CONSTITUTIONAL COURT OVERSIGHT OF INTERNATIONAL TREATIES: A RESTRICTION ON JURISDICTION OR A REALISTIC APPROACH TO INTERNATIONAL OBLIGATIONS?

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Abstract:
In the context of legal globalization and modeling of legal norms, international treaties are increasingly used as a source of international and national norms, especially in the light of the decline in the State's "reserved space" and the regulation of international norms on issues that were, in the near past, purely national accountability.
Constitutional censorship thus emerges as an effective means of maintaining consistency between legal norms of international origin and those of internal origin under the problematic relationship of the Treaty's entry into the national legal system Control of the constitutionality of treaties is characterized by specificity, influenced by a set of features, namely.
Our intervention will attempt to investigate these sections by analyzing the jurisdiction of the Constitutional Court under the Constitutional Amendment of 2020.
***Keywords**: international convention, control, constitutional amendment.*

INTRODUCTION:

With the increasing interconnection and integration of the world, and the emergence of new fields for lawyers where international and domestic laws intersect in both their private and public aspects, international law has evolved and its interaction with national law has increased. International law now regulates areas that were previously within the sovereignty of states, as evident in the field of combating cybercrime, prosecuting war criminals, disputes over free trade and e-commerce, and the protection of human rights, among others. This has led to the vast array of bilateral and multilateral international treaties that serve as the legal framework for individuals practicing public international law, regulating all aspects of life at the international and domestic levels.
The methods of incorporating agreements internally vary depending on the legal traditions of each country, especially since international systems do not require a specific approach. They impose an obligation to achieve the result of integration regardless of the means used. Furthermore, the distinction between dualism and monism has become more difficult in light of the increasing hybrid patterns that combine both approaches. Practice has shown that some monist systems have a dual inclination, while some dualist patterns have a monist inclination as a result of deepening interaction between international and national rules.
Countries also differ in the status they give to international rules within their legal systems. Some countries prioritize the supremacy of international rules over constitutional rules, while others place them above legislative rules. Some countries equate them with domestic legislation. However, the new global trend and the emergence of customary international law and peremptory norms emphasize the supremacy of international rules over all domestic rules, regardless of their nature.
In light of the interaction between national and international rules, constitutional oversight appears as a key factor in strengthening harmony between various rules of international and internal origin. The task of monitoring the constitutionality of treaties in Algeria is entrusted to the Constitutional Court emerging from the First Amendment of November 2020, to replace the Constitutional Council in an attempt to establish a judiciary. The Constitutional Council in Algeria exercises judicial oversight instead of the political oversight that was exercised by the Constitutional Council, as the Constitutional Founder allocated it to an entire chapter within Chapter Four, labeled Oversight

Institutions, and it was not referred to in the chapter devoted to the judicial authority despite calling it the court.

This paper will attempt to examine the impact of the transition from the Constitutional Council to the Constitutional Court and the resulting functional and structural changes on constitutional oversight of international treaties in light of the amendments introduced by the November 2020 referendum. Especially since the oversight of treaty constitutionality is characterized by specificity that requires consideration of the existing tension between international rules as binding standards for the state and national rules issued by state authorities. Therefore, the focus of our study will revolve around the following problem: How did the constitutional amendment of 2020 affect the requirements of national oversight of international treaties in light of the dialectical relationship between international rules and national rules? This problem encompasses a set of questions, the most important of which are: Who has the right to initiate oversight of international treaties? When can they do so? What are the limits of the Constitutional Court's oversight of treaty constitutionality? What should be done when unconstitutional provisions appear in a previously ratified treaty? Do all ratified treaties have equal constitutional value? What is the impact of the Constitutional Court's decisions on treaties found to be unconstitutional?

To answer the main problem and the sub-questions, the descriptive analytical approach was used to determine the foundations of oversight of the constitutionality of international treaties in light of the constitutional amendment of 2020, through scrutinizing the articles that created the Constitutional Court as an independent oversight institution, in addition to the constitutional texts that relate to the tasks of the three authorities, considering that access to the treaty International law in the internal legal system is a legal reality that depends on the will of these three authorities. Texts that address the status of international treaties in the internal system must also be analyzed because of their significant impact in determining the scope and type of oversight that will be exercised by the Constitutional Court.

1/ the internalization of the international treaty into Algeria's legal system

Constitutional judicial oversight is considered a national act that is only established when the international treaty enters the national legal hierarchy. The jurisdiction of oversight bodies to examine the legality of international treaties does not exist unless the international treaty is part of the national legal texts, whether by ratifying the agreement and publishing it directly, or by enacting a legislative law. It contains the contents of the international treaty, and the limits of constitutional oversight are affected by the status that the international treaty acquires compared to other national rules. In addition, the type and content of the agreement will affect the nature of the oversight imposed on it. Therefore, these issues must be detailed before delving into the powers of the Constitutional Court in oversight on treaties.

1/1/ defining the concept of an international treaty subject to constitutional oversight

The term international treaty has multiple connotations and can be used to refer to different meanings due the amplitude of his lexical field, a treaty can be called: an agreement, convention, charter, covenant, protocol, declaration, statute. In the face of the multiplicity and diversity of terminology, the Vienna Convention on Treaties sought to adopt a comprehensive approach based on the legal effect of international action and not its name, as it was stated in the text of its first article: "A treaty means an international agreement concluded between states in a written form... whatever its specific name." by definition, the term "treaty" is used to refer to the intention of two or more parties to create a legal effect that is documented in a written instrument. Treaties can take several forms, such as bilateral or multilateral treaties, official and simplified treaties, law and contractual treaties, and political and economic treaties.

This abundance of terminology had an impact in the 2020 constitutional amendment, which used the words agreements, treaties, and even the declaration to refer to the multiplicity of substantive areas of international treaties, represented in human rights agreements, peace agreements, truces, economic partnership, and other areas referred to within the folds of the constitution and its preamble.

Despite the multiplicity of contents and nomenclature however, they all share in the authority of the President of the Republic in negotiating and approving them. The question raised is: do all the treaties approved by the President of the Republic fall under constitutional judicial oversight? Or is oversight limited to those agreements that the President of the Republic approves after explicit approval by the Parliament? It should be noted that there are other ways for the state to express its acceptance of complying with the provisions of the treaty, such as acceptance, approval, and accession, which are equated with ratification, as stated in Article 1, paragraph B of the Vienna Convention on the Law of Treaties.

It appears clearly from the text of Article 91/P12 and Articles 102,153, 154, and 190 From the 2020 Constitutional Amendment, the treaties that are subject to constitutional oversight are the only official treaties that are concluded and ratified by the President of the Republic. In other words, agreements of simplified form or agreements that are not subject to ratification are outside the scope of constitutional oversight, knowing that Algeria has integrated a group of international treaties into the system.

Domestic legal law uses the method of approval and acceptance allowed in the Vienna Convention on the Law of Treaties, which leads to defining the scope of control over the constitutionality of treaties in terms of practice that may push the state to adhere to the terms of the agreement without ratifying it.

Practice has proven Algeria’s commitment to international agreements without ratifying them, and resorting to adopting an approval method not stipulated in the Constitution. Most of them relate to loans borrowed or guaranteed by the Algerian government and are usually characterized by the following specifications: Issued by presidential decree with approval and not ratification. The related presidential decree is based on a report from in most cases, the Minister of Finance or other ministers concerned with the subject of the treaty publish these treaties under the section of regulatory decrees in the Official Bulletin, and Algeria also resorted to adopting the method of acceptance starting in the seventies of the last century.

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As for limiting constitutional oversight to the group of treaties that require explicit approval by Parliament and which are mentioned in the text of Article 153 of the 2020 Constitutional Amendment, which are represented in the armistice agreements, treaties of peace, alliance, union, and human rights, and treaties that entail expenses other than those included in the state budget, and bilateral and multiple agreements, partnerships related to free trade, and economic exchange, we do not find any logical foundation for it, because the text of Article 190 of the Constitution referred to treaties in general terms, and in absolute terms it applies absolutely, and therefore the only condition for the agreement to be subject to constitutional oversight is that the latter be subject to the ratification of the President of the Republic whether the Parliament's approval is required, or not required.

It is also not necessary to cast the treaty in a legislative form in order for it to be subject to constitutional oversight, given that Algeria has adopted the method of automatic integration of the international treaty in accordance with the text of Article 154 of the 2020 constitutional amendment, which made The treaty enters into automatic internal law, meaning that mere ratification coupled with publication in the internal Official Bulletin is sufficient without the need for the treaty to be received by a special internal law in order for it to acquire the legal value of internal rules. In fact, this condition will not be affected by the limits of constitutional oversight in light of the Algerian constitutional amendment, the oversight of which is always prior, that is, before the contents of the agreement enter the internal legal system.

1/2/ the implementation of international treaties in the Algerian legal system

The issue of the enforceability of international treaties in national legal systems is the true expression of the mutual influence between the three powers in different national constitutions. This is because the ratification of international treaties in most constitutions is a joint decision between the executive and legislative powers, subject to the scrutiny of the constitutional court, as is the case in Algeria. The judiciary also plays a prominent role in interpreting and applying these treaties and their provisions. The Algerian constitutional founder granted the executive power a significant role in

ratifying international treaties, in addition to its role in publishing these treaties in the official gazette. However, the constitutional founder also obligated the executive power to seek explicit approval from the parliament for certain international agreements.[2]

By signing international treaties and expressing their final commitment to the provisions within, states commit themselves. It doesn't matter how they express their will—by signing, ratifying, accepting, or accession—as long as this process involves giving their consent to the treaty's final commitment. It is crucial to understand the difference between a conclusion as a constitutional act and an international act. The former entails ratifying the treaty by exchanging and depositing ratification documents, while the latter refers to an act issued by the state's competent authority in accordance with a constitutional provision.[3]

Referring to Article 91 of the constitutional amendment of 2020, which states the President's authority to ratify international treaties, as all stages preceding ratification are the responsibility of the Minister of Foreign Affairs, as confirmed by Article 6 of Presidential Decree 90-359 dated November 10, 1990, repealed by Presidential Decree No. 02 dated November 26, 2002, which stated in its 16th article that: the Ministry of Foreign Affairs is responsible for approving agreements, protocols, regulations, and international treaties. The Ministry of Foreign Affairs is also responsible, according to the same article, for disseminating international treaties with reservations or interpretative statements when necessary, which clarify and accompany the commitments made by Algeria.[4]

As stipulated in Article 154 of the constitutional amendment of 2020, the international treaty must be presented to the parliament in specific and limited cases. Its approval is presented in the form of a regular law, not an organic one. Its provisions cannot be discussed by the parliament, but it is directly voted on for approval, rejection, or postponement. This is stated in Article 38 of Organic Law 16-12, dated August 25, 2016, which regulates the National People's Assembly and the Council of the Nation, their work, and the functional relationships between them and the government. It states that "projects of laws approving agreements or treaties presented to the parliament chambers cannot be subject to detailed voting on their provisions, nor can they be subject to any amendment. Each chamber decides, after the discussion is concluded, to approve, reject, or postpone the draft law." In reality, this is approval without discussion, for a regular law. At least, a regular law undergoes detailed discussion of its provisions before voting and approval.[5]

As the national judge is committed to performing his duties by applying the contents of the ratified treaties in accordance with Article 171 of the constitutional amendment of 2020, the judge is therefore obliged to exclude any legislative or regulatory text that contradicts the provisions of the convention approved by the President of the Republic after the approval of both chambers of parliament and its publication in the official bulletin. As for the role of the national judiciary in interpreting international treaties, the Algerian legislator has limited the judiciary from assuming this important role and has delegated it to the Minister of Foreign Affairs, as previously mentioned. Therefore, the provisions of the international treaty become effective in the national territory from the date of its publication accompanied by the approval decree in the official bulletin, in accordance with Article 4 of the Civil Law.

It should be noted that the Algerian constitution did not make publication a separate procedure that allows for the integration of international agreements into the national legal system, as some foreign constitutions have done. However, the constitutional founder refers for the first time in the recent amendment under Article 78 that: "Laws and regulations are not binding except after their peaceful publication." He also affirmed in the first paragraph of this article that: "No one is excused by ignorance of the law." It is also worth mentioning the first paragraph of Article 4 of the Algerian Civil Law, which states: "National laws shall apply within the territory of the People's Democratic Republic of Algeria from the day of their publication in the official bulletin." It must be clarified that the intended publication is the publication of the agreement at the national level and not at the international level.[6]

1/3/ The differentiation of the status of treaties in the Algerian legal system

The Algerian Constitutional Institution of 1963 regulated the process of integrating international treaties according to the text of Article 42 without specifying their place in the internal legal hierarchy. It also did not clarify what should be done in the event of a conflict between an international treaty and Algerian internal law, which was remedied by Article 159 of the 1976 Constitution, which gave international agreements the same status as law. As for the 1989 Constitution, It was stipulated in Article 132, which was transformed into Article 150 following the constitutional amendment of 2016.The text of Article 154 is the constitutional amendment resulting from the referendum on November 1st:"Treaties ratified by the President of the Republic under the conditions prescribed by law shall prevail over the law".

Algeria has adopted a balancing approach between national and international norms and the system of unity of law, with the primacy of the constitutional rule given its close relationship to the State's sovereignty, as evidenced by the evolution of international treaties in Algerian constitutions. The Constitution outlines how to deal with international norms; yet, in an effort to bring domestic and international laws into harmony, it placed emphasis on the supremacy of international treaties over the law, creating a sort of compromise that made international rules “sub-constitutional” and “supra-legislative”.

However, the generality of the term "law" in Article 154 of the Constitution has led to the emergence of two approaches to defining the problematic relationship between international treaties and organic law: The first opinion considers that international treaties are superior to ordinary law and lower in rank than organic law. Their argument is that organic law is an extension of the Constitution. The second opinion considers that international treaties are superior to both ordinary and organic law. Their argument is that the term "law" mentioned in the constitutional article dedicated to the principle of supremacy applies to everything issued by the legislative authority. However, Organic Law No. 12-03, which specifies the ways to enhance women's opportunities in elected councils, settled this debate when it considered international treaties as a reference point.[7]

The supremacy of the people will as a source of national sovereignty gives the Constitution's provisions precedence over national law and ratified treaties. As a result, the state has the exclusive right to regulate matters of international law. It has no bearing on the Constitution's legal standing, which remains at the top of the legal hierarchy since it is the foundational document that establishes the legal weight that the state accords to the norms of international law. Similarly, the internal legal system cannot contain international regulations that would jeopardize the state's sovereignty.[8]

Anyone who contemplates the constitution emerging from the first of November 2020 referendum realizes that the constitutional founder paid special attention to the international human rights agreements concluded and ratified by the President of the Republic after each chamber of Parliament explicitly approved them. The preamble also considered as “an integral part of the constitution” that the Universal Declaration of Human Rights the agreements ratified by Algeria are texts of reference value that constitute, along with the constitution, what is called the “constitutional bloc.”[9]

It can be understood from the text of the preamble that the Algerian constitutional founder included the Conventional rules for human rights within constitutional legitimacy, and when taking what was stated in the preamble literally, the agreements previously ratified by Algeria are the ones that are considered a constitutional reference, while he gave the rest of the ratified agreements a supra-legislative, sub-constitutional value, and perhaps This is due to the special nature of international human rights agreements.

The acquisition of international human rights agreements for constitutional value can be attributed to the transition of a set of rights to a list of rights that amounts to jus cogens rules, making it difficult to claim that they are unconstitutional. In the category of peremptory norms, constitutionality takes on another meaning, as it requires amending the basic state law in a way that makes it compatible with the provisions of treaty texts that have a peremptory nature, which is confirmed by Article 53 of the Vienna Convention on the Law of Treaties of 1969. Accordingly, the order becomes as follows: international peremptory norms, followed by constitutional norms, then Regular international rules are the rules issued by the legislative and executive authorities[10].

The obligations arising from international human rights agreements are characterized by a legal specificity that removes them from the traditional “relative” effect of international agreements, as they establish an objective system outside the scope of reciprocity, which is what made the rules emerging from them peremptory rules jus cogens and erga omnes.

2/ The specificity of oversight of the constitutionality of international treaties in light of the constitutional amendment of 2020

With the growing phenomenon of legal globalization and the modeling of legal rules through international treaties, the importance of monitoring the constitutionality of treaties has emerged in light of the problematic relationship between constitutional texts and international texts. This has led to the emergence of the concept of constitutionalization of treaties or imported constitutions, prompting many countries to introduce amendments to their supervisory bodies to align with the evolving dialectical relationship between international and national texts.

The Algerian founders of the constitution established the Constitutional Court as an independent oversight body to guarantee that all laws in effect in the state are consistent with the provisions of the constitution, thereby upholding the principles of legality and separation of powers. This was done in an effort to establish the supremacy of the constitution as a fundamental law that represents the will of the people and gives legitimacy to the authorities’ exercise of their duties.

To avoid the shortcomings that previously compromised the effectiveness of the Constitutional Council, the constitutional amendment represented a shift in the approach to constitutional oversight from the political to the judicial side, and this was amply demonstrated by the oversight the court exercised over international treaties. Consequently, we will look at the court's narrow jurisdiction, its arguments, and the legal options when signing an unconstitutional treaty. under the national legal framework.

2/1/ Narrowing the jurisdiction of the Constitutional Court in overseeing international treaties

The examiner of articles 102, 190, 193, 195, 198 of the constitutional amendment for the year 2020 notes a reduction in the role of the constitutional court in relation to international treaties from several aspects: the jurisdiction of the constitutional court is limited to official treaties ratified by the President of the Republic. The supervision exercised by the court is only advisory and preliminary, and the mechanism of declaring unconstitutionality cannot be applied to exclude provisions that have been proven unconstitutional after the treaty comes into effect. Additionally, the competent authorities to notify the court are the same authorities entrusted with the power to ratify agreements.

Articles 14 and 11 of the Vienna Convention on the Law of Treaties affirm the freedom of states to express their consent to be bound by a treaty through acceptance, accession, approval, or ratification. Upon examining Algeria's practice, it is evident that it has incorporated numerous international agreements into its legal system and published them in the official bulletin without formal approval. This renders them legally effective domestically without being subject to constitutional scrutiny, thereby weakening the jurisdiction of the court and exempting many internationally binding treaties from its control.

Because the acceptance and accession procedures are not mentioned in the constitution, it is understood that the constitutional founder has established constitutional control over the procedural rules for the implementation of the international treaty provided for in the constitution when determining the scope of control over agreements subject to ratification. Control, then, is centered on the need to have the President of the Republic ratify it in line with Article 91 of the 2020 constitutional amendment, and make sure that both chambers of parliament expressly approve it for the designated international treaties, as per Article 153 of the constitution.

If the constitutional procedures for ratification are not respected, the latter becomes "deficient" and the constitutional court can theoretically declare the ratification invalid due to its unconstitutionality, which is not inconsistent with the rules of international law regarding the consent

to be bound by international treaties. Article 46 of the Vienna Convention of 1969 states that "a State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance." This provision of treaty law allows states to withdraw their consent to be bound by treaties if the ratification procedures are not respected.[11]

The reduction of the powers of the Constitutional Court was also evident in limiting its oversight of international treaties to permissible prior oversight based on the text of Article 190 of the 2020 Constitution: “The court may be notified...before ratifying it,” as the court issues a decision preventing the executive authority from ratifying it based on Article 198. If the court decides that a treaty is unconstitutional... it will not be ratified.” It is noteworthy that the Constitutional Founder enshrined the approach of abolishing subsequent censorship that was approved in the 1996 Constitution in Article 165 after the 2008 amendment: “The Constitutional Council shall decide on the constitutionality of treaties...either by opinion “Before it becomes enforceable or by decision in the opposite case,” which some considered a reduction in the powers of the Constitutional Court when it monitors international agreements.

Just as the mechanism of declaring unconstitutionality cannot be activated on international treaties after ratification, not including the treaty in a legislative text limits the possibility of declaring its unconstitutionality after its entry into force, especially since Article 02 of Organic Law 18-16, which includes conditions and procedures for declaring unconstitutionality, states that: "Unconstitutionality can be declared... if legislative judgment... violates the rights and freedoms guaranteed by the constitution." Similarly, Article 195 of the 2020 Constitution states: "...when one of the parties claims that the legislative or regulatory judgment... violates their freedoms guaranteed by the constitution." Therefore, individuals cannot declare unconstitutionality if the provisions of a treaty that they believe violate their constitutionally protected rights are applied. This raises a fundamental question that touches on the principle of legitimacy: How can legislative unconstitutionality be declared while the unconstitutionality of treaty provisions that replace legislation cannot be declared? Especially since Articles 154 and 171 of the Constitution require the national judge to exclude legislative provisions if they conflict with the provisions of the ratified treaty.

Anyone who examines the text of Article 193 specifying the competent authorities to notify the Constitutional Court of the unconstitutionality of international treaties will find that they are the same authorities “the legislative and executive authorities” competent to ratify international agreements, as the President of the Republic ratifies the treaty based on the text of Article 91 of the Constitution after the approval of each chambers of Parliament under Article 154 of the Constitution. The question is: Why does the authority responsible for ratifying the treaty notify the Constitutional Court of suspicions of the unconstitutionality of the treaty before ratifying it? Wouldn't it be better to refrain from ratifying it in the first place?

2/2/ The rationale for diminishing the Constitutional Court's authority over overseeing foreign treaties

At first glance, it appears that the constitutional amendment has reduced the powers of the Constitutional Court in its oversight of international treaties, but one who examines the controversial and complex nature of the entry of international rules into the internal legal system and the different status of international agreements in the internal legal hierarchy notes that the Algerian constitutional founder was realistic in his dealings with international treaties in an attempt To establish actual constitutional oversight that can achieve results in practice instead of being a formal oversight confined to constitutional texts.

The restriction of constitutional oversight to official agreements subject to ratification is rooted in the fact that ratification is the only procedure stipulated in the constitution as a means of committing to a treaty. Therefore, the constitutional court cannot examine the constitutionality of a non-constitutionally established procedure such as acceptance, accession, and approval. Acceptance, accession, and approval can also be considered acts of sovereignty exercised by the executive

authority at the international level, so the oversight of the constitutional court is limited in this regard, based on the principle that sovereign acts are considered a restriction on the jurisdiction of the constitutional judiciary.

The truth is that implementing subsequent oversight of the ratified international agreement in accordance with procedural and substantive controls is difficult to achieve for several reasons. The most important of which is that oversight after the state's commitment at the international level will not produce results due to the difficulty of evading international obligations under the pretext of their unconstitutionality, especially in light of the legal manifestations of globalization. The process of ratifying and joining treaties is a technical process that takes effort on the part of the Ministry of Foreign Affairs and the delegates of the President of the Republic, making it difficult to undo it after its completion.

Referring to Article 38 of Organic Law 16-12 dated August 25, 2016, which regulates the National People's Assembly, the senate, and the functional relations between them and the government, we find that the approval of international human rights agreements is in the form of draft laws presented to both chambers of parliament without voting on their details. They cannot be subject to any amendment, and each chamber of parliament has the option to accept the entire draft, reject it, or postpone it. Therefore, instead of notifying its unconstitutionality to the Constitutional Court, it can be directly rejected, and the President of the Republic can refrain from approving it without presenting it to parliament.

Although automatic integration accelerates the state's commitment to international standards, it limits oversight of the constitutionality of treaties after their ratification, especially those whose provisions explicitly prohibit reservations about their provisions. The limitation of the mechanism of defending unconstitutionality to legislative texts can be explained by referring to the text of Article 139 of the constitutional amendment of the year 2020, which explicitly stipulates that the legislative authority is competent to legislate.

The constitutional founder was realistic when he limited the mechanism of declaring unconstitutionality to legislative and regulatory texts. If the constitutional court decides that a legislative or regulatory provision contradicts the constitution, it loses its effect from the date determined by the court's decision, according to Article 198. On the other hand, the constitutional court cannot invalidate the effect of any provisions of a ratified treaty, even if its unconstitutionality is proven, based on Article 46 of the Vienna Convention on the Law of Treaties, which prohibits a state from withdrawing from its international obligations on the grounds of inconsistency with its domestic laws (constitutional, legislative, executive), under the penalty of international responsibility. Instead, the state becomes obligated to take all constitutional, legislative, executive, and judicial measures to reconcile the provisions of the treaty with the domestic legal system.

The principle of the superiority of the international rule over the constitutional rule was enshrined in the Vienna Convention on the Law of Treaties of 1969, in its Article 27:"A party may not invoke the provisions of its domestic law as justification for not implementing a treaty". This principle of superiority means that the international rule of the Convention prevails over all national rules, whether constitutional, legislative, regulatory, or judicial. This is the same approach adopted by the European Convention on Human Rights, which considers that the provisions of the Convention have precedence over all internal actions, whatever their nature, or the body that adopted them, and even Constitutional standards must bend to European human rights standards, which forces the constitutional founder and national legislator to enact rules consistent with the provisions of the European Convention on Human Rights.[12]

International judicial and arbitration practice, since the Alabama case between the United States of America and Britain in 1972 until now, has devoted one course, which is confirmation and support of the principle of the supremacy of the rules of international law and their superiority over the rules of internal law, regardless of their rank in the internal legal system. Accordingly, the state cannot rely on its constitutional rules to deviate from its international obligations in the field of human rights under the pretext that its constitution provides optimal protection for human rights.[13]

2/3/ The Legal solutions when an unconstitutional international treaty takes effect in the domestic system.

Reducing the jurisdiction of the Constitutional Court and requiring its notification before ratifying international treaties will inevitably lead to the adoption of international rules that conflict with the constitution in the domestic system. Moreover, the nature of international relations within the framework of legal globalization may impose on the state the obligation to comply with treaty provisions that contradict its own constitution, especially with the rise of certain areas of international law to the level of binding rules and obligations in the face of all parties. Additionally, the executive authority may proceed with the ratification process after the Constitutional Court issues a decision declaring some provisions of the treaty unconstitutional due to international necessities.

It is possible to imagine legal solutions, represented by a reservation on the texts that the Constitutional Court deemed unconstitutional at the time of ratification in order to remove the conflict between the texts of the treaty and the constitution, if the international agreement allows reservations on its provisions. Constitutional amendment can also be resorted to as a measure to harmonize the constitution with the contents of the agreement, and in the end it is possible to imagine The state’s withdrawal from the agreement that conflicts with its constitution, which will be detailed later.

Based on Article 198 of the Constitutional Amendment of 2020, the executive authority is prohibited from ratifying an agreement whose provisions have been proven unconstitutional, but the nature of international relations, in light of the universality of some global standards such as human rights and the maintenance of international peace and security, imposes on the state to adhere to treaties that are inconsistent with its constitution. Reservation appears as a legal mechanism.

It allows the state to ratify the international treaty while excluding the legal effects of clauses that are inconsistent with the Constitution if the general conditions for reservation mentioned in Article19 of the Vienna Convention on the Law of Treaties are present: The reservation must be made upon signature, ratification, acceptance, approval ;The reservation must not be explicitly forbidden in the treaty ;The reservation must be specific ;The reservation must not be inconsistent with the object and purpose of the treaty.

The purpose of reservations is to strike a balance between preserving the state's independence and sovereignty, and its membership in the international community. Reservations also aim to reconcile universality and specificity in a multicultural world. These dualities have created certain flexibility in how states deal with international treaties, especially since most states were not parties to the foundational agreements. Reservations seek to garner the largest number of signatures and ratifications, thus serving the collective idea of the treaty. They also provide an opportunity for states to modify their national laws to align with the provisions of the treaty, regardless of the degree of conformity, especially since reservations are a temporary measure that must be lifted after harmonizing international and national rules, particularly constitutional ones.[14]

The pressure exerted by international rules on constitutional rules has led to the emergence of the phenomenon of "constitutional internationalization." This is a result of the expansion of constitutional provisions that regulate the relationship between the state and international law on one hand, and the increasing influence of international law provisions in the constitutional content on the other hand. The idea of constitutional internationalization crystallized with the signing of the Statute of the International Criminal Court.[15]

This is evident in the legal issues that arise from the Post-monitoring of international treaties, as the constitutional court's authority, according to Article 198 of the constitution, allows it to rule on the constitutionality of treaties before their ratification. However, it becomes complicated in practice when Algeria commits to an unconstitutional treaty. If the oversight of the constitutionality of a law leads to the cancellation or amendment of the text, the authority granted to the council does not allow it to cancel, amend, rephrase, or exclude any part of the treaty. The lack of constitutionality of an international rule does not mean that it is invalid, considering that the validity of the rule on the international level and its validity on the domestic level are two different things.

It is worth mentioning that Article 160 of the Algerian Constitution of 1976 stated: "If there is a contradiction between the provisions of a treaty or part thereof and the Constitution, it shall not be ratified until the Constitution is amended." It can be understood from the text that the amendment precedes the ratification, indicating the supremacy of international law before the ratification, despite being given the status of law under Article 159: "International treaties ratified by the President of the Republic in accordance with the provisions stipulated in the Constitution shall have the force of law." Perhaps this is due to the absence of constitutional oversight during that period..

The universality of international texts and the elevation of some of them to the status of binding rules make it difficult to claim that they are unconstitutional. In the hierarchy of binding rules, constitutionalism takes on a different meaning, as it requires amending the state's basic law in a way that aligns it with the provisions of the binding treaty texts. This was emphasized by Article 53 of the Vienna Convention on the Law of Treaties of 1969. Therefore, the order becomes as follows: binding international rules, followed by constitutional rules, then ordinary international rules, and finally rules issued by the legislative and executive authorities.[16]

In this context, the question arises about the fate of international treaties that do not include binding rules and that the Constitutional Court deems incompatible with the constitution. Should they be re-concluded? Or should the constitution be amended to align with the provisions of the treaty? Considering that re-concluding most treaties, whether multilateral or bilateral, would be impossible. Additionally, most countries were not parties to international agreements, so they cannot demand their re-conclusion due to their conflict with the constitution after years or decades have passed since their conclusion and entry into force. Therefore, the only solution remains in amending the constitution, especially since the idea of withdrawal from human rights treaties is not acceptable.[17]

In fact, in some cases it is impossible to amend the contents of the treaty on the one hand, and it is difficult to amend the constitution on the other hand, so the state resorts to withdrawal .The Vienna Convention on the Law of Treaties of 1969 dealt with withdrawal in many of its texts, and the agreement may include texts regulating the withdrawal procedure. A set of provisions apply to withdrawal, including:

- Withdrawal is not permissible except in accordance with the provisions of the agreement based on Article 2/42 of the Vienna Convention.
- Withdrawal from the agreement does not affect the state's obligation to fulfill its commitments under international law, regardless of the agreement's contractual location, Article 43 of the Vienna Convention.
- The possibility of separating the provisions from which the state wishes to withdraw, unless the treaty provides otherwise or the parties agree otherwise, Article 54 of the Vienna Convention.
- If the treaty does not include a provision allowing withdrawal, it can only be done if the intention of the parties wishing to withdraw is established, and if it is possible to infer withdrawal from the nature of the treaty, Article 56/01 of the Vienna Convention.
- It is necessary to notify the other parties of the withdrawal at least one year in advance, Article 02/56 of the Vienna Convention.
- Withdrawal is possible in case of impossibility of implementation, Article 67 of the Vienna Convention.
-Withdrawal is possible based on a fundamental change in circumstances.[18]

The controversy arises when the treaty lacks a provision that regulates the process and criteria for withdrawal, as is the case with the two international covenants on human rights. When the Democratic People's Republic of Korea withdrew from the International Covenant on Civil and Political Rights in 1997, the Secretary-General of the United Nations clarified in a memorandum issued regarding the Korean withdrawal that the silence of the agreement on withdrawal means that it is not permissible. The Secretary-General concluded, after referring to the preparatory work of the covenant, that the nature of the treaty and the absence of a provision regulating withdrawal necessitate the impossibility of withdrawing from it.[19]

Withdrawal, in other words, is a declaration by the withdrawing state that it is no longer bound by international rules, which raises serious questions among the international community about this

state's commitment to and achievement of minimum international standards. The state's withdrawal after agreeing to abide by these rules puts it in a position of doubt and uncertainty[20].

Conclusion:

Answering the problem at hand is not an easy matter given the complexity of the relationship between international law and domestic law, as well as the overlapping of legal and political considerations when we talk about the entry of international convention rules into the domestic legal system. International and domestic legal rules Although they share the goal, they differ in methods of origination, termination, and binding force. The modernity of the Algerian experience with regard to constitutional oversight of international treaties made us reach the following results:

-It is difficult to differentiate between the approach of duality and the approach of unilateralism when dealing with international agreements, due to the emergence of hybrid patterns that have the characteristics of both approaches, which has made international regulatory bodies focus on the "result" and not the "method" as long as there is actual compliance by the state that takes all legislative, executive and judicial measures to activate the requirements of the agreement at the internal level.

The constitutional amendment of 2020 contributed to raising the status of international human rights conventions within the Algerian legal system, as it introduced the concept of the constitutional bloc, which explicitly included the Universal Declaration of Human Rights and the international human rights conventions ratified by Algeria, which indicates that it gave international human rights conventions a clear constitutional value. The rest of the ratified agreements have sub-constitutional and supra-legislative value.

- The constitutional oversight exercised by the Constitutional Court over international treaties is very limited because it is precedent and permissible and applies to official agreements only. Also, the parties that notify the Constitutional Court of suspicions of the unconstitutionality of a treaty are the same ones that ratify it, so it would have been better to refrain from ratification directly, and the payment mechanism is The claim that the international treaty is unconstitutional is not available to the individuals, even though the texts of the treaty replace legislation, who can argue that it is unconstitutional.

- It is not possible to argue that treaties are unconstitutional, even if it is unpalatable, it is logical, because providing individuals with the opportunity to argue that treaties are unconstitutional will not exclude the legal effect of the "unconstitutional" clauses after their ratification, given that international human rights conventions prevent the exclusion of any legal effect on the pretext of their conflict with International rules, whatever their degree.

The Constitutional Court exercises constitutional oversight over the formal procedures for the entry into force of an international treaty, which is represented by ratification and obtaining the approval of Parliament in both chambers of some agreements and publication in the Official Bulletin, but it does not exercise oversight over the substantive provisions until after they enter into force in the internal regulations, due to the absence of subsequent oversight of the International treaties .

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[15] -Khalfan Karim and Sam Elias,opcit,p23.
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