuaimis, 2017).

The Status of International Rules in the Constitutional Framework of Various Countries

The majority of constitutions give international law provisions a lower legal value compared to constitutional rules. Although there

are differences in their legal status compared to ordinary domestic legislation, many constitutions consider international treaties as superior to domestic law (Milanovic, 2009). The minority grant international treaties the force of law. Some constitutions assign international rules a middle ground between the constitution and ordinary laws. The constitutional text is the reference for determining the legal value of international rules (Kumm, 2004). The constitution defines the method of incorporating international rules into national legislation and their position within the legal hierarchy. Therefore, it is not possible to apply international rules outside the limits and framework of the constitution. It is essential to clarify the stance of states in determining the status of international rules within the constitutional framework.

(a) International treaties have a higher status than the constitution

It is extremely uncommon for countries to prioritize international treaties over their constitutions. However, there are a few examples, such as the Dutch Constitution of 1963. It places international treaties above the constitution itself (Daoud, 1987). These countries display a strong international orientation and are committed to upholding the principles of international law. It means going against domestic legislation or provisions in their own constitutions though. In such cases, ratified treaties are treated as amendments to the existing constitution. It resolves any conflicts between the two (Sato, 1967).

(b) International treaties have the same legal status as domestic laws

International law follows the same procedures as domestic law for enactment and ratification. For instance, the Egyptian Constitution of 1971 specifies that the President of the Republic can conclude treaties. They become law after conclusion, ratification, and publication according to the prescribed procedures. Similarly, the Iraqi Constitution of 2005 demonstrates Iraq's commitment to international treaties and agreements. It regulates their ratification through ordinary legislation. This makes them a part of domestic legislation. According to Article 61/4 of the Iraqi Constitution, the Council of Representatives has the power to organize the process of ratifying international treaties and agreements. The Council enacts a law with a two-thirds majority vote. Based on the text above, we find that international treaties are

considered to have the same legal status as domestic law. They are enacted by a law that is legislated with the approval of a two-thirds majority of the members of the House of Representatives. Article 73 of the Constitution states “the President of the Republic shall exercise the following powers: Approval of international treaties and agreements after the approval of the House of Representatives. Such approval shall be granted within fifteen days from the date of receipt.” (*the Constitution of Iraq*, 2005). In case of conflict, the law must be repealed or amended by subsequent legislation. If this is not done, the state cannot be exempted from its international responsibility for violating its international commitments. This is based on the legal principle that “the new rule prevails over the old one that is similar in force but conflicts with it in content (Saeed, 2020).

(c) International treaties are in a middle position between the constitution and ordinary law

This means that international treaties have a higher status than domestic legal rules, with the constitution being of higher importance. This can be found in Article 55 of the French Constitution of 1958. It states “treaties or agreements duly ratified or approved shall, upon publication, prevail over domestic laws, provided that such treaties or agreements have been properly implemented by the other party,” (“The 1958 Constitution of France,” 1958). Additionally, Article 54 of the same constitution prohibits the approval or ratification of an international treaty that has been declared by the Constitutional Council to be contrary to the constitution. It places the international treaties in a subordinate stance to the constitution (Saeed, 2020).

In summary, based on the facts it is clear that international legal norms cannot directly impose their authority on domestic legal rules. International norms cannot cancel or modify domestic legal rules even if they conflict with them. This is especially true because domestic rules require legislative procedures regulated by the domestic constitution regarding cancellation and modification (Grimm, 2004). At the same time, an internal rule cannot cancel or modify an international rule because it would contradict it. Treaties are established based on the explicit will of member states. Therefore, it is necessary for the constitutional judge to apply the idea of reconciliation and balance between conflicting international and domestic rules. This considers the hierarchy of legal rules.

THE CONSTITUTIONAL AND INTERNATIONAL JUDICIARY'S STANCE ON CONSTITUTIONAL RECONCILIATION

International treaties are considered an integral part of international law. The Vienna Convention on the Law of Treaties, adopted in 1969, provides guidelines for the interpretation and application of international treaties. Once a state becomes a party to a treaty, it is generally obligated to comply with its provisions. This means that states cannot easily evade their obligations under the treaty by relying solely on their domestic laws or constitutions. According to what is established by the constitutional rule, all internal legal regulations, include international treaties. These treaties enjoy the same force as ordinary laws, or have a higher legal value than them without reaching the level of constitutional provisions. They are subject to constitutional review, just like ordinary laws (Shantawi, 2015). Hence, it is appropriate for us to discuss the stance of both constitutional and international courts regarding constitutional reconciliation in this matter. We will begin by explaining the viewpoint of the constitutional judiciary. Then we will explore the perspective of the international judiciary on constitutional reconciliation. We will delve into these two sections to provide a comprehensive understanding of the subject.

The Constitutional Judiciary Stance on Constitutional Reconciliation

We have discussed the perspective of jurisprudence on reconciling international law with domestic law. We have also examined the status of international rules within the constitutional framework. We have probed the varying approaches taken by different countries in determining this position. Now it is essential to clarify the stance of the constitutional judiciary in comparative legal systems regarding the idea of reconciling international law with domestic law. This can be achieved through the following elaboration:

The French Constitutional Judiciary Stance

The position of the French Constitutional Council is that international treaties in the French system have legal value. It exceeds that of ordinary laws, provided that they are ratified or approved according to the prescribed legal procedures. It is published in the Official

Gazette in the same manner as national legislation. Additionally, it is a requirement that the other party to the treaty (reciprocity) applies it. This was established in Article 55 of the French Constitution issued in 1958. It states “treaties or agreements that are ratified or approved shall have the force of law from the moment of their publication, provided that the other party applies this agreement or treaty (Nouji, 2007).

The present article has shown that the French constitutional judiciary has put the international treaties in the mid between the constitution and the normal law. This means that in the event of a conflict between the international treaties with the local constitution, the constitution receives the supremacy over the international law. The constitutional jury has the responsibility in such an instance to violate the international treaties and apply the local constitution. This leads to evade the rights and freedom that the international treaties possess.

The authors of this article believe that instead of evading the international treaties, the French constitutional judiciary can reconcile between the international rules and the domestic rules. It ensures preserving the rights and freedoms which international and local laws preserve. In doing so, the French constitutional judiciary can reconcile between them without evading any.

The Egyptian Constitutional Judiciary Stance

Article 151 of the Egyptian Constitution states that the President of the Republic is responsible for forming treaties. The President then presents them to the People’s Assembly with a suitable declaration. These treaties hold the power of law once they are finalized, ratified, and published according to the legal conditions in place. If the treaties involve state lands, matters related to sovereignty rights, or entail expenses not included in the budget, they need the approval of the People’s Assembly (Article (151) of the Egyptian Constitution of 2014).

In summary, it can be inferred from this passage that the Egyptian constitutional lawmaker established international treaties. They are legally binding, with the constitution taking precedence over them. However, the Egyptian constitutional judiciary, in numerous instances, elevated the status of international treaties above that of

regular laws when conflicts arise (Al-Tersawy, 2008). This implies that when there is a contradiction between the provisions of the constitution and international treaties, the constitutional judge will enforce the constitution, resulting in the infringement of rights and freedoms guaranteed by international treaties. This can lead to both international and domestic issues. To prevent these problems, it is important to align and reconcile the laws of the domestic system with those of international law, without disregarding either one.

The Iraqi Constitutional Judiciary Stance

The Iraqi constitution is considered superior to international treaties. If an international treaty conflicts with the provisions of the Constitution of Iraq for the year 2005, the Federal Supreme Court considers the treaty unconstitutional. It violates the constitution. For the year 2015, where it was stipulated in Article (19) which states that “the agreement or treaty enters into force towards the Republic of Iraq on the date stipulated in the treaty based on it: First: Ratification of bilateral treaties in accordance with the provisions of this law and the exchange of ratification documents or notes supporting ratification.”

Secondly: Ratifying or joining multilateral treaties in accordance with the provisions of this law. It deposits the necessary document or notifying it in accordance with the provisions specified in the treaty with the depositary with the final provisions of the treaty.

Thirdly: Implementing the final provisions of the treaty from the time of adopting its text, regarding the organization and authentication of its texts and proving the states agreement to abide it. This means that the agreement is not considered enforceable in Iraq, and judges are not allowed to base their rulings on it or apply it unless it is ratified by law. Unlike the Jordanian legislator, the Iraqi legislator has integrated international treaties with domestic legislation. The Iraqi Constitutional Court, represented by the Federal Supreme Court, does not allow for the reconciliation between international treaties and the Iraqi Constitution in case of conflict. The Federal Supreme Court would declare the article of the international treaty unconstitutional. This has negative consequences on Iraq’s international obligations. In a decision by the Federal Supreme Court, it stated that the request for the extradition of an Iraqi convict by the Sharjah Misdemeanor Court, according to Article 40 of the Riyadh Agreement of 1983, which was

ratified by Law No. 110 of 1983, contradicts the Constitution of the Republic of Iraq of 2005. Thus, the mentioned article is considered ineffective and unconstitutional (Riyadh Agreement Law ratifying the Riyadh Arab agreement for judicial cooperation, 1984).

The International Judiciary Stance on Constitutional Reconciliation

One of the stable matters in international law is that international law and international treaties are superior to constitutions and internal laws. When there is a conflict between them, it means that international law is higher in rank than national laws. But this does not mean that these national texts have no value for international courts. National constitutions and laws do not obligate or restrict international courts. It indicates that the aspects of consideration for constitutional rules are in the event that they do not contradict the rules of international law (Ibrahim, 1995). Many decisions have been issued by international courts, the most important of which are:

The advisory Opinion of the ICJ in 1998

It was between the United States and the United Nations in 1947. It focused on the application of the condition of resorting to arbitration in the headquarters agreement concluded between them. The court emphasized the supremacy of international law over American law. This is based on the stability of this principle in international court rulings since ancient times, such as the Alabama case in 1872.

Judgment of the ICJ Issued in 2000

The ICJ issued a judgment in 2000 regarding the arrest warrant for the Congolese Minister of Foreign Affairs. The warrant was issued under the Belgian International Jurisdiction Law. It allows Belgian courts to handle international crimes regardless of where they occurred. The court determined that international law upholds the immunity of high-ranking state officials from jurisdiction in other countries. The Vienna Convention on Diplomatic Relations does not specifically address the immunities of foreign ministers. It must be determined based on customary international law. The court concluded that the arrest warrant and its international publication violated Belgium's international obligations towards the Democratic Republic of

the Congo. It disregarded the minister's immunity from criminal jurisdiction under international law (Al-Enezi, 2016).

The advisory opinion of the ICJ

When the United States tried to close the headquarters of the Palestine Liberation Organization in New York, the court clarified its advisory opinion in 1988. It states "the United States of America is obligated to respect its international obligations by resorting to arbitration in accordance with Article (21/A) of the Headquarters Agreement of 1947. If the United States claims that the national law takes precedence over the obligations arising from the headquarters agreement, the court reminds it that the basic principle is stable in international law. It is the supremacy of international law over national law, and this supremacy has been recorded by the international judiciary" (Ibrahim, 1995).

The present authors believe that in the event of a conflict between the constitutional rules and the international rules, the constitutional judge can raise this conflict without affecting the provisions and rules of international law. The judge does not need to violate the provisions of the rules of the national constitution. S/he reconciles them as mentioned previously. Reconciliation is a tool to present the conflict between the disputants onto the hands of the judge. The role of the judge here is to devise the best solutions. S/he conciliates system in order to preserve the legal value of the rules of the constitution before international judiciary and international law without violating an international principle. This is the supremacy of the rules of international law over national laws.

CONCLUSION

Within the domain of jurisprudence and international law, the resolution of conflicts between constitutional rules entails distinct approaches. Nevertheless, a prevailing tendency among jurists and constitutional judges is to pursue reconciliation and equilibrium between conflicting constitutional rules. This inclination arises from the constitutional judge's authority to innovate, harmonizing contradictory texts or fundamental principles rather than relying solely on traditional interpretative or constitutional scrutiny methods.

Consequently, the constitutional judge assumes the responsibility of resolving conflicts between such rules through reconciliation.

Through the analysis and discussions presented, this study has yielded several conclusions. As a natural extension of these findings, we put forth recommendations intended for contemplation and development by the constitutional legislator. Notably, certain countries such as Egypt and Iraq have adopted a dualist approach concerning the relationship between international law and domestic law, treating them as distinct and independent legal systems. Conversely, other nations have embraced the theory of the unity of laws, wherein international law takes precedence over domestic law, considering them as an inseparable legal entity. In the context of Iraq, the legislator has adopted the dualist theory, resulting in a reduced likelihood of conflicts as both laws are treated independently.

In light of these observations, this study strongly recommends the international community to pursue a unified formula for addressing conflicts between international law and domestic law, rather than leaving it to the discretion of individual states. Such an approach can effectively mitigate the risk of undermining conflicting rights and interests. Additionally, we propose that countries incorporate their international obligations into their domestic laws, akin to the approach undertaken by the Iraqi legislator, which mandates the ratification of treaties through domestic legislation. By doing so, potential conflicts can be preemptively addressed, fostering a more seamless integration of international law into domestic legal systems.

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