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The Authority of Endorsements of Legislations for Iraqi Constitution in 2005

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Abstract

The research seeks to identify the competence of the ratification of legislation under the 2005 Constitution in the Iraqi political system under the parliamentary system applied in Iraq after 2003, and the work by which the head of state gives the necessary declaration without which the law cannot become enforceable, and thus ratification is a key element In the legislative process, it is a birth certificate of the legislation to be supported by its implementation, issued by the President of the Republic and includes an order for all members of the executive branch and its workers to implement the new law after the approval of the draft law Parliament does not become effective legislation only after ratified by the Head of State And it`s. Following the issuance process, the publication of the law on the order of the President of the State in the Official Gazette, but the issuance and publication are two separate processes are integrated into the publishing process so that some people confuse them and calculate that the publication is the issuance, while the issuance of the pre-publication, and publication follows the issuance. Publication is a material process subsequent to the issuance intended to notify the public of the enforcement of the law on a certain date, i.e. to inform the law to the people and inform them. The 2005 constitution gave the president the power to ratify and promulgate laws, and it seems to us that the president's power to ratify laws is more formal than actual. Legislation is ratified by a 15-day period from the date of referral to the president if he does not actually ratify it. It is noticeable that there is a constitutional breach that has arisen under the State Administration Law for the Transitional Period, where the Vice-President exercised the power to ratify the laws referred to the Head of State in case the President is absent or refuses to ratify. More accurate by the vice president instead of the president's Central Criminal Court. It is forbidden to abstain from ratification, as indicated in the text of article (75 / second) of the Constitution by saying the Vice President replaces the President of the Republic in his absence.

Keywords: *jurisdiction, ratification, legislation, Constitution, Iraq.*

Introduction

The original international law is superior to domestic law in case of conflict between them based on the principle that the first regulating international relations between its persons, led by states based on the rules and obligations pledged to undertake by these people, while the second does not exceed its impact on the regional borders of States. Therefore, states do not have the right to invoke their internal law if it contradicts international law, because these international people pledge based on their constitutional law that authorizes them to abide by the rules and obligations they enter into, or else they enter into a state of contradiction with what they have undertaken. International treaties are the first and basis for these obligations. (Abdul-Qaher, 1978) These cases are mentioned exclusively, and in other than the six mentioned cases, signing the treaty does not mean final commitment to it, and that the treaty needs additional action to bring it to the final commitment. There is no assumption that treaties not stipulated in the ratification condition are considered implementing agreements, especially those that affect the state’s sovereignty, financial obligations, and

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private rights. These agreements differ from the treaties that are not subject to ratification contained in Article 52 of the French Constitution and which are subject to the consideration of the President of the Republic. And the signing of these treaties shall be by the concerned ministers and not by the President of the Republic, for which these treaties are notified for approval in accordance with this article and according to the opinion of the French Council of State in a case. *Societe Navigatoire* on 7/13/1965. As for the Treaty Law of 1979, Article 18 subordinates the final commitment to the treaty relating to the exchange of documents to the ratification clause, and is not considered an implementation agreement accordingly. The problem of research lies in the constitutional framework of the president's authority to ratify laws, as some constitutions have regulated this authority in a clear manner that does not arouse any problem in judgment or in detail. The president's authority to ratify laws appears in its theoretical and constitutional framework clearly and venerable and specific, but the reality is that external factors make this authority a subject of jurisprudential disagreement between supporters and opponents, just as this authority theoretically seeks to correct the deviant legislative path or to pursue legislation that conflicts with the public interest, it turns Sometimes into a means of executive tyranny. (Ibrahim, 1984) The jurisdiction of ratifying laws is a means to protect the legal system of the state from the aggression of the parliament, so the owner of the power is until he becomes tyrannical in a way that turns him into a suspicious dictator, and we do not exclude from this principle any authority, as tyranny is not the consort of the executive authority and within its hierarchy, but it may extend to the two legislative powers And judicial. The powers of the head of state are usually affected by the nature of the constitutional system, so what may be empowered to the president in the presidential system, he may not be authorized in the parliamentary and mixed system, and from here we have been keen on researching the presidential, parliamentary and mixed system to determine the extent of the influence of the constitutional regime on granting or withholding this power For the president. (Thunder, 1988)

Literature review

1. Ratification concept

Perception associated with compliance with respect, and judgment whether or not it matches reality. It is this knowledge that regulates the course of relations between people, and limits the parameters of those dealings according to the legal texts and the jurisprudence of the jurists, and what was done by the work of judges without neglecting the people's custom and customs. (Abdul-Qaher, 1981) So it is a science that shows the elements of every agreement concluded between two or several persons, guarantees its continuation, and settles the disqualification between the contracting parties, explaining to each of the contracting and contracting parties, their money and duties. This knowledge is called "knowledge of documents" and "knowledge of conditions" and the document issued by the revision is called "legal testimony" or "evidence" and it is the most important way to prove rights and transactions. Therefore Islam took care of it and organized its rules and between its provisions, Ibn Farhoun: "Evidence is the name for everything that demonstrates and reveals the truth, and the Prophet, may God's prayers and peace be upon him, and the witnesses were given evidence of the fact that the statement was made by their statement and the heightened forms of their testimony. (Charles, 1982) which is done by the head of state according to the certification law issued by The House of Representatives approves the treaty signed by its prediction for ratification, according to the ratification document issued by the head of state, which is exchanged in the second treaties

with the other party, or which are deposited with the depositary in the multilateral treaties. Multilateral treaties that are adopted can be ratified by voting on them. By international organizations, namely the ILO conventions exclusively, which are subject to the ratification by member states of the conventions that are approved by voting through diplomatic conferences held by the organization. Treaties have the approval of the legislature, even if they vote against them. The state parties do not sign it, but rather its approval is sufficient to be signed by the President of the Diplomatic Conference and the Director of the International Labor Office, as he is the highest employee in the organization. Note that these treaties do not accept reservations. (Abdel Qaher, 1978)

2. The role of certification in the legislative process

The legislative and executive authorities share the function and mechanism of final commitment to formal treaties. The legislative authority grants permission to ratify the treaty by approving its object and content, and the executive authority undertakes the formal procedure by issuing the ratification document under the ratification law or the accession document under the accession law approved by the legislative authority in the following: (Ali, 1965) The legislative authority exercises its role in the final commitment to formal treaties through its function of overseeing the actions of the executive authority, considering that the treaty is an act of sovereignty concluded by the executive authority constitutionally empowered to represent the state in its international relations. As such, it is subject to legislative oversight, and the Council examines Representatives in Iraq agree on the treaty, and it is approved by a two-thirds majority in accordance with Article 61 / Fourth of the 2005 Constitution. This is an objective procedure related to the country's foreign policy that requires the supervision of the legislative authority. The US Senate effectively exercises this oversight so that the administration of the President of the American Republic for international relations passes through the approval of two-thirds of the members of the Senate, as for the French constitution, it allows the President of the Republic to resort under Article 11 to a referendum to obtain popular approval to ratify the treaty in case he disagrees with the National Assembly in this regard. In this regard, what is considered an evolution in the traditional style of the role of the legislative authority in dealing with the executive authority, where there is referendum approval in addition to legislative approval? (Muhammad, 2000) Under the 2005 constitution, the Iraqi parliament refused to approve the comprehensive economic partnership agreement signed with Turkey on 3/23/2009 due to the lack of provision in it for a water share for Iraq in the waters of the Tigris and Euphrates based on the strategic declaration signed between Iraq Turkey on 7/10/2008. Under Article 61/4, the House of Representatives approves the treaty ratification law and prepares a law for accession to it, and these are the two methods by which the treaty is finally committed to. With the issuance of the ratification or accession law by the President of the Republic, the treaty becomes effective as a national legislation that is introduced into the domestic law in this way. The executive authority undertakes the formal procedure in the final commitment to the treaty by ratifying or acceding to it by issuing a law to that effect and preparing the instrument of ratification or accession based on the aforementioned law legislated by the Council of Representatives in Iraq in accordance with Article 61/1&4, based on Article 73/2 of the Constitution. This is considered ratification or accession by the President of the Republic after the lapse of 15 days from the date of receiving the law of ratification or accession from the House of Representatives in the event that the President of the Republic does not do this procedure before him. (Ahmed, 1990) Given the end of the first parliamentary session in 2010, the provisions of the transitional article 138 of the Presidency Council have expired with the end of the functions of the

Presidency Council, which had the power to object to the laws approved by the House of Representatives, and the ratification or accession law must now be issued by the President of the Republic In all cases.

3. The authority competent to ratify national legislation

Amend the constitution. In domestic law, the French Constitution of 1958 establishes this principle in Article 55, which states that treaties and agreements ratified or duly accepted, and as of their publication, have supreme authority over laws, provided they are applied by the other party and for each case separately. (Abdul Aziz, 2011), but Article 54 of the 1958 Constitution relating to the competence of the Constitutional Council in monitoring the constitutionality of laws and their conformity with the Constitution gives the right to the Council that in the case of an international obligation to include a provision contrary to the Constitution, the approval or ratification of this commitment or acceptance is not only after Amend the constitution. Article 54 has sparked a debate about the extent of the superiority of the French constitution over international treaties in violation of the constitution, as long as this treaty cannot be ratified or accepted before the constitution is amended. In the sense of contravention, the constitution, prior to its amendment, does not allow ratification or acceptance of treaties containing provisions contrary to the constitution. However, the French jurisprudence believes that this problem is not related to the enforcement of the treaty in violation of the constitution, but rather concerns the procedural, not the substantive aspect, as the implementation of the treaty in French law does not take place except by amending the constitution that allows ratification or acceptance of the treaty. If the amendment is not completed, there is no ratification or acceptance of any there is no treaty to begin with until it is said that it opposes the constitution and cannot be respected. If the amendment is made, this would lead to its ratification or acceptance. (Ahmed, 1990) In order to solve this problem, the French Constitutional Council, for the purpose of recognizing the supremacy of the treaty over French law, including the constitution, has refrained from deciding on the compatibility of French law with a treaty that binds France by saying that the law opposing the treaty does not necessarily mean that it violates the constitution The treaty is not a constitution that requires the introduction of international law into constitutional law, because international law is not part of domestic law, but rather of another nature, which does not prevent the recognition of its supremacy over domestic law. (Raad, 1988) For its part, the French Council of State did not play any role in a matter that contradicts a treaty with a law that has no right, as stated in a late decision on 5/13/1993 in a case, and the issue of the constitutionality of laws remains exclusively entrusted to the Constitutional Council. Nevertheless, the French Constitutional Council recognized the contradiction of several treaties with the French constitution, which led to a request to amend the constitution in order to ratify those treaties, namely: (Ghassan, 1988) Treaty of Maastricht 7/19922 regarding the participation of European citizens in municipal elections and granting foreigners an entry visa By the Council of Ministers of the European Community rather than by the competent national authorities. The Amsterdam Treaty of 10/2/1997 regarding granting entry visas to foreigners by the Council of Ministers of the European Community by an ad hoc majority and not unanimously. C. The Rome Treaty of 7/18/1998 concerning the Statute of the International Criminal Court, with regard to the jurisdiction of trying heads of state, ministers and representatives who enjoy immunity from the special judiciary, and the court's authority to exercise its jurisdiction over French territory without the presence of the competent French judicial authorities. D- The European Charter for Regional Languages and Minorities signed in Budapest on May 7/1994, considering that the rights granted to these groups under the Charter harm the principle of the unity

of French territories, equality before the law and the unity of the French people. The French constitution has been amended according to the decisions of the Constitutional Council in this regard. (Abdul Aziz 1969)

4. The authority responsible for ratifying international agreements

The legal system of treaties is based on two legal sources: the constitution on the one hand, and international law on the other hand. Because the treaty is an international legal act that binds its parties as an expression of sovereignty according to national law first, and as a contract between its parties that is binding under international law secondly. As for the aspect of the obligation, it is based on the principle of the contract, the Shari'a of the contractors' *pacta sunt servanda* as a rule imposed. Impose Of the rules of positive international law. It is not a default rule Suppose By the parties to the treaty; it is subject to veto by them. Rather, it is a rule resulting from international dealings with legal doctrine. Estimated Juris As a customary international legal rule, it is not just one of the hypothetical principles of international law that falls outside the circle of consensual law or customary law. (Lee, 1995) base is the contract law of the contractors are not top of the pyramid by abstract theory, because the law of international law is not an abstract or presumed, but is the international dealing law as it is already under way and not what is supposed to be because it is not a law on the standing of States under the natural law or According to substantive law, it is a willful law of the making of its people as it expresses their will and not based on the will of a higher authority. Treaty conclusion is an expression of sovereignty. This directed that states, in their dealings with the conclusion of treaties, want to abide by what they pledge to in these treaties as an obligation in order to avoid the highest way of choice. Rather, in their dealings this has reached the point of frequency establishing a legal doctrine that this treaty system is imposed by this belief. This is because the countries that conclude a treaty are obliged to abide by it because they do not find in return from the states that leave them the choice in that, because the purpose of the treaty in the treaty is to act upon it, not the choice in it. And states do not need, in their dealings; to authorize them to deal in this manner, due to the absence of a supreme international authority over the states that has the authority to authorize, but rather relies in these dealings on their constitutional law that authorizes those who express their will to conclude treaties. This is because treaties are a legal instrument resulting from the authorization of national law on the one hand and acceptance of international dealings with them on the other hand. Accordingly, there is no need for theoretical explanations to establish the basis of the contract, the Shari'a of the contractors outside this dealings resulting from the convergence of domestic and international laws together in establishing the contract, which is understood from the terms of the ruling of the Permanent International Court of Justice on 17/1923/8 in the case Wimbledon Between France and Germany (Abdel Aziz, 1969), in which it was stated that the authority to conclude international undertakings is precisely a competence of the state’s sovereignty. When states conclude a treaty, they do not concede their sovereignty, but rather that the conclusion of any treaty by them is an exercise of this sovereignty, which is what happened He has to deal with the judiciary and arbitration as stated in the case of acquiring Polish nationality between Germany and Poland, where the arbitral tribunal considers that each state acts and decides sovereignly within the framework of its obligations, as it is obligated to act and decide in accordance with these obligations. (Ali, 1995) The transcendence of treaties over national law, Sovereignty is not an exception or an obstacle to states' respect for their international obligations, because sovereignty determines the scope of its work by its legal actions through self-limitation of these actions, Principe de l`auto limitation). Therefore, internal law cannot be invoked in the face of international law, because domestic law and the legal actions resulting from it cannot but respond to the

obligations of the state in the treaties it concludes with other states as a result of the results of the contract rule, the Shari'a of the contractors as the existing relations between the parties to the treaty are governed by the treaty. Regardless of the internal law position, which is stipulated in Article 27 of the Vienna Convention on the Law of Treaties on 23/5/1969, whereby a party to the treaty cannot invoke the provisions of its internal law as an excuse for not implementing the treaty. Thus, the international judiciary recognizes the principle of the supremacy of international law over domestic law. In arbitration Montijo between the United States and Colombia on 7/26/1875 in which it was stated that the treaty is superior to the constitution and that the republic's legislation must conform to the treaty, not that the treaty be in conformity with the law arbitration.1850) Moor.). In the advisory opinion of the Permanent International Court of Justice in the case of the treatment of Polish patriots in Danzek, according to the general principles recognized, the state cannot, vis-à-vis another country, adhere to its constitutional provisions, but only by international law and properly concluded international obligations on the one hand, and on the contrary, the state cannot protest With its constitution in the face of another country in order to dissolve from the obligations imposed on it by international law and the treaties in force on the other hand CPJI. Series. A /B.no.44p.24This is because "national laws are merely facts." simples faits In international law, as it is an expression of the will and activities of the state in the matter of judicial decisions and administrative procedures, as seen by international law and the Permanent International Court of Justice in its judgment on 5/25/1926 in the Polish High Silesian case CPJI.Serie.A.no.7p.19This is what the International Court of Justice ruled in the Notbaum case (subject) in its judgment on 4/6/1955, and what Judge Cassese ruled in the Blaskellah case before the Criminal Court for the Former Yugoslavia on 3/4/1996 (TPIY.IT.95 / 14.AR108bisBy saying, no person of international law can rely on the provisions of national legislation or the lack of national legislation in order to depart from his international obligations. This principle applies to the law of the European group, as international law prevails over the law of this group. In one case Commission Against Germany, it was stated in the decision of the French Council of State that the international agreements concluded by the group would prevail over the texts of the European Community Subsidiary Law that governs the interpretation of this law in accordance with those agreements as much as possible. Nevertheless, the treaty's subjection to international law on the one hand and domestic law on the other hand may raise the issue of inconsistency between these two laws and resolving this conflict in favor of international law. (Ibrahim, 1984)

5. Procedures for ratification of national legislation

The implementation of the treaty after its incorporation into the national system means taking legislative, administrative or judicial measures to fulfill the provisions of the treaty, such as allocating funds in the general budget for financial obligations arising from the treaty or introducing amendments to national legislation or regulations in force, such as those required by Article 19 of the Constitution of the International Labor Organization and as stated By the Permanent International Court of Justice in its advisory opinion on the issue of the exchange of Turkish and Greek populations in 1925, in which it stated that from the attainment of the outcome, the state that correctly concludes international obligations is obliged to make necessary amendments to its legislation to ensure the implementation of the obligations concluded by it. (Al-Shafei, 1971) The state's authorities are distinguished by two characteristics, namely the non-submission of state agencies to the authorities of another state on the one hand, and the presumption of correctness of the actions of these bodies from the international legal point of view on the other hand. (Abdel - Aziz, 1969) the first is one of the characteristics of sovereignty and political independence in accordance with Article 2.2 of the UN Charter on the sovereign equality of member states of this organization and the declaration of friendly relations among States No. 2625 (In 197/10/24). As for the second characteristic, it arises from the legal immunity of the state and its legal actions and exclusive national competencies according to Article 7/2 of the Charter of the United Nations and non-interference in its internal affairs according to an established general principle based on the fact that bad faith is not presumed in the actions of

the state, as stated in the arbitration court ruling in the case Lake Lanoux between France and Spain on 16/1/1958. The treaty is implemented by the concerned state agencies, as the state is responsible for implementing the treaty by its administrative agencies as they are governmental bodies through which the implementation of laws and treaties that have entered into force in national law in accordance with the established constitutional procedures, and it is not possible to distinguish between these bodies if they are in Simple states or federal states, because the state has one sovereignty, deals in its international relations as a single international entity, because territorial sovereignty is the criterion that the state adopts as a person of international law, as stated in the ruling of the Permanent International Court of Justice in the case of the ship and the aforementioned countries. And that this territorial sovereignty is based mainly on the territorial competencies that are the legal source of that sovereignty because it is the legal entity directly subject to international law and which enjoys the rights and obligations under this law according to the advisory opinion of the International Court of Justice in the issue of compensation for damages suffered by the United Nations employees and even within the framework of the Union The European Union, Article 88/1 of the amended French Constitution of 1958 stipulates that the European Community and the European Union are formed Nan are from countries that have freely chosen, according to the treaties, to establish them to jointly exercise their powers, which does not contradict their sovereignty according to the decision of the German Constitutional Court in the case Hahn 10/12/1993And the French Constitutional Council on 4/9/1992 regarding the Maastricht Treaty, and in this way, the European Union is no more than a system close to the confederate system and not the federal system, because the federal state arising from the union of several states in one state such as the United States or from a simple state to a federal state It enjoys only one sovereignty and has one international personality, since the head of state is the one who represents it in its international relations and has the original authority to conclude treaties to begin with, and the Ministry of Foreign Affairs is considered one of the agencies of the one state in implementing foreign policy and that there is one direct responsibility towards international law. (Talalif, 1986) Some federal states have special powers to conclude treaties of a technical, not political nature, subject to the approval of the federal authorities in Germany, the United States of America, Switzerland and Canada, and these powers are based on the constitutional law of the federal state and not under international law because these states do not have personality International legal and not subject to international law under the principle of directness. (Nguyen, 2002) In Iraq, the federal authorities have jurisdiction in the 2005 Constitution draw foreign policy, diplomatic representation and negotiation on international treaties and agreements and the policy of borrowing and signed by the agreements, drawing up foreign economic and trade policy sovereign according to Article 110 of the Constitution, not the regional authorities of any jurisdiction of a sovereign external, including the negotiation and conclusion of international treaties. As for international organizations and some international political entities, such as the national liberation movements recognized by the United Nations, the Arab League and the African Union, they do not have sovereign international competencies based on regional sovereignty, but rather on the basis of final functional competencies defined under the articles of association of those organizations or the treaties they established or under Recognition of national liberation movements on a case-by-case basis. (Abdel-Aziz, 1969) and the implementation of existing international commitments in treaties concluded by the State through public authorities, the legislative, executive and judicial state in the following: -

– *The work of the legislative authority*: some treaties stipulate the obligation of the state party to make an amendment in its national legislation to implement those obligations. Alabama between England and the United States on 9/14/1872 the Arbitration Court refused to take into account the deficiency in English legislation to exempt England from its international responsibility resulting from the absence of an English legislative impediment that prevents the American revolutionaries from maintaining the Alabama ship in the English ports at a time when England declares its neutrality In the American War of Secession .The legislative authority must not enact laws that contradict the international obligations of a state party to the treaty .In the case of some German interests in Upper Silesia between Germany and Poland on 9/10/1923 the Permanent International Court of Justice concluded that Polish legislation abolishing the acquired rights of German subjects contradicts the provisions of the Treaty of Versailles of 1919 regarding the protection of minority rights and would raise international responsibility for Poland .Legislation to nationalize or expropriate foreign interests for the public benefit ,although it is valid legislation ,but failure to stipulate compensation in it is contrary to international law and raises international responsibility, as stated in the case on 10/13/1922 and the decision of the International Center for the Resolution of Investment Disputes in a case on 8/30 / 2000.

– *Actions of the executive authority*: The actions of the executive authority required in accordance with the provisions of the treaties to which the state is linked are evidenced by the violations committed by state employees and its executive bodies that harm the rights established for foreigners based on the residency treaties) *Traites d`etablissments* or agreements to protect and encourage investment On the one hand or because of the repression carried out by the security authorities on the other hand, especially with regard to the protection of human rights guaranteed in the two International Covenants for the Protection of Civil and Political Rights and Social and Economic Rights signed in New York on 12/19/1966 and in the European Convention on Human Rights signed on Rome on 11/14/1950, the New York Convention against Torture signed on 10/12/1984, the New York Convention against the Taking of Hostages signed on ,1979/12/12 the Four Geneva Conventions for the Protection of Victims of Armed Conflicts signed on 8/12/1949 and many others. The following: - (Ezz El- Din, 1971) A -Protection of the acquired rights of foreigners in the residency and investment treaties .International economic contracts concluded by foreigners with the state, as prior concession contracts, are international contracts because they contain a foreign component, but they are subject to national law according to the rules of conflict of laws .However, its containment of the international commercial arbitration clause removes it from the jurisdiction of the national judiciary with regard to resolving disputes arising from the interpretation and implementation of these contracts, but it remains subject to national law in terms of the subject matter, and according to the ruling of the Permanent International Court of Justice in the Serbian debt case on 7/12/1929 Because the international contract is not a treaty and is subject to internal law, and the sovereign state cannot assume that the origin of its religion and the validity of its transgressions are subject to anything other than its national law. CPJI Serie A. no 20-21 p. 4et121). (Zuhair, 1993) However, the damages resulting from the termination of these contracts by nationalizations or others or by amending them in a way that seriously harms foreigners and without compensation would constitute a violation of international law requiring compensation in the event of expropriation and not because of the decision to expropriate property for the public benefit, which is an act of sovereignty Act of State; In an issue, In front of the International Center for Settlement of Investment Disputes CIRDI It was stated in the arbitration decision that at a time when expropriation or appropriation for environmental reasons can be likened to expropriation for the public benefit and as such, it is considered legitimate The funds seized for this purpose do not affect neither the nature nor the significance of the compensation requested (Zuhair, 1993).

6. Procedures for ratification of agreements

The nullity of treaties, treaty-making procedures are subject to the provisions of the Constitution and, when necessary, a special law as Treaty Law No. 111 of 1979 in Iraq.

– he Constitution, Article 61 / Fourth of the Iraqi Constitution states that the House of Representatives organizes the ratification process for international treaties and agreements by a law enacted by a two-thirds majority of the council's members, and no law has been issued in this regard so far, which means the continuation of the implementation of the Treaty Law No. 111 of 1979 in a manner that does not conflict with The constitution and until the aforementioned law is issued. (Muhammad, 2000) Article 13 / Second of the Constitution recognizes that a law that contradicts the constitution may not be enacted in accordance with the general principles of constitutional law that stipulate the supremacy of the constitution over the law .According to Article 93, the Federal Supreme Court exercises control over the constitutionality of laws and regulations accordingly, because the constitution and according to Article

13/1 is the supreme and supreme law in Iraq .Whereas Article 13/2 is considered null and void every other legal text that contradicts it, paragraph Article 93/1 enables the Federal Supreme Court to decide the nullity of the law or any other legal text that conflicts with the constitution .It is understood from the context of Article 13/2 in its first and last parts that the treaty in respect of which a law of ratification or accession is issued may be subject to nullity if it is inconsistent with the constitution without the need to address the issue of inconsistency between the constitution and international treaties and agreements in the manner contained in Article 55 of the French Constitution This means that if the French Constitutional Council was able to avoid the issue of inconsistency between the French constitution and the treaties concluded by France with other countries, the Iraqi constitution does not include anything that would confront the conflict between the constitution and the treaty and that the Federal Court finds no escape from Deciding the nullity of this treaty if it is requested to exercise its function in monitoring the constitutionality of laws.

- Treaty Law No. 111 of 1979 There is nothing in the Treaty Law in Iraq, nor in the Federal Supreme Court (Ordinance) Law No. 30 of 2005, which indicates the contradiction between international and national laws, noting that Article 4 / Second of this law grants the court the authority to (repeal) Laws, decisions ,regulations, and instructions that contradict the provisions of the Law of Administration for the Iraqi State for the Transitional Period issued by the Governing Council on 3/8/2004, while Article 13/2 of the 2005 Constitution provides for the authority of the Federal Court to (annul) these and other laws .And since the constitution supersedes the law, the Federal Supreme Court has the power to rule nullity according to the constitution, not the power to revoke according to the law. With this reward, it exercises the same authority as the US Federal Supreme Court to veto or suspend the work of a treaty ratified by the President of the Republic if it is in violation of federal law contrary to the principle the general judge for the supremacy of international law over domestic law in order to clarify the relationship between international law and domestic law through international treaties. (Qasim, 2003) The constitutional law defines the authority to conclude treaties as an act of sovereignty, and international dealings have been made on establishing the competence of internal law in determining this authority .The Vienna Convention on the Law of Treaties of 1969 recognized this dealings as a customary rule codified in Article 7/2, whereby heads of state, heads of government and foreign ministers are representatives of their countries by virtue of their functions in order to carry out all the work related to the conclusion of the treaty, namely negotiation and signature .Aside from these, they only have the power to negotiate treaties and adopt their texts, whether they are bilateral or multilateral .These are the heads of diplomatic missions for the sake of adopting the text of a treaty between the accrediting country and the country accrediting it, and the representatives accredited to international conferences and organizations to adopt the text of the treaty therein.

7. The power to sign treaties Treaty making power

Constitutional authority: This is related to the powers that the representative of the state possesses in foreign relations, including the full authority to sign the treaties genuinely without the need for a mandate from anyone and without the need to conclude a document authorizing the signature. This authority is granted in Iraq to the Council of Ministers or whoever authorizes him, as Article 80 states Sixth of the constitution, that the cabinet exercises the power to negotiate international treaties and agreements and sign them or whoever

authorizes him. This is an inaccurate wording. The Council of Ministers does not negotiate or sign because it is a legal person. Therefore, the Prime Minister is the one who genuinely exercises this authority as he is the natural person who acts in the name of the Council of Ministers. As for the President of the Republic, he does not have this authority, as the Constitution restricted his authority only to ratification of treaties and agreements after the approval of the House of Representatives in accordance with Article 73 / Second of the Constitution. This contradicts international dealings and Article 7 / Second / A of the Vienna Convention on the Law of Treaties of 1969. As for the Treaty Law of 1979, it was established under the one-party government, and constitutional powers are given originality where the party leader is the President of the Republic and his deputy, as understood from Article 5 / 1 of the law, while the foreign minister only has the power to negotiate in originality according to Article 5/2, and he does not have the authenticity to sign. (Abdul Aziz, 2011) And since the Iraqi constitution has replaced previous temporary constitutions, including the constitution of 7/10/1970, Article 5/1 of the Treaty Law of 1979 has expired and the President of the Republic does not have the power to sign treaties in origin.

Administrative authority: It relates to the powers that are granted by those who possess it authentically to others according to the constitution, whereby treaties are signed based on a document authorizing signature issued by those who possess these powers in origin. This document is given to the Minister of Foreign Affairs, the ministers concerned and those of their rank as necessary. These unfamiliar formulations express the keenness of the drafters of the 2005 Constitution to define the authority of the Prime Minister in the Council of Ministers itself to prevent the expansion of his constitutional powers, which is observed in the French Constitution of 1958, which went towards increasing the powers of the President of the Republic as a guarantor of the respect of treaties according to Article 5 at the expense of the Minister The first is according to the requirements of the semi-presidential system established by the 1958 as a Constitution of the Republic. The President of the Republic is the one who negotiates and ratifies treaties under Article 52, and even has the right to resort to a referendum to obtain popular approval for important treaties in accordance with Article 11 to ratify them, as was the case with the Evian Accords of 8 / 4/1962 regarding self-determination of the Algerian people and the Brussels Treaty of 01/22/1972 concerning the expansion of the membership of the European Community and the Treaty of Maastricht of 9/20/1992 regarding the European Union, as well as resorting to exceptional measures under Article 16 if it appears that respect for treaties would be one of the reasons that lead to taking those measures if the implementation of those treaties seriously and directly threatens the functioning or continuity of the general constitutional authorities in France. (Zuhair, 1993) As for the Iraqi constitution of 2005, it focused the powers of the executive authority in the hands of the cabinet instead of the prime minister, to emphasize the features of the representative system as the prime minister works in the cabinet. Non-constitutional negotiators should present documents authorizing them to sign during the signing ceremonies each of them to the other party for authentication on the one hand, and because the legislative authority requires these documents for the purposes of ratification on the other hand. If the signature is done without obtaining the authorization document, then a document authorizing the signature should be issued for the aforementioned purposes in accordance with Article 8 of the Vienna Convention on the Law of Treaties of 1969 and Article 6 of the Treaty Law of 1979. The signature with the initials is not considered a complete signature unless the two negotiating parties agree on that in accordance with Article 12/2/a of the Vienna Convention of 1969 and Article 17/1 of the Treaty Law of 1979. There is no reference in the 2005 constitution to executive agreements and Article 16 of the Treaty Law of 1979 does not imply that, as it permits commitment to the treaty initially as soon as it is signed, but the second

paragraph of this article subjected this treaty to ratification procedures for the purpose of final commitment to it. This means that the Iraqi constitutional law does not apply to the agreements. Executive and that any treaty in Iraq must be subject to the approval of the House of Representatives before ratification in order to be binding. It is not considered a treaty according to the Treaty Law of 1979, both of the agreements and executive programs that are concluded to implement the provisions of legally ratified treaties, or their enforcement is subject to the approval of the competent minister or head of the entity not associated with a ministry if it does not include financial obligations on Iraq. Also, the agreements concluded between Iraqi ministries and institutions and their equivalent in other countries and not concluded in the name of the Iraqi government are not considered treaties even if they are subject to the approval of the President of the Republic or whoever authorizes him unless otherwise stipulated by law, including memoranda of understanding concluded by the relevant Iraqi ministries and institutions as long as they are not concluded In the name of Iraq or the Iraqi government according to Article 2 of the aforementioned law (Zuhair, 1993) .

Results

1. To sign and ratify the treaty. The absolute nullity of this treaty can be ruled on the condition that this coercion not result from the use of force or the threat of it in accordance with the United Nations Charter, including the use of force under the unilateral or collective legitimate defense in accordance with Article 51 of the Charter or according to a resolution of the Security Council under Chapter Seven of the Charter. This means that the treaty concluded in this framework is valid and enforceable, and the state that entered into it has no right to claim absolute nullity because of this coercion.
2. There are few international court rulings that deal with both relative and absolute cases of nullity, especially in light of the provisions of the Vienna Convention on the Law of Treaties of 1969. However, the Nurmurg court ruled in its judgment on 10/1/1946 that the trusteeship treaty signed by the German President Hasha in Berlin in 1939 when Odolf Hitler hosted him and forced him to do so under the threat of bombing Czechoslovakia with German military aircraft, despite the objections of England and France to this The treaty. On 6/19/1973, and in light of the openness between the western and eastern camps after the clouds of the Cold War dissipated, the German-German agreement was signed, which recognized the nullity of the Munich Agreement, which was signed by Germany, Italy, France and England on 2/30/1938, which approved the annexation of the Sudetenland. The Jiki for Germany, despite the absence of Czechoslovakia from this agreement.
3. The relationship between international and national law is a dialectical relationship that does not go in one direction with the preference of international law over national law at all when it contradicts them, but rather moves in multiple directions between the preponderance and preponderance of one over the other, not on a theoretical basis based on unity or duality in this relationship, but on the basis of balance Between the supreme national interests of states, the requirements for achieving international peace and security, and the requirements of international dealings being compatible with international national laws .
4. The head of state’s objection to the law takes one of two forms, an absolute objection (veto absolute). (This is technically called the right to refuse certification, and arrest arrest) veto suspense or a temporary objection. The absolute objection is the one that can be called the right to refuse ratification, and it means that the objection of the head of state to draft laws cannot be overcome in a constitutional manner. Laws cannot be issued but rather are considered if the head of state objects to them by refusing

to ratify. As for the arresting objection, it is the objection that does not prevent the promulgation of the law that the head of state objected to and returning it to Parliament within the constitutionally specified period. Parliament can overcome this objection, and thus the right of arresting objection differs from the right of absolute objection, as the first is exercised by the head of state as a member of the legislative authority, while the second is in which the head of state expresses some observations to the parliament, which remains the only person who has the legislative order, so the objection is taken neglected The bill, or a promise to it, otherwise it was approved and forced to ratify it without objection.

5. The international treaty goes through several stages, starting with negotiations and passing through signature, ratification and registration, and the president in Iraq under the 2005 constitution has no effect except in the ratification stage, as Article 80 of the constitution entrusts the Council of Ministers with the authority to negotiate international treaties and agreements and sign them or whoever authorizes him. The constitution delegates to the Council of Representatives and the President of the Republic the power to ratify treaties and agreements to which Iraq is a party

Conclusions

1. The constitutional legislator must oblige the president to cause the ratification decision and to refrain from ratifying draft laws, as well as to clearly and accurately determine their nature as they are formal or substantive in a manner that prevents abuse of power, taking into consideration what is related to abstention for considerations of convenience for the public and higher interest of the state.
2. We propose to amend the constitution in a way that gives the president of the republic the power to partially abstain by refraining from ratifying an article or several articles of the draft law that he deems inappropriate for the public interest or has formal and substantive defects, which makes them worthy of disbelief, as is the case in most Democratic constitutions.

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