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The legal value of international treaties in Iraq and Spain: Analysis and challenges in their implementation.

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Abstract:

The principle of national sovereignty underpins international law by guaranteeing state independence and its legislative authority without external interference. However, the interaction between domestic norms and international commitments has sparked debate, particularly in cases of potential normative conflicts. Two main theories explain this relationship: dualism, which distinguishes between the two legal systems, and monism, which gives primacy to international law. This study analyzes the impact of international treaties on national legal frameworks, focusing on the position of Arab States regarding human rights. It examines the Iraqi legal system, its incorporation of treaties, and their influence on the 2005 Constitution, as well as the role of the judiciary. Finally, a comparison with the Spanish legal system is presented to identify key similarities and differences.

Keywords:

International treaties, Iraqi legal system, 2005 Iraqi Constitution, Spanish legal system.

Resumen:

El principio de soberanía nacional sustenta el derecho internacional al garantizar la independencia del Estado y su autoridad legislativa sin interferencias externas. Sin embargo, la interacción entre las normas nacionales y los compromisos internacionales ha suscitado un debate, especialmente en casos de posibles conflictos normativos. Dos teorías principales explican esta relación: el dualismo, que distingue entre los dos sistemas jurídicos, y el monismo, que da primacía al derecho internacional. Este estudio analiza el

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impacto de los tratados internacionales en los marcos jurídicos nacionales, centrándose en la posición de los Estados árabes con respecto a los derechos humanos. Examina el sistema jurídico iraquí, su incorporación de los tratados y su influencia en la Constitución de 2005, así como el papel del poder judicial. Por último, se presenta una comparación con el sistema jurídico español para identificar las principales similitudes y diferencias.

Palabras clave:

Tratados internacionales, sistema jurídico iraquí, Constitución iraquí de 2005, sistema jurídico español.

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1. INTRODUCTION

State sovereignty, understood as the independence and exclusive authority of a State over its territory, constitutes the foundation of international law. This principle prohibits any external interference without consent and grants States the power to legislate. However, such domestic norms may come into tension with international law, which is primarily articulated through legally binding treaties aimed at harmonizing with national legislation through appropriate mechanisms of integration. Within this context, the theories of dualism and monism have sought to explain this relationship, with the latter being supported by both international courts and constitutional reforms that recognize treaties as having equal hierarchy to domestic legislation.

The development of international relations has been grounded in the conclusion of treaties that promote peace, security, and cooperation. Nevertheless, this harmonization is frequently challenged by normative conflicts between international law and domestic legal systems, which raises both practical and theoretical concerns. This forms the central issue of the present study: the tension between national sovereignty and the obligations arising from international treaties—particularly in the Iraqi case, where recent constitutional reforms have sparked debate over the degree of primacy that international law should hold within the national legal system.

International human rights instruments, such as the International Covenant on Civil and Political Rights, provide guidance for states in aligning domestic legislation with global standards. The experience of states, including Spain as previously discussed in this study, illustrates mechanisms for integrating treaties while respecting national sovereignty, offering insights relevant to Iraq.

The importance of this research lies in its contribution to understanding how States, especially Iraq, can effectively integrate international obligations into their domestic Systems without undermining their sovereignty, while also offering a framework for comparison with the Spanish experience. The main objectives, are: to examine the nature and types of international treaties; to analyse the approach of Arab States Toward human rights; to study how constitutions and national legislations—especially in Iraq—incorporate these treaties and the role of the judiciary in their implementation; and finally, to conduct a comparison with the Spanish legal system regarding the treatment of international treaties.

The research adopts a descriptive, analytical, and comparative approach, allowing for the identification of both theoretical foundations and practical challenges arising from the relationship between international and domestic law.

2. THEORETICAL FRAMEWORK

This section addresses the concept of international treaties, their various forms, and the position of Arab States regarding the international protection of human rights. It also analyses the relationship between international law and domestic law through a comparative

study of the main theories that explain this interaction, assessing their foundations, implications, and critiques.

2.1. Concept of an international treaty

International treaties and conventions, whether general or specific, are a primary source of international law, establishing norms accepted by States and contributing to the protection of sovereignty and mutual respect among nations. They have developed alongside domestic legal systems as mechanisms for regulating interstate relations. Customary international law has progressively shaped the procedures governing treaties, a process consolidated through the work of the International Law Commission under the authority of the United Nations General Assembly and reflected in Article 38 of the Statute of the International Court of Justice. Their significance lies in their role in establishing binding legal frameworks for international relations.[1]

Scholars have long debated the relationship between the sources of international law, emphasizing a distinction between their de jure and de facto status. De jure, treaties (international conventions) and customary international law are regarded as co-equal sources, possessing the same formal legal value under Article 38 of the ICJ Statute, without any inherent hierarchy. In this view, neither can automatically Override the other; each contributes to the framework of international obligations, and norms may even possess both conventional and customary character simultaneously (Russo 1987, 33).

In practice, international law has evolved in a way that gives treaties a dominant role in contemporary state relations. Their clarity, precision, and basis in express consent make them the principal instruments for regulating interstate conduct and settling disputes. Yet customary law remains essential: it operates as a foundational source where treaties are absent and continues to shape treaty interpretation and the development of international norms. This perspective reconciles the formal equality of legal sources with their practical predominance, revealing the dynamic relationship between theoretical normative hierarchy and functional hierarchy in practice (Greenwood 2008).

Treaties are now central sources of public international law, though their relationship with customary law and general principles requires nuance. Historically, customary law predominated, particularly before the expansion of international organizations, but the

[1] International Court of Justice. (n.d.). Statute of the International Court of Justice, Article 38 establishes the following:
The Court, whose function is to settle disputes submitted to it in accordance with international law, shall apply:
A) International conventions, whether general or specific, that establish rules expressly recognized by the States involved in the dispute.
B) International custom, as evidence of a general practice accepted as law.
C) The general principles of law recognized by civilized nations.
D) Judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law, without prejudice to the provisions of Article 59.
This provision shall not prejudice the power of the Court to decide a case ex aequo et bono (according to what is fair and good), if the parties agree thereto.

growth of treaty-making gradually made treaties the principal framework for interstate cooperation (Orrego 2025a).

From a de jure standpoint, Article 38 of the Statute of the International Court of Justice identifies treaties, customary law, and general principles as co-equal sources of international law. No formal hierarchy exists between treaties and custom, except for jus cogens norms, which prevail over both (Greenwood 2008, 1).

Customary law continues to shape international obligations, especially where treaty law is absent or incomplete. It provides continuity and stability within the international legal system, filling gaps between treaty regimes and addressing emerging issues (Ferreira and Ferreira 2014, 54).

In practice, treaties exercise de facto predominance because they are explicit, codified, and based on express state consent, whereas customary rules require evidence of practice and opinio juris. This practical advantage explains their frequent use as reference points in diplomacy and international adjudication (Çalı 2015a, 129).

Scholarly debate persists over whether a hierarchy among sources exists. Some writers stress the practical predominance of treaties, while others emphasize the continuing influence of custom and the role of general principles in specific contexts. Judicial decisions and academic writings function as subsidiary interpretative tools rather than primary sources of law (Greenwood 2008, 1-2).

Before the adoption of the Vienna Convention on the Law of Treaties, which entered into force in 1980, treaty-making and interpretation were governed mainly by customary international law. The Convention introduced a structured legal framework for the conclusion, interpretation, and termination of treaties and limited its formal scope to agreements concluded between States. Since the mid-twentieth century, particularly after the creation of the United Nations in 1945, treaties have become the principal practical source of international law. Although customary law historically held preeminence, treaties gained prominence because of their clarity, codification, and enforceability in regulating relations among States (Orrego 2025b, 12-45).

From a de jure perspective, Article 38 of the Statute of the International Court of Justice recognizes treaties, customary law, and general principles as co-equal sources of international law, with jus cogens norms as the sole formal exception. Customary law remains essential, particularly where treaties are absent or silent, and it continues to inform treaty interpretation under instruments such as the Vienna Convention (1969). In practice, treaties dominate international relations and guide dispute settlement before bodies such as the World Trade Organization and various human rights tribunals. At the same time, the boundary between treaty and custom is fluid: treaties may codify existing custom, while customary norms influence treaty interpretation. Academic debate therefore balances the de facto predominance of treaties with the enduring role of customary law (Çalı 2015b).

In international practice, treaties are distinguished from other instruments by both form and content. A treaty is understood as any binding international agreement governed by international law, whether bilateral or multilateral. Multilateral conventions, including the

Geneva Conventions, are often cited as prominent examples, but bilateral agreements creating obligations between two States are equally recognized as treaties and form part of the primary sources of international legal obligations. This inclusive understanding prevents the misconception that only multilateral instruments qualify as treaties (Aust 2013, 14-15). A protocol generally supplements or amends a treaty, whereas a declaration usually articulates shared principles without establishing binding legal obligations.[2]

According to Article 2 of the Vienna Convention, a treaty is an international agreement concluded in writing between States and governed by international law, regardless of its specific designation. To be valid, it must meet four elements: (1) be concluded between subjects of international law, primarily States or international organizations (since the 1986 Vienna Convention); (2) be in written form; (3) be governed, at least in part, by international law (Shukri 1997, 415); and (4) aim to establish legally binding effects (Shata 2023, 921). Excluded from this category are political Agreements without legal intent (gentlemen's agreements) or contracts governed by private law between States and corporations (Al-Bazaz 2019, 30). Thus, international treaties not only formalize the legal will of States but also constitute an essential pillar of legal certainty in international relations, by imposing clear and enforceable obligations under international law (Shata 2023, 922).

2.2. TYPES OF INTERNATIONAL TREATIES

The Vienna Convention on the Law of Treaties does not formally distinguish between categories of treaties and applies to agreements establishing international organizations (Art. 5). Under Article 62(2)(a), [3] a fundamental change of circumstances cannot justify terminating treaties that impose permanent limitations. Although some scholars view treaty classification as legally secondary, it remains theoretically and practically useful. Treaties may be classified according to the parties involved and their content, based on substantive criteria (nature and obligations) and formal criteria (form, procedure, and number of parties) (AL-Mujtoub n.d., 492). According to their subject matter, treaties are commonly divided into normative, contractual, general, special, constitutive treaties, and those creating international organizations:

a) Normative and Contractual Treaties: The distinction between normative and contractual treaties is a traditional one in international law. Normative treaties establish general rules that may influence even non-signatory States and represent an important source of public international law (Hamdi 1988, 39). They are usually multilateral and create broad legal frameworks (Al-Fatlawi 2009, 60), as illustrated by instruments such as the Hague Conventions, the Covenant of the League of Nations, the Vienna Convention on Diplomatic Relations and the Geneva Conventions. By contrast, contractual treaties regulate specific relations between particular parties and reconcile limited or divergent interests. They are typical in areas such as peace settlements, alliances, extradition, and consular arrangements, and do not create general rules of international law (Russo 1987, 37).

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[2] For the generic denomination of treaties, see: Aboulkhair 2006, 6–7; Al-Fatlawi 2009, 53; Bin-Dawood 2010, 62-69; 2011, 142-143.

3 "If a new peremptory norm of general international law emerges, any existing treaty that is incompatible with that norm shall be considered void and terminated."

b) General and Special Treaties: Article 38 of the ICJ Statute recognizes both general and special treaties. Some authors see this distinction as reflecting normative versus contractual treaties. General treaties have universal application, affecting even non-signatory States, such as the Charter of the United Nations and the Geneva Conventions. Special treaties, by contrast, apply only to States Parties and are often shaped by geographic, historical, or cultural ties, including the Charter of the Organization of American States and the Charter of the League of Arab States (AL-Mujtoub n.d., 573).

c) Constitutive Treaties and Treaties Establishing International Organizations: Article V of the Vienna Convention on the Law of Treaties recognizes treaties that create international organizations, which possess a unique character. These constitutive treaties establish entities affecting not only the States Parties but also other States, defining their legal and operational frameworks and forming part of the international legal order. Examples include treaties creating permanent regimes, such as Switzerland's neutrality system, or instruments for territorial disarmament (Amer 1984, 341-432).

Jurisprudence further distinguishes treaties by form: bilateral treaties are concluded between two States, while collective treaties involve more than two States. Another distinction exists between long-form treaties, which are more complex, and simple conventions, which are direct and straightforward:

a) Bilateral and Collective Treaties: Bilateral treaties are agreements concluded between two States, covering areas such as politics, security, economy, or education. Collective treaties, by contrast, involve multiple States and address matters of broader international concern. A key difference lies in ratification: bilateral treaties are ratified through the exchange of documents, whereas collective treaties are ratified by deposit. Withdrawal from a bilateral treaty terminates the treaty, while withdrawal from a collective treaty does not affect its validity. (Zaraqat 2011, 56–57). Examples of bilateral treaties include border agreements, alliances, and reconciliation pacts. Notable collective treaties include the United Nations Convention against Transnational Organized Crime and the Treaty of Versailles, which address global challenges and reflect the legal equality of the States Parties (Dupuy 2000, 253).

b) Long-Form Treaties and Simple-Form Conventions: Long-form treaties and simple-form conventions represent two key categories in international law. Long-form treaties require adherence to formal legal procedures, including negotiation, signature, and ratification by the competent national authorities, as established in the constitutions of the States Parties (Sabarini 2007, 45). In contrast, simple-form conventions enter into force upon signature, without further ratification (AL-Mujtoub n.d., p. 573). This distinction allows simple conventions to be used more often in urgent or less significant matters, such as restoring diplomatic relations or concluding customs agreements. The primary difference between the two lies in the level of formality and the speed of implementation (Amer 2007, 201).

.3. Arab States and the international protection of human rights

In this section, we analyse the reception of international law within the legal systems of Arab States and their participation in the development of the International Bill of Human Rights.

3.1. RECEPTION OF INTERNATIONAL LAW IN THEIR LEGAL SYSTEMS

During the 20th century, after decolonization, Arab countries such as Egypt, Iraq, the UAE, Syria, Tunisia, Algeria, Lebanon, Yemen, and Morocco adopted constitutions emphasizing sovereignty, separation of powers, and fundamental rights. From the 1970s, many aligned with international human rights treaties, reflecting liberal influences (Gutiérrez Castillo 2012, 117).

Acceptance of international law varies: some countries, like Libya, omit it, while others—such as Morocco[4], the United Arab Emirates[5], Kuwait[6], Bahrain[7], Comoros[8], and Afghanistan[9]—reference it in the Preamble or in key provisions, showing differing scopes and applications. It is also incorporated within the programmatic section, under guiding principles or executive powers, as in Qatar[10], Iraq[11], and Algeria[12].

The debate between dualism and monism in Arab countries remains an open and controversial issue. Ongoing constitutional reforms, particularly in the Maghreb, make it difficult to reach a definitive conclusion. The relationship between international law and domestic law lacks a uniform approach in the region (Gutiérrez Castillo 2012, 119). Only a Few constitutions explicitly address this matter, adopting both dualist and monist perspectives, with Tunisia[13] and Morocco serving as representative examples of this interpretative diversity.

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[4] The Preamble of the 2011 Moroccan Constitution reaffirms the Kingdom's commitment to the protection and promotion of human rights and international humanitarian law, emphasizing their universality and indivisibility as fundamental principles of the State.

[5] The Preamble of the 1971 Constitution of the United Arab Emirates reflects the intent to establish a federal, sovereign, and independent State, founded on cooperation with Arab States and other members of the international community, based on principles of mutual respect and shared interests.

[6] The Preamble of the 1962 Constitution of Kuwait expresses the State's conviction in its role in promoting Arab nationalism, as well as in strengthening world peace and the advancement of human civilization.

[7] The Preamble of the 2002 Constitution of Bahrain emphasizes the State's commitment to its international responsibilities, highlighting adherence to human values and participation in regional and international efforts for justice, freedom, peace, and global well-being.

[8] The Preamble of the 1996 Constitution of the Comoros affirms the centrality of Islam as a normative source, while committing the State to the principles of the UN, the Organization of African Unity, the Islamic Conference, and the Arab League, also recognizing the inspiration of the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights.

[9] The Preamble of the 2004 Constitution of Afghanistan states: "Appreciating the sacrifices, historic struggles, jihad, and just resistance of all the peoples of Afghanistan [...]. In accordance with the Charter of the United Nations and the Universal Declaration of Human Rights [...]."

[10] The 1999 Constitution of Qatar, Article 6, enshrines the State's commitment to respecting and fulfilling international treaties. Article 7 directs foreign policy toward international peace and security, promoting the peaceful resolution of conflicts, respect for the right to self-determination, and non-interference in the internal affairs of other States

[11] Article 8 of the 2005 Constitution of Iraq establishes that: "Iraq shall observe the principles of good neighborliness, adhere to the principle of non-interference in the internal affairs of other States, seek to resolve disputes by peaceful means, establish relations based on mutual interests and reciprocity, and respect its international obligations."

[12] Article 28 of the 1996 Constitution of Algeria provides that: "Algeria works to strengthen international cooperation and develop friendly relations among States [...]. It subscribes to the principles and objectives of the Charter of the United Nations."

[13] Before the 2002 reform, the 1959 Tunisian Constitution required specific domestic approval for ratified treaties. Law 2002-51 granted the President the authority to ratify treaties, although certain treaties (concerning

Some constitutions use ambiguous language, allowing dualist interpretations while upholding ratified treaties. For example, Article 81 of Saudi Arabia's 1992 Basic Law states that the system "shall not affect... commitments arising from treaties," recognizing treaty primacy yet leaving room for domestic interpretation.[14] States reflect their historical and political contexts: Somalia (1958) [15] and Mauritania (1960)[16] show strong human rights concerns, while Iraq emphasizes international Commitments.[17] Debate over dualism and monism in Arab constitutions remains unresolved, with ambiguity about treaty value, ratification, and application. Morocco, among others, is revising or drafting new constitutions.

3.2. The participation of Arab States in the formation of the International Bill of Human Rights

The United Nations has established core human rights instruments under the International Bill of Fundamental Rights: the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights, with their Optional Protocols. These are supplemented by specific treaties, including the Conventions on Racial Discrimination, on the Elimination of Discrimination Against Women, on the Rights of the Child, Against Torture, and on the Protection of Migrant Workers. These texts form the global foundation for human rights protection.

At the San Francisco Conference, a binding convention was proposed, but a Declaration was adopted instead for broader acceptance. Later, the International Covenants imposed legal obligations on States. The Universal Declaration was adopted on December 10, 1948, with 48 votes in favor, none against, and 8 abstentions; Saudi Arabia abstained for religious reasons concerning Article 18, while other abstentions were political, including from the communist bloc and South Africa (Oraá 2003, 125-129).

The role of Arab countries in human rights emerged after World War II, as they integrated into the international system and acceded to UN instruments. During the 1980s, the topic gained prominence in doctrinal, legal, and sociological discussions. Religious influence in political and social life affected their practice, often reflected in reservations to human rights treaties subordinated to Sharia (Gutiérrez Castillo 2012, 123). Additionally, Arab States

borders, trade, finance, or legislative obligations) require prior approval from the Chamber of Deputies. The 2022 Constitution reaffirms this framework: Article 75 establishes that ratified and approved treaties have precedence over ordinary laws and acquire the status of fundamental laws.

[14] Similar approaches can be observed in Article 18 of the 1996 Constitution of the Comoros, Article 37 of the 1992 Constitution of Djibouti, Article 177 of the 1963 Constitution of Kuwait, Article 121 of the 2004 Constitution of Afghanistan, and Article 147 of the 1971 Constitution or Basic Law of the UAE.

[15] Article 14 of the 1979 Somali Constitution states: "The Republic of Somalia shall recognize and implement all international human rights conventions and treaties to which the Republic is a party."

[16] Article 7 of the 2004 Afghan Constitution establishes the State's respect for the Charter of the United Nations, international treaties, and the Universal Declaration of Human Rights. It also prohibits activities such as terrorism, drug trafficking, and the use of intoxicating substances.

[17] Article 8 of the 2005 Iraqi Constitution provides that Iraq shall respect good neighborliness, non-interference in the internal affairs of other States, resolve conflicts peacefully, base its relations on common interests, and fulfill its international obligations.

promoted alternative regional declarations to align human rights with their religious and cultural values.[18]

Participation in international treaties has varied, frequently accompanied by reservations and declarations. As Rodríguez Carrión notes, international law respects State heterogeneity, allowing gradual adherence without conflicting with particularistic interpretations (Rodríguez Carrión 1983, 97-98). Many Arab States leveraged opportunities to engage actively in treaties, mitigating conceptual conflicts arising from cultural heritage, especially regarding certain rights and freedoms.

4 .RELATIONSHIP BETWEEN INTERNATIONAL LAW AND DOMESTIC LAW

International treaties and domestic laws are essential for structuring societies worldwide. Treaties reinforce relations between States and promote peace and security, while national norms ensure state functionality and protect rights. Human rights protection constitutes a binding obligation under international treaties. The interaction between international and domestic law has prompted doctrinal debate: some scholars emphasize domestic law's supremacy, while others stress its complementary role. Consequently, it is crucial to examine theories on this relationship and how constitutions and national legislation regulate the implementation of international treaties.

4.1. THEORIES GOVERNING THE RELATIONSHIP BETWEEN INTERNATIONAL TREATIES AND DOMESTIC LAW

The debate on the relationship between international and domestic law centres on two main issues: whether international law should prevail over domestic law or be treated as equivalent, and whether international norms apply directly or require national incorporation. Some scholars argue that each legal system pursues distinct objectives and should follow its own principles. From this debate, two primary theories emerge: dualism (Yadkar 2009, 41), which views the systems as independent and autonomous, and monism, which considers them integrated, with one system prevailing in cases of conflict. International jurisprudence seeks to clarify this relationship by defining the status and scope of norms and treaties, ensuring coherence between domestic and international law, and balancing state sovereignty with international obligations.

4.1.1. Dualism theory

This doctrine, based on the jurisprudence of authors such as Tripel and Anzilotti, holds that international law and domestic law are distinct and independent legal systems, each of equal importance (Russo 1987, 18). Each system is governed by its own norms and Principles, organizing relationships within its respective jurisdictions without one prevailing over the other (Alfar 2009, 28).

[18] The main human rights declarations in Islam are the Declaration of the Rights and Fundamental Duties of Man in Islam (1979), the Document on Human Rights in Islam (1981), and the Cairo Declaration on Human Rights in Islam (1990), adopted within the Organization of Islamic Cooperation (OIC).

Some authors argue that domestic law is created exclusively by the will of the State, without external intervention, while international law arises from agreements between States or other international actors (Amer 2007, 163). Domestic law regulates relations between the State and its citizens, whereas international law governs interactions Between States. The autonomy of both systems is fundamental to this theory, as each has a distinct purpose and specific sanctions for violations (Shubr 2017, 137).

The application of international law differs from that of domestic law, since States develop national norms tailored to their internal structure and functions, while international norms regulate their relations with the global community. The distinction between the two systems is clear within States, where the legislative, executive, and judicial branches operate under a single constitutional framework. However, this internal organization cannot be replicated at the international level due to its diverse nature (Maña 2010, 46).

Arguments of dualism theory

a) Difference in the Source of the Two Laws: Domestic law originates from the sovereign will of each State, expressed through constitutions, statutes, and administrative regulations, allowing a country to modify or repeal its norms without external interference (Al-Tai 2010, 80). It governs the authority of the State over its citizens and territory. In contrast, international law lacks a supreme authority and is founded on agreements and consensus among States (Rafat 2002, 99), formalized via treaties and customary practices. While domestic law reflects the individual will within a State (Al-Fatlawi 2009, 44), international law represents the collective will of States and international organizations. International obligations stem from the express or tacit consent of States, whereas domestic obligations derive from constitutional and national legislation.

b) Difference in Object and Regulated Subjects: International law and domestic law govern distinct spheres. International law addresses relations among international subjects, such as States and international organizations, whereas domestic law regulates relations among individuals or between individuals and State authorities (Bin Dawood 2010, 286). This distinction is crucial: domestic law defines the legal status of individuals within a State and their relationship with public authority, while international law governs political, economic, social, and cultural interactions between States, in both peace and conflict (Hamid *et al.* 1987, 26). Consequently, international law primarily targets States and organizations, whereas domestic law applies to individuals under national jurisdiction, highlighting clear differences in subjects and scope (Al-Ajami 2011, 20).

However, this distinction is not absolute: international norms can directly affect individuals, particularly in areas of global security and international public order, as seen in the actions of organizations such as Interpol and international criminal tribunals, which uphold international law and contribute to global stability.

c. Different Legal Structure: National constitutions establish the legal framework, organizing government and defining the powers of the legislative, executive, and judicial branches. Cooperation among these branches varies by political system—parliamentary or presidential—and is unique to each State. This internal organization is not governed by international law, which lacks a supreme authority over all States (Abdelsalam 2014, 32).

International law is based on coordination and equality among States, while domestic law imposes obedience within a State (Ali 1984, 37). Domestic laws regulate internal affairs, whereas international law governs relations between States; each is a separate branch of public law with distinct principles, subjects, sources, and addressees (Alwan 2007, 113).Compliance in domestic law is mandatory, whereas international law relies on the principle of pacta sunt servanda, ensuring equal rights and obligations. Their relationship is thus defined by their distinct nature and the different matters and subjects they regulate.

Consequences of dualism theory

Dualism holds that international and domestic law are independent systems. International norms do not apply directly in national courts, and domestic norms do not extend internationally; each system has its own scope (Abdelsalam 2014, 32). Conflicts are limited to norms within the same system (Al-Fatlawi 2009, 28). International norms bind domestic law only if prescribed procedures are followed, obligating national judges to apply domestic norms (Rafat 2002, 101).

Exceptions exist through cession and reception. Cession incorporates domestic norms into international law, particularly in diplomacy, war, territorial waters, and the law of the sea, where international law references and defines these norms (Abu Haif 1990, 93).

Reception occurs when international norms are adopted into national legislation, making them binding domestically (Al-Shammari 2018, 9-10), as seen in laws reflecting ratified treaties (Allam 2014, 138). While dualism emphasizes independence, reception allows interconnection between the two legal systems (Ibrahim 1995, 37-39).

Criticisms of dualism theory

This theory has been criticized as follows:

a) Distinction Between Sources of International and Domestic Law: One criticism questions the separation between the sources of international and domestic law, Highlighting the confusion between a source as the reason for a norm and as its formal expression. Both respond to social demands, differing mainly in technical methods. In international law, the primary sources are treaties and customary law, in domestic law, legislation and customs. However, this distinction does not justify entirely separate systems, as it might misleadingly suggest that norms derived from domestic legislation are fundamentally different from those derived from domestic customs (Russo 1987, 40).

b) Limitation of Subjects: The distinction that limits international law to States and domestic law to individuals is insufficient. International law considers not only the physical presence of individuals but also the collective associated with territory and The conditions for its establishment (Al-Hawari 2014, 227). Moreover, international norms can directly affect individuals, while domestic law regulates both individuals and the State itself. Therefore, the presence of individuals in both systems does not justify a strictly bilateral view of domestic law. In this regard, the Nuremberg Military Tribunal concluded that there is no substantial difference between the two systems based solely on the subjects they regulate (Al-Jadar 2000, 16).

c) Criticisms of Differences in Legal Nature and Structure: The supposed fundamental difference between international and domestic law is limited and does not negate existing similarities. International law has judicial and executive institutions, such as the International Court of Justice, the International Criminal Court, and the Security Council, demonstrating its own structure. Therefore, the difference between the two systems is more organic and formal, reflecting unequal integration in specific social contexts. Essentially, it is a difference of degree, not of nature (Russo 1987, 42–43).

d) Direct Application of International Norms: In certain cases, international norms can be applied directly within a state's territory without prior domestic legislation.[19] This legal recognition eliminates strict boundaries between international and domestic law. Critics argue that overemphasizing the separation of the two systems ignores their possible interaction and overlap. In fact, many countries incorporate international treaties into their legal systems without formally transforming them into domestic norms (Ali 1984, 42).

4.1.2. Monist theory

The Monism Theory: Monism posits that international and domestic law form a single, interconnected legal system. Scholars such as Scelle, Kelsen, Verdross, and Cleaver Argue that both belong to a superior normative order governing State relations and ensuring legal unity. In this hierarchy, international norms prevail over national ones, reflecting the collective will of the international community (Alwan 2007, 117). Both systems aim to serve the public good and protect universal values such as peace, justice, and human rights (Al-Samari 2010, 52).

States are therefore obliged to integrate international provisions into domestic law and ensure compliance by national authorities (Maña 2010, 46).

Other scholars, including Kaufmann, Zorn, and Ferrandiére, stress constitutional supremacy, asserting that state sovereignty determines how treaties apply domestically (Al-Tersawi 2006, 25), ensuring that no international norm can be applied without proper incorporation according to the State's legal system (Rafat 2002, 103).

Nonetheless, most theorists agree that the systems should operate in harmony, with international law prevailing in conflicts, as it forms the foundation of all legal systems, including national ones (Al-Samari 2010, 54).

Arguments of the monist theory

a) Proponents of the unity of law emphasize that, although international and domestic law originate from different sources, both share a common purpose: serving the collective welfare (Amer 2007, 166). Domestic norms arise from constitutions, statutes, and regulations, while international norms emerge from treaties and recognized State practices.

[19] Self-executing treaties are agreements that become automatically binding and enforceable without additional actions by the States. Examples include the 1958 Geneva Convention on the High Seas, which entered into force 30 days after the necessary ratifications, and the 1969 Vienna Convention on the Law of Treaties, which, according to Article 84(a), enters into force 30 days after the deposit of the thirty-fifth ratification instrument. Both illustrate how international treaties can be implemented and applied directly and promptly.

Both establish binding standards regulating the behavior of individuals and organizations within their respective spheres (Al-Shafei 1974, 86). However, practical challenges persist due to structural and political differences among States. Despite its universal character, international law still lacks mechanisms to ensure uniform domestic enforcement across all States.

b) Subjects of International and Domestic Law in the Monist Theory: The application of international and domestic law demonstrates that both systems ultimately concern individuals. The State, composed of people, enforces norms that directly affect its citizens, while international law influences individuals indirectly through State actions (Alwan 2011, 26). The Nuremberg Tribunal emphasized that States are not abstractions but associations of human beings, highlighting the interconnection of the two legal systems. Both systems share individuals as primary subjects, especially regarding the protection of rights. While international law holds primacy and guides national legislation, certain domestic norms may limit the application of treaties when they Conflict with individual rights or domestic norms shaped by religious, social, or cultural values.

c) In monist theory, international law regulates relations between sovereign States without a superior authority (Al-Anzi 2001, 29), although treaties and customary international law generate obligations even for non-ratifying States. The distinction from domestic law is mainly formal and structural: while domestic law reflects State-specific particularities and regulates relations between individuals and authorities, international law establishes common rules for the conduct of States. This distinction Indicates a functional differentiation, not an absolute separation, within an interconnected legal system (Al-Ajami 2011, 26).

d) In monist theory, the main difference between international and domestic law is historical, as the former is more recent, though this does not imply a hierarchy between them. International law has developed institutions like those of national systems, such as the UN General Assembly, the Security Council, and the International Court of Justice, reflecting a functional organization that reinforces the notion of an integrated legal system.

Consequences of monist theory

The monist theory holds that international law has supremacy over domestic law, allowing it to modify or annul national provisions in the event of a conflict. In such situations, judges must apply the international norm, which replaces the conflicting domestic provision. Likewise, no domestic rule, not even constitutional— can prevail over international treaties or customary international law (Abu Al-Khair 2003, 40). This primacy obliges courts, authorities, and citizens to comply with international law, and any violation thereof entails the international responsibility of the State (Al-Tersawi 2006, 21).

Criticisms of the monist theory

Although monism views international law and domestic law as interconnected systems— contrary to the dualist theory, which considers them as separate legal orders, the monist approach has faced criticism from two opposing perspectives: one that upholds the

supremacy of domestic law, and another that supports the primacy of international law. The following analysis outlines these objections:

a) The position that grants supremacy to domestic law argues that, in cases of conflict, national legislation should prevail over international norms due to the broader scope of internal regulations and the limitations of judicial mechanisms. However, this view has been criticized for several reasons: it reduces international law to treaties while disregarding customary law; it neglects the obligation to protect individual rights (Al-Tersawi 2006, 26); and some courts give precedence to the national constitution, questioning the validity Of treaties in the face of constitutional changes (Najm 1990, 61–62). Furthermore, interpreting treaties according to domestic interests could weaken their legal force in relations among States (Faiz 2015, 63).

b) Criticisms of monism with the supremacy of international law: this perspective has been challenged for considering international law as the foundation of the entire legal order, including domestic law. Critics highlight the temporal gap between the development of domestic and international law and argue that this approach Undermines state sovereignty by subordinating it to external norms (Al-Mosmari 2010, 54). It is also criticized for attempting to unify both legal systems while disregarding their structural differences. Moreover, although treaties are indeed binding, this theory tends to minimize the normative autonomy of States (Shubr 2017, 142). Some defenders of this view Acknowledge the distinction between the two orders but insist that the logical and practical coherence of international law should prevail over purely formal or historical considerations (Al Jaddar 1992, 35).

5. The position of constitutions and national laws on international treaties

Constitutional law determines how treaties are implemented, their binding force, and whether additional legislation is required for their application. Some legal systems incorporate treaties automatically into domestic law upon ratification (“automatic incorporation”), while others require specific legislative approval or enactment on an ad hoc basis (“ad hoc incorporation”). This distinction affects the immediate applicability and enforceability of treaties within domestic courts and aligns with the provisions of the 1969 Vienna Convention on the Law of Treaties regarding treaty entry into force and domestic implementation (Cassese *et al.* 2020, 112–115).

5.1. The Iraqi legal system

5.1.1. How to integrate an international treaty into Iraq’s legal system

The process of concluding an international treaty in Iraq begins with negotiations between representatives of the involved countries (El Attiyah 2012, 114). Under Article 80/VI of the 2005 Iraqi Constitution, the Council of Ministers may express Iraq’s intention to enter treaties and authorize negotiation and signing.

A formal mandate, issued to the negotiator, certifies the State's consent to be bound. The 1969 Vienna Convention defines this mandate as a document designating Representatives for negotiating or adopting the treaty. Iraqi Treaty Law No. 35 of 2015 (Art. 1/VI) requires the Prime Minister and Minister of Foreign Affairs to sign these credentials.

Once negotiations conclude, treaty terms are precisely drafted. Article 7 of Treaty Law No. 35 specifies that bilateral treaties must be drafted in Arabic when the other State speaks Arabic; otherwise, they must include Arabic and the other State's official language. A third language, if needed (English or French), may also have legal validity. The signing formally accepts the treaty provisions. If the negotiator lacks immediate authority, initialing may be used pending government consultation (El Attiyah 2012b, 121).

Ratification validates the treaty's application. Under the Constitution, treaties must be approved by the Council of Representatives and ratified by the President (El Attiyah 2012b, 123; 2012a). Article 61/IV allows the Council to regulate the process by law with a two-thirds majority, while Article 73/2 allows the President to ratify treaties after Council approval; ratification is finalized 15 days after submission.

Treaty Law No. 35 clarifies that Iraq's compliance depends on Council approval, either through a Ratification Law or a Treaty Accession Law. For ordinary treaties, a simple majority suffices; for sensitive issues (borders, sovereignty, alliances, security, creation of regional organizations), a two-thirds majority is required.

In Iraq, a treaty is not binding unless enacted as national law through the Treaty Ratification Law, which requires approval by the Council of Representatives. Exceptions for borders, sovereignty, peace, security, or alliances require a two-thirds majority. Under the 2005 Constitution (Arts. 61/IV and 73/II), the process combines legislative authority with the President's formal role; ratification is finalized 15 days after submission. A notable case occurred in 2009, when the Economic Partnership Agreement with Turkey was rejected over water quotas for the Tigris and Euphrates rivers (Hutan 2018).

Iraqi law distinguishes formal treaties from executive agreements signed by ministers or entities outside the Council of Ministers. Executive agreements are considered implementation mechanisms rather than international treaties and require formal ratification. Financial commitments must be approved by the Council of Ministers, and inter-ministerial memoranda require authorization by the Prime Minister or designated delegates. Reciprocal agreements with foreign states fall under parliamentary oversight but not direct constitutional review. Only treaties ratified according to the law are subject to constitutional scrutiny (Al Bayati 2016, 31–33).

5.1.2. The status of international treaties in the Iraqi legal system

Since the establishment of the Iraqi state, the Constitution has not explicitly defined the legal status of international treaties, generating scholarly debate. Some argue that the 2005

Constitution does not establish a direct link between international and domestic law, though it promotes compliance with international obligations (Art. 8).[20]

Article 9(e) grants constitutional rank to obligations related to the non-proliferation of nuclear, chemical, and biological weapons. Other treaties do not receive the same status, raising questions about whether they should be considered constitutional norms or ordinary laws. A detailed legal analysis is required to clarify the value and hierarchy of treaties in Iraq (Al-Hallahi 2011, 171).

Iraqi domestic law as superior to international treaties

Proponents of the supremacy of domestic law argue that the executive and judicial authorities must apply national legislation before international treaties (Al-Sabawi 1999, 67). They contend that a treaty cannot be judicially enforced in Iraq unless there is an explicit Constitutional provision permitting its application. According to this view, the enforcement of a treaty requires its publication and a clear constitutional basis (Mahmoud 2009, 150).

However, this position has faced criticism. It is contradictory to consider the ratification law, which is necessary to access the treaty, as superior to the treaty's own provisions. Additionally, reports from the former Council of Legal Codification and the Advisory Council of Iraq have highlighted conflicts and gaps between national law and international treaties.[21]

Ultimately, the regulation and acceptance of treaties fall under political authority. Nevertheless, when a treaty is observed despite being incompatible with domestic legislation, the authorities must amend national laws to align them with international law (Al-Maliki 2019, 11).

International Treaties on Equal Footing with Domestic Law

In Iraq, once a law ratifying an international treaty is published, the treaty acquires the same legal force as domestic legislation. This principle relies on the official publication Procedure, which is mandatory for both internal laws and ratified treaties. While the Iraqi Constitution does not explicitly establish a hierarchy between treaties and domestic law, ratification and legislative approval indicate that treaties hold equivalent normative value and may even prevail in certain contexts (Alani 2015, 16).

This view has faced criticism regarding publication in the Official Gazette, as some see it as merely administrative without affecting compliance. Nonetheless, prevailing doctrine maintains that domestic validity requires ratification and official publication (Al Bayati

[20] Iraq upholds the principle of good neighborliness, commits to non-interference in the internal affairs of other States, promotes the peaceful resolution of disputes, establishes relations based on common interests and reciprocity, and respects its international obligations.

[21] Fawzi 1992, 464–465. Notable resolutions include: Resolution No. 1973/189 of the Legal Codification Office (July 24, 1973), regarding international trusteeship agreements and their compatibility with Iraqi law; Resolution No. 1978/132 (August 28, 1978), concerning Iraq's accession to the New York Convention of 1958, emphasizing the need to review laws and establish controls to ensure regulatory integrity.

2016, 89). This principle has been upheld historically through Law No. 59/1926, Law No. 78/1977 on publication, and Treaty Law No. 35/2015 (Al Bayati 2016, 70).

International treaties are superior to domestic law

A relevant doctrinal position maintains that international treaties have primacy over Iraqi domestic law. This approach is primarily based on Article 29 of the Iraqi Civil Code No. 40 of 1951, which stipulates that the provisions of the law do not apply if they contradict the provisions of a special law or a valid international treaty. This Interpretation is further supported by Article 573 of the Iraqi Commercial Code, which implicitly refers to the same principle. Proponents of this thesis emphasize that human rights treaties, due to their special nature, require higher hierarchical treatment. They argue that denying them priority would compromise the State's international standing and weaken its adherence to universal principles of fundamental rights (Mahmoud 2007, 82).

This view faces criticism because neither the Civil Code nor the Commercial Code explicitly establishes the supremacy of treaties over domestic laws. According to this interpretation, treaties are considered special norms that prevail only when permitted by the existing legal framework. Some authors suggest equating certain treaties, particularly human rights treaties, with constitutional-level norms so that judges consider them when evaluating the constitutionality of national legislation. However, this perspective is contested, as the 2005 Iraqi Constitution does not clearly establish the primacy of treaties over domestic legislation (Al Bayati 2016, 88).

5.1.3. The most common approach to the value of treaties in the Iraqi legal system

In Iraq, treaties ratified according to the Constitution acquire the same legal value as national legislation. They are enacted through the Treaty Ratification Law and published in the *Official Gazette*, integrating them into domestic law as ordinary norms. Historical provisions show variations: for example, Article 110 of the 1925 Fundamental Law granted treaties ratified by the King, particularly regarding territorial delimitation, a superior status over regional administrative legislation, preventing subsequent norms from contravening them. The 2003 State Administration Law further conferred constitutional value to human rights treaties. Article 23 recognized that the enumerated rights were not exhaustive, including those enshrined in ratified international treaties and extending protections to non-citizen residents. Article 26 established the supremacy of federal legislation over regional legislation, allowing, in certain cases, the Kurdistan National Council to amend non-exclusive federal legislation, with ratified treaties prevailing over regional norms (para. b). In conclusion, ratified and published international treaties form part of domestic law without holding superior hierarchy over national legislation. In case of conflict, classical principles apply special norms prevail over general ones, and later norms prevail over earlier ones. If complementary regulation is required, the Council of Representatives is responsible for issuing necessary legislation for effective implementation (Al-Busaisi 2008, 253; Al-Hasani 2011, 4; Al Attiyah, 2012b, 86).

5.1.4. Judicial position of Iraq on the application of international treaties

The Constitution of Iraq does not directly establish the primacy of international treaties over domestic legislation; this authority rests with the competent bodies involved in treaty conclusion (Al-Maliki 2019, 24). In case of conflict, the Federal Supreme Court examines compatibility with the national legal framework under Article 93 of the 2005 Constitution. Ratification requires approval by two-thirds of Parliament, and the President may only ratify with such authorization, with entry into force fifteen days after receipt (Art. 73/II). This confirms that treaties are not automatically applicable and require specific domestic legislation to acquire legal force, with the judiciary ensuring ratification and official publication. Iraq adopts a dualist approach, prioritizing the Constitution and allowing treaties to be invalidated if they contradict constitutional norms or public order.

The Federal Court of Cassation ensures normative coherence. When treaties conflict with domestic religious or social norms—such as equality in inheritance between men and women (Al-Abbasi 2018, 295)—the authorities must assess compatibility with national law. A notable example is the judicial review of the agreement between Iraq and the United States, where the Constitutional Court evaluated treaty conformity.[22] The Federal Supreme Court reaffirmed that treaties acquire the force of law after ratification and are interpreted according to normative hierarchy, with specific provisions prevailing over general ones.

Regarding human rights, judges may rely on treaties to promote equality, as seen in the interpretation of Article 49 of the Constitution, establishing a 25% female quota in the Council of Representatives, extended to local councils due to legislative omission. The decision cited Article 7 of the CEDAW Convention, guaranteeing equal political participation (Judgment 13/Federal/2007).

Nonetheless, judicial practice often prioritizes domestic legislation in case of conflict; for example, ruling 16/Federal/2015 declared Article 40/C of the Riyadh Agreement on judicial cooperation unconstitutional due to incompatibility with the Constitution and the 1971 Code of Criminal Procedure. In summary, while ratified treaties are part of domestic law, their application remains subject to the Constitution and national legislation, creating potential tensions with Iraq's international obligations.

5.1.5. The indirect effect of international treaties on the formation of the 2005 Iraqi Constitution

International treaties had a significant influence on the 2005 Iraqi Constitution, incorporating international norms, particularly in the field of human rights. Although adopted by referendum, the Constitution includes rights aligned with previously ratified treaties, such as the International Covenant on Civil and Political Rights (1970), which

[22] During the session of the Presidency Council on April 12, 2008, the sovereignty of Iraq regarding the conclusion of treaties was debated, arguing that foreign occupation invalidated such agreements. The Court, pursuant to Article 73/II of the Constitution, examined the case; the agreement had been approved on December 1, 2008, published on December 24, and scheduled to enter into force on January 1, 2009. The Court concluded that the treaty was still in the legislative phase and dismissed the claim as premature. This interpretation was confirmed in Decision 44/Federal/2008 of the Federal Supreme Court, emphasizing that treaties must complete their legislative process in order to be subject to judicial review.

guarantees equality without discrimination based on gender, race, or nationality.[23] This approach also reflects adherence to conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979).

The Constitution ensures essential civil and political rights, including political participation and the right to vote, in accordance with treaties such as the International Covenant on Civil and Political Rights (1966) and the Convention on Freedom of Association (1949). Furthermore, it protects life, security, and personal freedom in line with the Convention Against Torture (1984), and regulates citizenship as a fundamental right, establishing conditions for its revocation.[24]

Chapter Two, Part Two, of the Constitution safeguards fundamental freedoms and prohibits torture, forced labour, slavery, and human trafficking, consistent with the Universal Declaration of Human Rights (1948). It establishes procedural guarantees, Such as the right to a fair trial and legal defence and creates a High Commission for Human Rights to oversee violations.[25] Although not derived from a specific treaty, the Constitution incorporates international human rights standards, ensuring their effectiveness provided the corresponding legislation is enacted.

5.2. THE SPANISH LEGAL SYSTEM AND INTERNATIONAL TREATIES

The Spanish legal system establishes a detailed normative framework for the negotiation, ratification, and application of international treaties, primarily governed by the 1978 Spanish Constitution and Law 25/2014. This framework ensures the coherence of treaties with domestic law and constitutional principles. The Constitution contains key provisions for integrating treaties into the legal system:

Article 93: Allows Spain to delegate powers to international organizations, provided that the Cortes Generales authorize such delegation through an organic law, ensuring legislative oversight.

Article 94: Requires prior approval from the Cortes for treaties affecting political or military matters, territorial integrity, fundamental rights, financial obligations, or treaties requiring legislative amendments.

Article 95: Establishes that any treaty containing provisions contrary to the Constitution requires a prior constitutional reform for ratification, preserving constitutional supremacy.

Article 96: Determines that ratified treaties published in the Official State Gazette (*Boletín Oficial del Estado*, BOE) form part of Spanish law with the rank of law, automatically

[23] Iraqi Constitution (2005). Article 14. Guarantees equality before the law and prohibits discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief, or opinion.
[24] Iraqi Constitution (2005). Article 18. Affirms that Islam is the official religion of the state and a fundamental source of legislation, while ensuring respect for other religions and the freedom to practice religious rituals.
[25] Iraqi Constitution (2005). Article37/I. Prohibits forced labor and slavery, ensuring protection of personal freedom and security in accordance with national and international legal standards.

integrating into the legal system. Modifications or suspensions must comply with the treaty provisions or international law.

In Spain, international treaties are incorporated into domestic law while respecting the Constitution and democratic oversight. Law 25/2014 (Art. 2, para. (a)) regulates the negotiation, signature, ratification, and publication of treaties, defining them as written agreements between Spain and other international subjects, regardless of denomination.

The law modernizes treaty regulation, ensures compliance with international obligations, and requires publication in the BOE for transparency. It clarifies the competences of the Executive, Legislative, and Constitutional Court. According to Article 96 of the Constitution, ratified and published treaties have the rank of law; in conflicts with domestic rules, treaties prevail unless they contradict fundamental constitutional principles, which require constitutional reform.

Spanish courts, particularly the Constitutional Court and the Supreme Court, recognize the supremacy of international treaties over national legislation in conflicts, especially human rights treaties. In STC 28/1991, the Constitutional Court ruled that ratified human rights treaties must be interpreted in line with constitutional principles, and in STC 140/2018, it reaffirmed that treaties contrary to the Constitution require prior reform before ratification.

In summary, the Spanish legal framework ensures that international treaties are consistent with the Constitution, providing transparency and legislative oversight. The courts play a crucial role in the interpretation and application of these treaties, particularly regarding human rights, ensuring their observance in accordance with constitutional principles.

6. CONCLUSIONS

- International treaties possess an independent legal status in both Iraq and Spain, yet their incorporation into domestic law depends on the respective state's legal framework. In Iraq, treaties follow a dualist approach: they require parliamentary approval and publication in the Official Gazette to take effect, granting them a status below the Constitution but equivalent to ordinary legislation. Iraqi courts apply only treaties that have been formally converted into law, and the State cannot rely on domestic norms to justify noncompliance with international obligations. Ambiguities regarding the legal value of treaties, coupled with provisions in Law No. 35 of 2015 allowing the executive to conclude simplified agreements without parliamentary approval, contribute to judicial uncertainty and may hinder Iraq's adherence to international standards.
- In contrast, the Spanish legal system provides a detailed and transparent framework for treaty incorporation. Ratified treaties published in the Official State Gazette automatically form part of domestic law and are given the rank of ordinary legislation, while treaties conflicting with fundamental constitutional principles require prior constitutional reform. Spanish courts, Particularly the Constitutional Court and the Supreme Court, play a key role in ensuring that treaties, especially human rights instruments, are interpreted and applied in accordance with constitutional norms. Legislative and judicial oversight,

together with clear procedural rules in the Constitution and Law 25/2014, ensures coherence between domestic law and international obligations.
- Overall, while both countries recognize the binding nature of treaties, Spain's system emphasizes automatic incorporation and judicial enforcement within a strong constitutional framework, whereas Iraq relies on legislative approval and faces challenges in legal clarity and practical enforcement.

7. Proposals

- To strengthen Iraq's adherence to international law, treaty provisions should prevail over conflicting domestic laws unless clear legislative intent dictates otherwise. The Constitution should explicitly define the legal status of treaties and their relationship with international law. Reconsidering the dualist approach would allow direct incorporation of treaties, promoting greater compliance and integration into the international community. Legislation on treaty-making should be updated to eliminate implementation gaps. It is further proposed to grant treaties a higher status than ordinary laws, enabling their direct invocation before courts, and to amend Article 3 of the 2015 Law on Treaties to limit its application strictly to executive agreements.
- These proposals align with broader international practices. The treatment of international treaties within domestic legal systems is not unique to Iraq. International human rights instruments, such as the International Covenant on Civil and Political Rights, have shaped constitutional frameworks worldwide. Experiences from states like Spain—as analysed in this study—demonstrate mechanisms for the automatic incorporation of ratified treaties and judicial enforcement. Such comparative perspectives highlight how states can balance national sovereignty with international obligations, providing lessons to enhance treaty compliance without altering domestic legislative authority.

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