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مجلة نينوى للدراسات القانونية

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دور القضاء الدستوري في المصادقة على الاتفاقيات الدولية في النظام القانوني العراقي

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الملخص

يؤدي انتشار الاتفاقات الدولية عبر مختلف المجالات إلى تضارب بين القانون الدولي والقانون الوطني. في مثل هذه النزاعات، يكون القضاء الدستوري هو الكيان الأكثر موثوقية للتحقق من الموقف القانوني للبلد فيما يتعلق بالاتفاقيات الدولية عندما يكون الدستور صامتا. لدراسة كيفية تعامل النظام القانوني العراقي مع الاتفاقيات الدولية، تحلل هذه الورقة القواعد التي أرستها قرارات المحكمة الاتحادية العليا. يقال إن الرؤية القانونية العر اقية للنظر إلى الاتفاقيات الدولية ينظر إليها على أنها جزء من النظام القانوني العراقي. في الجزء الأول، توضح هذه الورقة عملية إبرام الاتفاقيات الدولية و إنفاذها. كما يدرس في جزئه الثاني كيفية تعامل المؤسسة مع الاتفاقيات الدولية التي أبرمت في العراق خلال العقدين الماضيين. وقد سعت المحكمة بنشاط إلى توسيع نطاق اختصاصها على الاتفاقات الدولية، وهي خطوة تؤكد سلطتها ونفوذها. بالإضافة إلى ذلك، تبنت أيضا موقف اعتبار الاتفاقيات الدولية قانونا عر اقيا، وبالتالي تأكيد ولايتها عليها. وفي التطورات الأخيرة، راجعت المحكمة تفسيرها للتصديق على النحو المنصوص عليه في دستور عام 2005، مما أدى إلى بعض الغموض فيما يتعلق بعملية التصديق على الاتفاقات الدولية.

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The Role of Constitutional Judiciary in Ratifying International Conventions into the Iraqi Legal System

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Abstract:

The proliferation of international agreements across various domains leads to conflicts between International Law and National Law. In such conflicts, the constitutional judiciary is the most reliable entity for ascertaining the legal position of a country regarding the international conventions when the constitution is silence. To examine how the Iraqi legal system deals with international conventions, this paper analyzes the rules established by the decisions of Federal Supreme Court. It is argued that the Iraqi legal vision of viewing international conventions is seen as a part of the Iraqi legal system. In the first part, this paper demonstrates the process for concluding and enforcing international agreements. It also examines, in its second part, how the IFSC comes to deal with international agreements that have been concluded in Iraq over the last two decades. The court has actively sought to broaden its jurisdiction over international agreements, a move that underscores its authority and influence. Additionally, it has also adopted the stance of considering international agreements as Iraqi Law, thereby asserting its jurisdiction over them. In recent developments, the court has revised its interpretation of ratification as stipulated in the 2005 Constitution, leading to some ambiguity regarding the ratification process of international agreements.

Keywords: Constitutional Judiciary, International Agreements, Ratification, Iraqi Federal Supreme Court (IFSC)

1. Introduction

International agreements, a formidable tool in international Law, have emerged as a cornerstone in strengthening the ties between nations across political, commercial, and legal realms. The regulation of the interplay between international law and domestic law has now taken a center stage in the field of international law, underscoring the global relevance of our research.

Following 2003, Iraq initiated a process of reconstructing its infrastructure under the guidance of a new vision and political system. In this transformation, the constitutional judiciary emerged as a crucial protector, entrusted with the task of protecting rights, constitutional principles, and the fundamental structure of the

constitution and the state's domestic system. The role of the institution is not merely symbolic but rather profoundly embedded in the system. It is responsible for overseeing regular legislation to guarantee compliance with the rules specified in the Constitution and prevent any infringements. This monitoring is a lawful mechanism that guarantees the efficient execution and enforcement of the constitutional law. This oversight is a legal method that ensures the effective implementation and application of the constitutional Law. One crucial aspect of this oversight is the review of the constitutionality of ordinary laws issued by the legislative authority. This ensures that these laws align with the provisions of the Constitution and prevents any contradictions between ordinary laws and higher-ranking laws. Even in this new era, international Law was not forgotten, as Article 8 stands tall in the last part, affirming Iraq's commitment to its international obligations.

There are several judicial review methods, including the Constitution's judicial review. This method involves scrutinizing any law that may constitute an infringement on the constitutional provisions. According to the Iraqi Constitution of 2005, the IFSC carries out this form of oversight. The court, outlined in Articles 92-94 of the Constitution, constitutes one of the federal authorities, serving as the highest judicial authority in the country. If proven by a judicial body, typically the highest court, that a law or any of its provisions are unconstitutional, the court decides on the Law's unconstitutionality and orders its annulment. The IFSC, established by Order No. 30 of 2005 on 24th April 2005, serves as the highest judicial authority with the power of constitutional oversight. Over the years, the court has issued numerous decisions, including administrative justice, appeals on the constitutionality of existing laws, and interpretations of constitutional articles. These decisions are crucial in upholding constitutional principles and ensuring the alignment of ordinary laws with constitutional norms. From this juncture, I commenced gathering the decisions of the IFSC to point out the judicial vision of international Law.

Article 8 of the Iraqi Constitution explicitly acknowledges and upholds Iraq's international obligations. However, if any international commitment interferes with Iraqi law, it is deemed null and void under Article 13(Second).[1] Furthermore, the growing importance of international law in the Iraqi legal system has been fueled by globalization and Iraq's foreign policy during the past two decades.

[1]- Any legal document that conflicts with this constitution is deemed invalid. In Iraq international conventions must adhere to this constitution as they are ratified through a law passed by the Council of Representatives.

This paper explores the role of the IFSC in overseeing international treaties regarding constitutional matters, emphasizing its power to examine laws for potential constitutional violations. Through an in-depth examination of Articles 92-94 of the Constitution, the study delves into the court's authority, responsibilities, and the advantages of judicial oversight.

Additionally, the study investigates the practical applications of the Federal Supreme Court's decisions, analyzing specific cases and their implications for legal practice in Iraq. By examining the court's interpretations of constitutional provisions and their impact on legal precedents, the study aims to provide a comprehensive understanding of the court's role in safeguarding the Constitution and ensuring the effective implementation of Constitution in regarding to international Law.

In the first part, I will compose my efforts to explain the relationship between international Law and Iraqi Law by clarifying the position of international agreement in the Iraqi legal system. In the second part, the paper examines judicial decisions on how the Iraqi constitutional judiciary domesticates International Law.

2. International Treaties in the Iraqi Legal System

This part analyzes the issue that arises from the domestication of international treaties in the Iraqi legal system. It is imperative to concisely explain the relationship between Iraqi Law and International Law based on the theories that categorize this relationship.

2.1. The Dualist and Monist Theory

Writing about international and national law relations initially involves a conflict of laws. Indeed, there are typically two theories on the relationship between both. The first theory is called the dualist. It assumes that two independent legal systems come to exist autonomously alongside each other.[1] Neither legal system can generate or alter the rules of the other.[2] Plethora of legal scholars, including Anzloti, Triepel, and Shtrop, endorsed this theory for reasons such as distinct origins for each legal system and variations in legal structures.[3] In other words, international

[1] G. Ferreira & A. Ferreira-Snyman, The Incorporation of Public International Law into Municipal Law and Regional Law against the Background of the Dichotomy between Monism and Dualism, 17
POTCHEFSTROOM ELEC. L.J. (2014), 1470-1471.

[2] Crawford, James, Brownlie's Principles of Public International law (9th ed., 2012). p 45.

[3] Alatia, Isam, Public International Law, University of Baghdad, 5th ed, 1992, p 55.

obligations only have a place in national Law after being adopted in a national law through a constitutional process in a country. As a result, the only Law that governs within the national legal system is the National Law.[1] In this way, international law becomes an internal law provision for an internal legislative process regarding issuance, modification, and repeal.

The second theory is called the monist. It considers International and Domestic Law as one part and has the same legal order.[2] In addition, when a state expresses its will to be part of International Law, there are no requirements for any involvement from any authority to integrate this Law into domestic Law.[3] As national Law gives international Law the legal effect in the state, conflict arises between the two laws; the perspective assumes that national courts enforce national Law or at least the national courts would determine which Law is applicable.[4] However, some writers believe that all principles of international Law hold supremacy over national Law, rendering any national law conflicting with international Law automatically invalid.[5] Furthermore, this theory asserted that principles of international Law are directly enforceable within the domestic jurisdiction of states.

The position of domestic Law towards international Law is more sophisticated than that of international Law toward domestic Law. Firstly, the legal systems of each state exhibit significant variations in this consideration.[6] Secondly, some states emphasize their sovereignty by not giving primacy to international Law over their own Law.[7] This difference between legal systems requires examining constitutional texts and relevant laws and focusing on how courts in such a state integrate international Law into their legal system. However, conservation observers

[1] Burham, W. Introduction to the Law and Legal System of the United States. West Academic Publishing. 5th edition, (2011) p 695.
[2] Ibid, p 57.
[3] Ibid, p 58.
[4] Crawford, James, p 46.
[5] Malanczuk, P. Akehurst's Modern Introduction to International Law. Routledge. 7th revised ed. the Taylor & Francis e-Library (2002, 12th April) p 64.
[6] - Ibid, p 64.
[7] Cassese, Antonio, Modern Constitutions and International Law, RdC 192 (1985–III), pp 331 et seq.

would find just one state whose Constitution gives the treaty supremacy over domestic Law.[1]

Before determining which theory the Iraqi legal system follows, it is essential to answer how international Law becomes part of Iraqi Law according to the Iraqi Constitution and Iraqi Law regarding the conclusion of international conventions.

2.2.Domesticating International Law in Iraq Law

The assertion of international obligations encapsulates a foundation tent within the legal architecture of Iraq. It is essential to begin this part by discussing the specific categories of foreign duties that Iraqi law encompasses. Henceforth, the Iraqi Law of Making Treaties No. 35 of 2015[2] classifies international agreements into three primary types. The first one is international conventions[3], a crucial source of international Law. This is main point of this paper. The Iraqi Constitution organizes this type as the source of its international obligations. The second type are executive agreements, which refer to any executive program concluded to implement the provision of the ratified treaties.[4] This agreement becomes legally binding after an Iraqi minister gives his formal permission, whether it does not involve any financial obligations or if the Council of Ministers approves it.[5] Furthermore, this form incorporates a pre-existing ratified international agreement. The last type is the Memorandum of Understanding, which is concluded between ministries and

[1] - Articles 93 and 94 of the Constitution of Netherlands, other states give the international customary law precedence over their Law. For instance, article 25 of the Constitution of Germany, Article 10(1) of the Constitution of Italy, and Article 9 of the Constitution of Austria, take this theory.

[2] In 2015, the Iraqi House of Representatives enacted a law to regulate making international treaties in Iraq as requested in Article 61 of the Constitution. This Law was numbered 35 of 2015. It was published in the official gazette (Al-waqaa Al-taqiyah) vol. 4383 on 12/10/2015.

[3] Article 1 / first of the Law defines international treaties as the concurred upon intentions, expressed in formal and written way between the Republic of Iraq or the government and other state or states or their governments or international organizations or any international persons recognized by the Republic of Iraq to create legal efforts subject to provision of intentional Law regardless the number of the documents in which the agreement is recorded.

[4] Article 1 /second

[5] Article 3/First

becomes binding after the Prime Minister's approval.[1] The executive authority makes the previous two types without legislative authorization, so the Law of making international treaties only applies to some.

2.2.1. Procedure for Creating and Ratifying International Agreements

The Constitution and the Iraq Law require specific procedures to conclude international agreements. This section is divided into two parts. The first part will focus on the executive authority making international agreements. The second part will study the ratification procedure as the legislative authority operates it.

2.2.1.1. Concluding agreements

According to Article 1(first) of the Law of Making International Treaties, international treaties are agreements between the Republic of Iraq and another state(s) or international organization(s). At this stage, the process of gathering wills requires meetings and occasionally lengthy discussions, referred to as negotiation.

Initially, negotiation can be defined as a mechanism to exchange viewpoints between representatives of states that intend to conclude an international agreement, whatever it is called, or discuss potential points that will be the agreement as articles.[2]

This step is constitutionally operated by the Council of Ministries or delegated persons.[3] Negotiations are conducted by officials or specialists who must carry documents of delegation signed by the Prime Ministers (the President of the Council and the Ministers) and the Minister of Foreign Affairs.[4] According to the Law, two persons can represent the Republic of Iraq during negotiation, The President of the Council of Ministers and the Minister of Foreign Affairs, based on their official positions without needing to present delegation documents.[5] The Council of Ministers has the power to delegate a person on behalf of the Republic of Iraq, and this person must not re-delegate another person.[6] After concluding the negotiations, representatives of states translate all the agreed points into articles; the international agreements move to another step, which is signature. A signature explicitly indicates the state's initial agreement or consent to be bound by what has

[1] Article 3 /second
[2] Alatia, Isam, Ibid, p 86.
[3] Article 80 (sixth) of the Constitution
[4] Alatia, Isam, Ibid, p 87
[5] Articles 5 (first and second) of the Law of making international conventions.
[6] Article 1 (eightieth).

been agreed during negotiations.[1] In Iraq, the signature can be defined as officially expressing the Republic of Iraq's consent by signing of the representatives. As the negotiation needs delegation documents from all the representatives of contracting states, the signature needs another delegation document from the representatives. These documents are issued from the Council of Ministers as the Ministry of Foreign Affairs suggests the person or persons to sign down on behalf of Iraq on the international agreement.[2] However, the Prime Minister is the only person who can represent the Republic of Iraq and sign down on international agreements based on his position without carrying delegation documents.[3] In addition, there are two kinds of signatures. The first is the signature that addresses the state's consent by being bound to the agreement if the parties agree to give the signature this power.[4] The second kind is initial, which indicates uncertainty about the final decision for the state, so the representatives put down their initials with the possibility of withdrawing them when the state's authorities express their final decision.[5]

The process of international agreements the executive authorities' powers. Putting the signature on behalf of the Republic of Iraq on the draft of the agreement does not indicate the Iraqi final decision to be bound by the agreement. However, it must go through the process of ratification.[6]

2.2.1.2. Ratification

Ratification refers to the formal approval given by a state to be legally obligated by an international agreement.[7] Once the executive authority has signed the agreement, it must be officially published in Iraq as an internal law adopted by the legislative authority. In order for a draft bill to become law, it must satisfy constitutional voting requirements. Nevertheless, the specific voting threshold for passing the ratification law of international agreement was ambiguous, as outlined in Article 61 (fourth) of the Constitution.[8] This ambiguity of constitutional wording led to entirely different decisions from those of (IFSC). The first decision was in 2014,

[1] Articles 11 and 12 of the Vienna Convention on the Law of Treaties, 1969.
[2] Article 1 (sixth) of the Law of making international conventions
[3] Article 5 (Second)
[4] Klabbers, Jan. The Concept of Treaty in International Law. Leiden; Boston, Martinus Nijhoff Publishers, 2006. p 75.
[5] Article 13 (Second) of the Law.
[6] Article 17.
[7] Article 1 (second) of the Vienna Convention.
[8] The ratification process of international treaties should be regulated by Law enacted by two–thirds of the majority.

and the court found that enacting ratification law is like enacting ordinary Law, which requires a simple majority.[1] However, the court found that the two-thirds majority required by article 61 (fourth) of the Constitution requires a majority to enact a law of making international Law, not to enact ratification law.[2] The second decision provides a more comprehensive analysis and challenges Article 61 (fourth) in a distinct manner, deeming the Law of ratifying the Agreement between Iraq and Kuwait Number 24 in 2014 unconstitutional. The court determined that voting in the Council of Representatives was unconstitutional due to the Law's failure to achieve the necessary majority as specified in article 61 (fourth), which needed a two-thirds vote of the representatives. It based its decision on Article 61 (Fourth). On the other hand, the President must approve enacting the ratifying Law by the Council of Representatives.[3] The President must endorse the ratifying Law within fifteen days of receiving it, or it will automatically be ratified after fifteen days.[4] Based on the constitutional vision, the Law defines ratification as approval by the Council of Representatives to authorize the President or after fifteen days, days of the receiving day.[5] After that, the international agreements are sent for publication in the official journal, which is published by the Ministry of Justice.[6]

In a short speech, the Executive Authority negotiates a treaty, and the Council of Representatives approves it. Finally, the President ratified it in 15 days. The Executive Authority makes the treaty, and the legislative consents and concurs by a two-thirds vote. Then, the President continues the ratification process, and the appropriate point proclaims the treaty ratified. It is accurate to say that treaty-making is shared between two authorities.

After discussing the process of international agreements to be Iraqi Law, it is time to point out the position of International Law in the Iraqi legal system. Since the Iraqi Constitution comes silent concerning the hierarchy of laws, the international agreement can only integrate into Iraqi laws if issued as a law by the Iraqi Council of Representatives. In this regard, the Federal Supreme Court deals with the text of

[1] According to Article 59 (first) of the Constitution, the Council of Representatives quorum is achieved by an absolute majority, 50% + 1 of the total number of representatives. In contrast, a simple majority makes the decisions in the Council, 50% +1 of present members.
[2] 21/ Federal/2014, pp 4.
[3] Article 73 (Second) of the Constitution.
[4] Id.
[5] Article 1 (Fourth) of the Law
[6] Article 27 (seventh) of the Law

international agreements as a part of the national legal system. It means that the judiciary is committed to monitoring the implementation of those agreements by the Constitution. However, this jurisdiction does not impact the agreement itself; it affects its application within the framework of Iraqi laws. It is appropriate to mention that Iraq is decidedly dualist in treating intentional agreements in its domestic jurisprudence. As the discussion in the next section makes clear by examining the decisions of the Federal Supreme Court, the fact that international Law may be the supreme Law of Iraq alongside the Constitution and laws does not make it superior to either the Constitution or Law.

The executive authority makes the international agreements, the legislative authority proves them, and the President has power over them for 15 days from the day they are received.

3. The Iraqi Constitutional judiciary and the implementation of international agreements

An in-depth analysis of the Iraqi constitutional court decisions concerning international agreements necessitates a meticulous study of the Iraqi Constitution. Section three of the Constitution of Iraq addresses the internal workings of the Iraqi Federal Powers. Internally, IFSC Powers are discussed in section three of the Constitution.[1] Chapter three of this section regulates the judicial power of the IFSC.[2] The Court[3] has been one of the critical institutions contributing to establishing the modern era form of the Republic of Iraq. It has played a significant role in shaping and formulating the Iraqi constitutional system. Upholding the rule of Law principle. Moreover, it substantially impacted determining the status of international agreements ratified by Iraq. For almost twenty years, the court has heard some cases or interpreted requests from formal authorities regarding international Law. This section analyzes rules from the decisions of the court. Since this paper intends to focus on analyzing the decisions made by the IFSC regarding international conventions, the application of these conventions by the ordinary judiciary will not be discussed.

[1] - Article 47, the first Article in section three of the Constitution, states that "the federal powers [in Iraq] shall consist of the Legislative, executive and Judicial powers and they shall exercise their completion and tasks on the basis of the principle of separation of powers."

[2] - Article 89 of the Iraqi Constitution.

[3] - Article 93 of the Constitution explains the jurisdiction of the court.

Internally, all actions of the IFSC must be authorized through a grant of power outlined in the Constitution.[1] According to Article 93 of the Constitution, one of the primary responsibilities of the court is to oversee the constitutionality of laws. Thus, the court has jurisdiction over the international treaty when it becomes an Iraqi law. In 2008, the plaintiff in case 44/Federal/2008[2] asserted that the international agreement between the Republic of Iraq and the United States of America was not valid for two reasons. First, the agreement was concluded between the USA, a sovereign state, and Iraq, a state under occupation. The Iraqi government could not legally conclude an international agreement in this situation. Second, the Council of Representatives operated without Law because no law was related to conclude international conventions.[3] The court found two ways to deal with this international agreement as domestic Law. Firstly, the court can only oversee a law while the Law is in action legally. Second, finalizing the legislative process for the ratification of international law is imperative before initiating the case. Before being ratified by the President of the Republic of Iraq, the plaintiff contested the Iraqi-American agreement; the court dismissed the case.[4] In this instance, the court explicitly said it does not have authority over international conventions until they are incorporated into domestic legislation through constitutional lawmaking.

As a result of recognizing international agreements as domestic Law, the Law of ratifying international agreements must be subjected to rules governing domestic Law. For example, the later Law replicates the former Law, and the Law must not contradict the Constitution. When international Law conflicts with the Constitution, the international Law is unconstitutional not as international Law but as an internal law. The court confirmed these principles in some decisions. In 16/ Federal/ 2015, the court considered the Riyadh Agreement for Judicial Cooperation in 1983 as an Iraqi law. The Republic of Iraq ratified it by ratifying law number 110

[1] Articles 87 and 88 of the Constitution.

[2] Cases from the court are numbered depending on the priority of submission. Article 21 (first) of the internal system of the court in 2021 explains the procedure of the lawsuit or request that is numbered after paying legal fees and registering at the registered office of the court.

[3] The Law on Making International Treaties was enacted in 2015; in this case, the previous Law was in act number 111 in 1979. The plaintiff considered the previous Law an annulment law because the permanent Constitution in 2005 put a constitutional obligation on the House of Representatives in Article 61 to enact the new Law for making international treaties.

[4] 44/federal/ 2008, pp 3.

of 1983.[1] In short, this convention is about cooperation between Arab states to implement legal warrants. Based on this decision, the agreement was treated as a national law.[2] When the court mentioned Article 40/C[3] of the agreement co-mentioned it with the Iraqi ratifying Law, the judicial paragraph says, "The Supreme Federal Court decides that article 40/C of the Riyadh agreement of 1983, ratified by Law Number 110 in 1983, is unconstitutional."[4] In this case, the court found that Article 40/C conflicts with Articles 21/First and 13/Second of the Constitution in 2005, which prohibits the extraction of Iraqis to foreign authorities. In addition, article 358 /fourth of the Criminal Procedure Law number 23 in 1971 prohibits extraction if the required person is an Iraqi. Considering the Constitution's superiority, the court found Article 40/C of the agreement unconstitutional based on the Constitution's supremacy.[5] This case illustrates the Iraqi understanding of international agreements that Iraqi courts are capable of considering international agreements in their decisions after being national law in the process presented above.

In case number 44/ federal/ 2023, the plaintiffs alleged that the defendant, the Iraqi Prime Minster, expanded the Iraqi-Jordanian agreement, which gave Jourdan the privileged right to buy Iraqi oil with a special discount.[6] The plaintiffs asked the court to decide on nullification, unconstitutionality, or modification of the agreement. The court determined that the plaintiff's lawsuit is formally dismissible on the grounds of jurisdictional insufficiency. However, there are some criticisms of this decision. Firstly, the court dismissed the lawsuit without differences between Iraq's three types of international obligations. Second, the court was required to elucidate the specific international responsibility that falls outside its jurisdiction. The court mentioned that "the court finds that the plaintiff's complaint is formally dismissible due to lack of jurisdiction; this is because the court's jurisdiction and

[1] 16/Federal/ 2015, pp 2.

[2] Through the decision, the court did not mention the agreement alone but associated it.

[3] Article 40/C says that Extradition is compulsory for the individuals who have been found guilty either in person or in abse/ntia by the court of the seeking party for committed a crime that carries minimum sentence a year or more by the law of the requested country.

[4] 16/Federal /2015, p 3.

[5] Ibid, p 4.

[6] 44/federal/ 2023, pp 2.

power are exclusively defined in the constitution and its law."[1] Looking back at the plaintiffs' lawsuits and requests, they built their case on refusing the international agreement. In contrast, the defendant's legal representative built his objection on refusing the court's jurisdiction because this agreement was a memorandum of understanding between the Republic of Iraq and the Kingdom of Jordan signed between ministers and approved by the Council of Ministers. Hence, this agreement was not an international agreement.[2] On the other hand, the court dismissed the lawsuit depending on the plaintiffs' requests based on considering the agreement as international.

Even though all lawsuits the court decided considered international treaties as internal Law as presented, international treaties should be ratified by particular Law. In 2013, the Republic of Iraq and the State of Kuwait agreed to regulate navigation in Khuor Abuallah. However, the court heard this agreement twice. The first hearing was in 2014.[3] In this case, the court said that ratifying legislation Number 42 in 2014 is ordinary legislation, so it requires only the majority of presented representatives to vote for it according to Article 59[4] of the Constitution and Article 3 of the Making International Treaties Number 111 in 1979[5]. The court found the ratifying legislation of agreement was legal and went through the legislation process, dismissing the lawsuit.[6]

The second hearing took place in 2023. The court assessed the validity of ratifying law No. 42 of 2013. The court found that the Law enacted by voting just 172 representatives out of 329 representatives, which means a simple majority, and thus it is unconstitutional.[7] The court ruled that the existence of a statute pertaining to the creation of international law does not justify disregarding the Constitution, particularly Article 61(Fourth).[8] It found a conflict between the Constitution of 2005 and the Law of Making Treaties Number 111 in 1979, which was active until it was canceled. In cases of dispute between a Constitution and a Law, the Constitution

[1] - Id, pp 3.
2 Id, pp3-5.
[3] 21/ Federal/ 2014.
[4] This Article regulates the voting process in the House of Representatives for enacting new Laws.
[5] The Law of Making International Treaties Number 111 in 1979 was canceled in Article 30 of the Law of International Treaties Number 35 in 2015.
[6] 21/Federal/ 2014, p 4.
[7] 105/Federal/2023, p 13.
[8] 105/ Federal/ 2023, p 13.

takes precedence and necessitates the nullification of the ordinary Law.[1] Even though the Law is older than the Constitution, it also added that ratifying international agreements requires a majority of two-thirds of the Representatives, a total of 329.[2] As a result of this decision, the court revised its previous decision.

Considering that the IFSC's judgments carry legal force that must be adhered to by all authorities in Iraq, there are various disadvantages associated with this. First and foremost, in Iraq, the ratification legislation of international agreements requires a two-thirds majority of the representatives. This majority is significantly challenging in a political regime that is representative and parliamentary. Secondly, the court has frequently regarded international agreements as Iraqi law, but in a recent judgment, the court added more requirements for applying international agreements. In this view, what is required for ordinary legislation should be required for international conventions. It is odd text to require a simple majority to enact ordinary law while the ratification of international treaties must meet a two-thirds majority. Third, it will be hard to establish stable international agreements because of the ambiguity surrounding the necessary majority for ratifying international treaties, especially since this judgment considered the two-thirds majority to be the majority for ratifying international law. In contrast, the Law of making international agreements requires this majority for exclusive international treaties and a simple majority for others.[3]

In summary, the court aimed to limit its authority over international agreements by narrowing the scope of oversight until they became Iraqi Law. However, the court functions according to the Constitution, which is newer than many laws enacted in entirely different political regimes and legal perspectives. This makes the court's mission more challenging, particularly with regard to international obligations.

4. Conclusion

The judiciary power worldwide plays a significant role in creating the state's form and saving the law hierarchy. In Iraq, the IFSC has fulfilled as the center of gravity for halting every instance of constitutional infraction. At the same time, the

[1] Article 13 (second) of the Constitution.

[2] Ibid, p 13.

[3] Article 17 of the Law addresses the required majority of international agreement, which is a simple majority except for certain kinds of international agreements as discussed in Article 17 (first), which are: 1) borders and territorial sovereignty, 2) convention of political, military and security alliances and peace, 3) establishment or membership of international or territorial organizations.

court has dealt with international agreements as part of Iraqi law. In the overall decision, the court did not mention the international agreement just by itself, but rather in the Iraqi ratification law.

The process of making and adopting international treaties into domestic Law is a complicated and multifaceted task that necessitates careful consideration of both international treaties and national legal frameworks considerable thought. The process commences with the Executive authority, which assumes negotiation as an exclusive and constitutional responsibility. Then, the international agreements are signed by a delegate from the Council of Ministries to be sent to the Council of Representatives. After receiving the agreement, representatives argue about it. After this, the agreement should be approved by a two-thirds vote in the Council. In the last stage, the President of the Republic of Iraq ratifies the agreement in 15 days and sends it to the Ministry of Justice to be published in the official journal. In this way, the agreement takes a number depending on the superiority of the legislation received.

Analyzing the Federal Supreme Court's judgment regarding interns when the court panel is complete, Italy has changed, which is difficult because of the interpretation station of the same aspect. With this paper, I could achieve some results as follows.

1- Iraq is decidedly dualist because it treaties intentional treaties in its domestic jurisprudence as they need special process to be enforced in Iraq.
2- The Iraqi Constitution makes it complex and lengthy to enforce international agreements in Iraq to ensure that every authority expresses its concerns about the agreement.
3- The Federal Supreme Court deals with international agreements as an Iraqi law.
4- Required votes for the Ratification of international agreements in the Council of Representatives have recently been ambiguous, especially after the decision of the Federal Supreme Court that dismissed the ratification law of international agreements that did not get the two-thirds votes as Article 61 (Fourth) requires. On the other hand, the Law of Making International Treaties Number 35 in 2015 only requires two-thirds for some kinds of treaties.

Finally, International agreements are legally considered to be Iraqi laws. Consequently, the constitutional judiciary can only assess the legitimacy of foreign accords if they are implemented as laws in Iraq. However, the extent to which the IFSC can scrutinize international law remains uncertain. Can the IFSC selectively oversee the articles of international accords by recognizing specific articles and

disregarding others? The court has not provided clear answers to these problems; hence, there is no definitive resolution for them.

References

1- Books

1- Alatia, Isam, Public International Law, University of Baghdad, volume 5th, 1992.
2- Burham, W. Introduction to the Law and Legal System of the United States. West Academic Publishing. 5th edition, (2011)
3- Cassese, Antonio, Modern Constitutions and International Law, RdC 192 (1985-III)
4- Crawford, James, Brownlie's Principles of Public International law (OUP, 9th ed., 2012).
5- G. Ferreira & A. Ferreira-Snyman, The Incorporation of Public International Law into Municipal Law and Regional Law against the Background of the Dichotomy between Monism and Dualism.
6- Malanczuk, P. Akehurst's Modern Introduction to International Law. Routledge. 7th revised ed. the Taylor & Francis e-Library (2002, 12th April)
7- Klabbers, Jan. The Concept of Treaty in International Law. Leiden; Boston, Martinus Nijhoff Publishers, 2006

2- Constitution, Laws, and International Agreements

1- The Permanent Iraqi Constitution in 2005
2- The Law of Making International Law Number 35 in 2015
3- The Law of Federal Supreme Court Number 30 in 2005
4- The Vienna Convention of Law of Treaties in 1969

3- Cases

1- 44/Federal/ 2008
2- 21/ Federal/2014
3- 16/Federal/ 2015
4- 44/federal/ 2023
5- 105/Federal/ 2023