

Control over the Constitutionality of International Treaties (A comparative study)

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International treaties are a source of Public International Law. Control over their constitutionality is of great importance. It is concerned with the protection of the supremacy of the constitution, and its priority over all other legal norms in the State, specifically its sanctity before international legislation. In addition, such control constitutes an impervious barrier to any encroachment on the sovereignty of a State, which may be prejudiced by certain international treaties, threaten its interests and prejudice its independence and sovereignty by some treaties it has concluded. Based on this, we will discuss constitutional control over international treaties, and highlight the positive or negative role of the Constitutional Council in France and the Constitutional Court in Jordan, and their role in protecting constitutional provisions. The main research problem lies in the supremacy of international treaties over the constitution and ordinary laws, and control of the extent of their constitutionality in maintaining constitutional supremacy.

Key words: *International Treaties, Constitutional Control, Constitutional Council, Constitutional Court.*

Introduction

Building the legal state is based on the existence of constitutional rules which are superior to other legal norms in the state. This principle is an established fact. There is no way to subject all acts and actions, of public authorities and individuals, unless they are subject to these norms. This is due to its link with the principle of legality in its broad conception, which requires all, both rulers and ruled, to be governed by its norms, i.e. all is to be governed by the legal norms in force in the State. That is in addition to not violating the constitutional rules, and complying with its provisions which have superiority over all other legal norms.

Undoubtedly, the importance of the constitutional rules is not attained merely by their existence, but in their implementation. The various State bodies and individuals may not violate these norms without penalty. Therefore, control of the constitutionality of laws guarantees the principle of the supremacy of the Constitution on the one hand, and on the other ensures individuals' exercise of their rights and freedoms.

International treaties are a component of the legal system of the State. Therefore, they are subject to control over their constitutionality. If they contravene the formal and substantive constitutional rules, in their content and conditions, they are unconstitutional in this case. This subject raises many questions about the constitutional control of international treaties, the mechanism for moving this control in the face of international treaties, and the special nature of this control over the constitutionality of international treaties.

The present study seeks to clarify this issue. It addresses constitutional control over international treaties, by comparing the French and Jordanian constitutional systems. Constitutional control over the international treaties differs from one country to another, where some follow the method of political control preceding the issuance of the law like France, while others follow the method of judicial control succeeding the issuance of the law like Jordan. This study is divided into two sections. The first is devoted to the study of international treaties in the field of constitutional control, while the second deals with constitutional controls over international treaties.

The Meaning of the International Treaty in the Field of Constitutional Control

International treaties are important. They are the primary source of contemporary international law. Today, they are paramount among the sources of the international law, after occupying the position occupied by international custom. The most important question is: What is the meaning of the international treaty in the field of constitutional control? In other words, does the international treaty here mean the treaty that must be approved and ratified by the parliament, represented by the competent legislative authority to exercise such functions? Or does it include all treaties to which the state is bound without being approved or ratified by a competent authority? To answer this question, we must divide this research into two requirements. The first is to examine the meaning of the international treaty which is subject to the control of the French Constitutional Council. The second is devoted to the meaning of the international treaty subject to the Constitutional Court in Jordan. We are aware of the significance of the subject from a legal point of view. However, we preferred that before entering into the core of this study, we should clarify the concept and definition of the international treaty in the field of public international law on the one hand, and the legal value of international treaties on the other hand, as follows:

First: the Concept of the International Treaty in the Field of Public International Law

The consensus of public international law jurists can be used here (Amer, 2002). The term of a treaty is defined as any written agreement between two or more persons of public international law, whatever it is called, concluded in accordance with the provisions of international law and is intended to produce legal effects (Ibrahim , 1995). In this sense, the Vienna Convention on the Law of Treaties of 1969, in Article II, paragraph 1 (a), states that the treaty: "means an international agreement concluded between two or more States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation". Therefore, it is clear that the hallmark of the treaty as a type of international convention is, on the one hand, that it is a formal agreement only made in writing by following certain procedures, and on the other hand needs to be ratified and approved by the body given power by the constitution to control and ratify treaties (Abdul Majid, 1997). It is clear from the above that international treaties are based on several basic elements, including (Bashir , 1997):

1. They are an agreement between two or more persons in public international law.
2. These Agreements shall be in writing.
3. They are to be concluded in accordance with the provisions of public international law.
4. The aim of their conclusion is to create and have legal effects.

Second: Legal Value of International Treaties

The priority and supremacy of international treaties in the domestic legal order, and thus their entry into force in the international system, raises many legal issues. That is particularly so at the level of general international jurisprudence. The problem of aligning international treaties with national legislative texts, and their application in domestic legal systems, has attracted the attention of many jurists and researchers in the field of constitutional law. National constitutions differ in their dealings with this subject. Based on the foregoing, it could be said that the international treaty, having met all legal requirements required by the constitution to be implemented within the State, whether as regards publishing such requirements in the Official Gazette in accordance with the law, or related to Parliamentary approval for the agreement, the question that springs to mind is about the legal value of the international treaty: Does it have the effect of domestic law and prevail over it? Or is it rank equal to that of internal constitutional texts and rules, and outweigh ordinary laws and legislation? We must distinguish and highlight at the same time the consideration and position of French and Jordanian legislators about the question, and the subject of the legal value of treaties in both systems. This is due to the increasing, national importance of the content of international treaties from which States enter, and on the other hand the global transformations dictated by the United Nations, in particular human rights conventions on the subject of sovereignty.

Thus, legal controversy in those countries (France in particular), preceded, decided early and declared the importance and legal significance of such agreements, through explicit constitutional provisions in this regard. This is evident in Article 55 of the French Constitution of 1958. The French constitutional legislator granted force to the treaties or conventions duly ratified or approved, and upon their publication outweighing the laws of Parliament, provided that they are applied by the other party in connection with this agreement or treaty. In extrapolating this constitutional text, it becomes clear that the French Constitutional Legislator has clearly determined the importance of international treaties or conventions, and given them a higher legal value than ordinary laws and a lower level of constitutional provisions and rules. As to the Jordanian constitutional legislator, we find that it took a different position from its French counterpart. The Jordanian Constitution of 1952 did not contain a clear and explicit text on this issue (the subject of the legal value in the national legislative pyramid of all these agreements). That is despite the position of the French Constitution, which is clear and explicit. Its position was resolved and translated by constitutional texts and rules with a clear indication as to the legal status of international agreements, and considered them superior to national laws and legislation. Accordingly, we reach an unavoidable scientific hypothesis, that the Jordanian legislator has avoided stipulating any explicit legal requirement that may enshrine the supremacy of international treaties over domestic laws and legislations. Article (33) of the Jordanian Constitution of 1952 limited the right to sign and ratify international treaties to the National Assembly, in case such treaties entail financial costs and burdens to which the State is bound or which would affect the rights of Jordanians.

The Meaning of the International Treaty Subject to the Control of the French Constitutional Council

The current French Constitution of 1958 defined the controls over the constitutionality of laws. They are divided into two types: compulsory control and voluntary control. Compulsory control is the control which the Constitutional Council has to carry out. The provisions of control are represented in the basic laws and the regulations of the Houses of Parliament which obligate the Parliament to refer them to the Constitutional Council before they are issued, to indicate their conformity with the Constitution. Article (61) of the French Constitution stipulates: "Institutional Acts, before their promulgation, Private Members' Bills mentioned in Article 11 before they are submitted to referendum, and the Rules of Procedure of the Houses of Parliament shall, before coming into force, be referred to the Constitutional Council, which shall rule on their conformity with the Constitution." In extrapolating this text, we find that controlling the Basic Laws and the Regulations of the Parliament is compulsory and not automatic. The Constitutional Council does not exercise this control on its own, but at the request of the Prime Minister regarding the Basic Laws. It is obliged to refer the Basic Law before its promulgation to the Constitutional Council, or at the request of

the Speaker of the National Assembly or the President of the Senate, as the case may be, with respect to the regulations of the Parliament, which shall refer those regulations to the Constitutional Council (Luchair,1980).

The second type of control is called voluntary control. The French Constitution of 1958 regulated its provisions in Articles (54) and (61). This control over the constitutionality of laws is optional. These competent authorities are not obligated to refer the texts of such control to the Constitutional Council. However, it is permissible to apply control by requesting the Constitutional Council to convene, to control the constitutionality of these texts (Fawzi, 1992). Hence, it is clear to us that such censorship (both compulsory and optional) is considered a prior political control and not a subsequent one, since it is exercised before the laws are issued and not after they are issued. Therefore, once the law is passed, we cannot imagine exercising control over its constitutionality. Hence, such control (both compulsory and optional) is considered a prior and not a subsequent political control, as they are exercised before and not after the issuance of the laws. So, once the law is issued, we cannot imagine practising control over its constitutionality. In light of the foregoing, it could be said that control of the constitutionality of international treaties in accordance with the provisions of Article (54) of the French Constitution is an optional control (permissible), exercised by the Constitutional Council at the request of the competent authorities, to apply control by the Constitutional Council, to declare the conformity of the international treaty with the Constitution. It is noted that the treaty bill, not the treaty itself, is subject to the control of the Constitutional Council, as the treaty after being approved and ratified cannot be disputed. However, the question that arises in the context of this discussion is the meaning of the international treaty, which is subject to the control of the French Constitutional Council. Are they the treaties provided for in Article 53 which require approval by the Parliament, where Article 53 states: "Peace Treaties, Trade agreements, treaties or agreements relating to international organisation, those committing the finances of the State, those modifying provisions which are the preserve of statute law, those relating to the status of persons, and those involving the ceding, exchanging or acquiring of territory, may be ratified or approved only by an Act of Parliament"? Alternatively, do the international treaties mean any international agreement that binds the State, even if it does not require the intervention of parliament to approve and ratify it? To answer this question, we must address the position of the French jurisprudence and the Constitutional Council on this issue.

The Position of French Jurisprudence on the Meaning of the International Treaty

There is a clear difference in French jurisprudence, in determining an international treaty subject to constitutional control. This difference has been manifested in two directions, as shown below:

The First Trend

This jurisprudence is based on linking between Articles (54) and (53) of the French Constitution. This jurisprudence holds that the control by the Constitutional Council is limited to the treaties mentioned in Article 53 of the Constitution, referred to in terms of any treaties that should be approved and ratified by the Parliament (Burdeau, 1969).

The Second Trend

The supporters of this trend agreed with the French Constitutional Council in this regard. This jurisprudence considers that the Council's control over international treaties is not limited to the treaties provided for in Article 53 of the Constitution, i.e. the treaties which must be approved and ratified by the Parliament. This jurisprudence posits constitutional control as including all types of international treaties to which the state is bound, even if it does not require the intervention of Parliament to approve and ratify them in accordance with international law. This trend justifies its position on the basis of Article (54) of the French Constitution, which refers to the broad concept of international treaties and agreements, where this trend considers that this concept includes all forms of treaties which the State is bound to. It is not bound only to treaties provided for in Article (53) of the Constitution which requires the intervention of Parliament to approve and ratify them.

The Position of the French Constitutional Council on the Meaning of the International Treaty

The French Constitutional Council established its position on the meaning of international treaties subject to its control, by adopting a broad interpretation of Article 54 of the Constitution, which made its control over all international treaties not subject to approval by Parliament. In this regard, the French Constitutional Council decides to include the resolutions adopted by some international organisations which provide an obligation for France without subjecting them to the approval of the Parliament. This was confirmed by the Constitutional Council in its Resolution No. 39/70 of 19 June 1970. It concerned control of the decision of the Council of the European Union, on the provision of independent financial sources to the Union instead of the sources contributed by the Member States. That is in addition to Council Resolution No. 71/76 of 30 December 1976, which concerned the election of the European Parliament by direct poll. The Council declared that the resolution of the European Union Council does not contain any clause that contradicts the Constitution and does not constitute a violation to the national sovereignty. Further, the resolution of the European Union relates only to the procedures and method of the European Parliament election, so the resolution does not contradict the Constitution (Fawzi, 1992).

The Meaning of the International Treaty Subject to the Control of the Constitutional Court in Jordan

In this requirement we will examine the study and establishment of the Constitutional Court in Jordan and its legal nature, and examine its terms of reference. After that, we will address the meaning of the international treaty subject to the control of the Constitutional Court in Jordan, by dividing this requirement into the following sections:

Section I: Establishment and Legal Nature of the Constitutional Court

The Constitutional Court in Jordan was established in accordance with the provisions of Article (58) of the Jordanian Constitution of 1952, and under a special law where the Constitutional Court Law No. (15) of 2012 was approved. The Court is of a special legal nature, and is considered an independent judicial body according to Article (58) of the Constitution. The Constitutional Court Law of 2012 defined the independence of the Court as that the Court shall have a legal personality and enjoy financial and administrative independence. In such capacity, it may own movable and immovable assets and make all such legal dispositions as are required to perform its functions. There is no doubt that the financial and administrative independence enjoyed by the Constitutional Court in Jordan would ensure the utmost transparency and non-dependency of any government or any other administration.

Section II: Competences of the Constitutional Court

Article (59) of the Jordanian Constitution defines the competencies of the Constitutional Court. Article (4) of the Constitutional Court Law also approved these jurisdictions where the Court has two responsibilities: the first is to oversee the constitutionality of the applicable laws and regulations, and the second is to interpret constitutional provisions.

First: Control the Constitutionality of the Laws and Regulations in Force

In this regard, the Jordanian Constitution and the Constitutional Court Law have exclusively restricted the jurisdiction of the Court, to control the constitutionality of the laws and regulations in force. Therefore, the Court is not competent to hear constitutional appeals on draft laws and regulations in force which have not entered into force.

Second: The jurisdiction of the Court to interpret the provisions of the Constitution

Article (4) of the Constitutional Court Law stipulates that the Court shall have the right to interpret the provisions of the Constitution, but the exercise of this right is not absolute. The

Court cannot interpret the provisions of the Constitution by itself but only under a special request of the Council of Ministers, or under a decision taken by the Senate or the House of Representatives by majority. The Court's jurisdiction to interpret the Constitution is therefore limited and does not exceed the limits stated in the request for interpretation.

It should be noted that the Court's interpretative jurisdiction is specific only to the provisions of the Constitution. It does not include other laws and regulations whose interpretation is valid when the court interprets laws in accordance with Article (123) in the Jordanian Constitution. In fact, the entry into force of the Constitutional Court Law eliminated the Supreme Council to interpret the Constitution, which was abolished when the Constitutional Court Law came into force in accordance with Article 122 of the Jordanian Constitution.

Section III: The Position of the Constitutional Court in Jordan on the Meaning of the International Treaty

When talking about the Constitutional Court authority to oversee international treaties ratified by Jordan, we will find ourselves facing a legal issue. Article (59) of the Jordanian Constitution and Article (4) of the Constitutional Court Law stipulate that constitutional control shall be over applicable laws and regulations. Therefore, the question becomes whether international treaties ratified by Jordan will be treated as domestic laws, or will the Constitutional Court lose its constitutional control over these treaties.

To answer this question, we find that the Constitutional Court has resolved and translated its position on the meaning of International Treaties. It did so in the Interpretation Decision No. (2) of 2019. It was issued by the Constitutional Court based on the decision of the Jordanian Council of Ministers to request interpretation of paragraph (2) of Article (33) of the Constitution, explaining a letter of the Prime Minister No. (29372) dated 18/7/2019. The Constitutional Court affirmed in its interpretative decision that Article (33) of the Constitution states:

1. The King declares war, concludes peace and ratifies treaties and agreements.
2. Treaties and agreements which involve financial commitments to the Treasury or affect the public or private rights of Jordanians shall not be valid, unless approved by the National Assembly. In no circumstances shall any secret terms contained in any treaty or agreement be contrary to their overt terms.

The Council of Ministers responded to the request for interpretation referred to earlier. Subsequently, the Constitutional Court established its position based on the findings of jurisprudence, the judiciary and constitutional jurisprudence. It considered that the treaties and agreements provided for in Article 33 of the Constitution are acts of sovereignty

entrusted to the King as Head of State, concluded by any State as a natural or legal person in public international law. The agreements concluded by any state with any natural or legal person shall not be subject to the provisions of public international law, and shall not be concluded by the Head of the State. Their or their conceptual entry into force shall not be subject to the approval of the Parliament, and they shall be exercised by the State as part of its administrative activity, and shall be subject to the provisions of its domestic laws and the terms and conditions contained therein.

Based on the foregoing, the Constitutional Court resolved the meaning of the international treaties in terms of its interpretative jurisdiction. However, the Court has not yet exercised its oversight role on these treaties. The problem remains before the Constitutional Court, which has the possibility of overseeing all treaties and agreements, or they may be prevented from overseeing the agreements and treaties on the pretext of non-ratification by the Parliament, which means that they are not included in Article 59 of the Constitution.

This question remains unanswered until the Constitutional Court practices its supervisory jurisdiction over international treaties and agreements.

Methods to Apply Control over the Constitutionality of International Treaties

There is no doubt that there is a discrepancy and difference between the ways of applying the control over the constitutionality of international treaties before the French Constitutional Council, and the application of control over the constitutionality of international treaties before the Constitutional Court in Jordan. We will divide this subject into two requirements. In the first we will address the ways of applying constitutional control before the French Constitutional Council. In the second we will address the ways of applying constitutional control before the Constitutional Court in Jordan, as follows:

Ways to Apply Control over the Constitutionality of Treaties before the French Constitutional Council

It was already pointed out that control over the constitutionality of international treaties is voluntary or permissible. This means that the authorities competent to control may require the convening of the Constitutional Council, to decide whether an international treaty contains a clause contrary to the Constitution.

According to Article 54 of the current French Constitution, issued in 1958 before its amendment, the request to convene the French Constitutional Council to exercise such permissive control over international treaties is limited to the four highest authorities: the



President of the Republic, the Prime Minister, the President of the National Assembly and the President of the Senate (Abdul Hamid, 1991).

A constitutional amendment was made on October 29, 1974. It may be in the process of expanding the scope of control, allowing sixty members of the National Assembly or the Senate to request the convening of the Constitutional Council to exercise constitutional control. If so, it was limited to Article 61 on the constitutional control of laws. It did not include Article (54) of the Constitution concerning the control of the international treaties. The French Constitutional Council reached the same conclusion, by accepting a request to convene it by Parliamentarians, to challenge the law ratifying an international treaty. The matter was decided by the Constitutional Council in its Resolution No. 116/80 of 17 July 1980 on the Franco-German Convention on Judicial Cooperation.

In light of this constitutional decision, Article (54) of the current French Constitution on the control of international treaties was amended on June 25, 1992 upon the request of the deputies of the strike. That allowed sixty members of the National Assembly or Senate the right to request to convene the Constitutional Council to exercise control over international treaties, following the 29/10/1974 amendment on the control of the constitutionality of laws. It should be noted that convening the Constitutional Council to exercise this control over international treaties, in accordance with Article (54) of the current French Constitution of 1958, occurred only five times between 1959 and 1995. Finally, the international treaty, or the so-called draft treaty, is referred to the Constitutional Council after being signed by the government and before being ratified by Parliament, to determine whether the treaty contains a clause contradicting the Constitution. The Constitutional Council shall decide on the conformity or compatibility of the international treaty with the Constitution, within one month from the date of its referral. However, in the case of non-use, the period may be reduced to eight days at the request of the Government. The provisions may not explicitly require the Constitutional Council to decide international treaty conformity with the Constitution, within the one month or eight days period as the case may be. We find the Constitutional Council confirmed this in its decision of 9/4/1992, on the Maastricht Treaty (1). According to the President of the Constitutional Council, the period stipulated in Article 61 of the Constitution relating to the control of the constitutionality of laws must be respected, once the Council exercises its control over the constitutionality of international treaties (Ahmad, 2000). There is no doubt that Constitutional Council decisions to adjudicate on constitutionalism are not challengeable by any methods, and bind all public authorities of the State. These decisions must be reasoned and published in the Official Gazette, in accordance with the Basic Law issued by the Constitutional Council on 7/11/1958 and its amendments in 1959 and 1974.

Ways to Apply Control over the Constitutionality of Treaties before the Constitutional Court in Jordan

The international treaties in the Jordanian legal system after their conclusion, ratification and publication are in accordance with the provisions of Article (33) of the Jordanian Constitution of 1952. We find that they enjoy a force equal to ordinary laws but not constitutional provisions. In talking about ways the Constitutional Court can control international treaties, we find that we need to examine in one section the types of challenge before the Constitutional Court, and in a second section clarify the challenging procedures before the Constitutional Court.

The Entities Having the Right to Challenge at the Constitutional Court

First: Direct Challenge

Article 60, paragraph 1, of the Jordanian Constitution of 1952 and Article 9 of the Constitutional Court Law No. 15 of 2012, specified the entities having the right to challenge, at the Constitutional Court, the constitutionality of the laws and regulations in force. The right of direct challenge is entrusted exclusively to the House of Representatives, the Senate and the Council of Ministers. Accordingly, if any of these entities decides to challenge the constitutionality of a law or regulation, the challenge must be made before the Constitutional Court at the request of the President of the challenging entity, in accordance with the challenging procedures provided for in the Constitutional Court Law.

Second: Indirect Challenge

Article 60, paragraph 2 of the Constitution regulates the right to raise an indirect challenge to the unconstitutionality of any laws and regulations. That means this challenge is not filed through the entities specified exclusively in Article 60/1 of the Constitution, but by the stakeholders in cases before the courts of various types and instances, where Article 60/2 of the Constitution authorises parties to the lawsuit to challenge the unconstitutionality, before the court hearing the subject of the case. The court should check the substantiality of the challenge, as the Constitution granted this right to the regular courts. Therefore, it could be said that this type of challenge can be called an indirect challenge. The challenger must be a party to a case before the courts, and challenge the constitutionality and the court then deciding the substantiality of this challenge. If the court is satisfied with such challenge, it will refer it to the Court of Cassation, for the purpose of deciding whether to refer it to the Constitutional Court.

Challenging Procedure before the Constitutional Court

First: Direct Challenge Procedures

Article (9) of the Constitutional Court Law regulates the principles to be followed, to put forward the defence of unconstitutionality of any law or regulation, where it limited the application of these principles to the direct challengers, namely the Council of Ministers, the Senate and the House of Representatives. There are different principles and procedures when filing an indirect challenge (challenging the constitutionality by stakeholders in proceedings before ordinary courts).

Therefore, the direct challenge submitted by the Council of Ministers requires a decision by the Council, and the challenge shall be submitted to the Constitutional Court after being signed by the Prime Minister. As for the challenge filed by the Senate and the House of Representatives, either House must vote on the decision and obtain a majority. The challenged decision shall then be submitted to the Court, by an application signed by the head of the challenging body, in which the following information shall be stated:

1. The name and number of the challenged law or regulation and the scope of the challenge, clearly setting out whether it concerns the entire law or regulation or one or more articles.
2. The grounds for claiming that the law or regulation is in breach of the Constitution.
3. After the challenge is submitted by one of the above challenging entities, the President of the Constitutional Court shall send a copy of the challenge submitted to him, in accordance with Article (9) of the Constitutional Court Law, to the heads of the other two bodies referred to in paragraph (A) of Article (9) of the aforementioned Constitutional Court Law. Either of them may submit its response to the Court within ten days from the date it is received.
4. The Court shall decide on the challenge within a maximum of 120 days from the date it reaches it.

Second: Indirect Challenge Procedures

Article (11) and Article (12) of the Constitutional Court Law set forth the procedures to be followed for filing an indirect challenge against the unconstitutionality of a law or regulation, where it allowed the natural or legal persons who are part to a case pending before the regular courts to file such challenge. That is, provided a dispute is already pending in a case before the regular courts; i.e., the challenge may not be filed in a decided case or in a case for which a final verdict was issued. The subject matter of the case before the Court shall also be linked to the law or order contested as unconstitutional, i.e. the challenge shall be linked to a law or regulation affecting the outcome of the case and applicable to the substance of the case.

It should be noted here that raising an indirect defence is limited to the parties to the lawsuit. The court is not entitled to raise this defence on its own. Nor may it be raised by non-litigants in the lawsuit, whether the party is a plaintiff, defendant, complainant, defendant, appellant or appellee, petitioner or respondent, an interferer, an interlocutor or challenger where in the previous cases the raiser of the defence is considered party to the case and has an interest in putting forward the defence of unconstitutionality. In fact, indirect defence is of the defences related to public order which may be raised at any stage of the case. Such defence shall be put before the court considering the case, by means of a memorandum in which the challenger shall state the name of the challenger and the name of the law or regulation in respect of which the defence of unconstitutionality has been raised, and the grounds for why the law or regulation is in breach of the Constitution. Any other party to the case may submit its response before the court, within fifteen days from the date the memorandum of defence is submitted for unconstitutionality.

The court then considers its jurisdiction over the defence submitted for unconstitutionality. We mean here the statutory court, which has discretionary power to prejudge the defences raised (i.e., the statutory court), to issue its decision regarding this defence which is limited to one of two things: the court either decides to refer the defence to the Court of Cassation, which has the jurisdiction to refer the defence to the Constitutional Court where the court shall suspend consideration of the case until the referral is determined by the Court of Cassation. If the Court of Cassation decides to dismiss the defence of unconstitutionality, the statutory court shall consider the case from where it stopped. But if the Court of Cassation decides to refer the defence to the Constitutional Court, the original case will remain pending until the Constitutional Court decides on this defence.

In fact, the referral decision of the statutory court is unchallengeable. The Court of Cassation by *de jure* ('of right') decides whether to refer. In case the Court of Cassation decides to refer the defence to the Constitutional Court, it shall notify the parties to the case, as every party to the case may submit a memorandum to the Court setting out clearly and specifically the law or regulation in respect of which the defence of unconstitutionality has been raised, the scope of such defence and the grounds for purporting that it is in breach of the Constitution, within 15 days from the date it is notified of the decision to refer to it (Toubat, Mahafzah & Balas, 2019). On the other hand, every party to the case may submit a response to the Constitutional Court, to the memorandums submitted by the other parties to the case within a maximum of 30 days from the date it is notified of the referral decision. The President of the Constitutional Court shall send a copy of the referral decision received by the Court of Cassation, or the Higher Administrative Court, to the Prime Minister, the Speaker of the Senate and the Speaker of the House of Representatives. Each may submit a response to the challenge to the Court within ten days from the date of receipt. It should be noted that the Speaker of each of the House of Representatives and Senators is not obligated to submit a response to the

challenge, while Article (12) of the Constitutional Court Law No. (15) of 2012 obliged the Prime Minister to submit a response. Finally, the Constitutional Court must, in accordance with the provisions of Article (12) of its law, decide on the challenge referred to it by the Court of Cassation or the Supreme Administrative Court, within a maximum of 120 days from the date of receiving the referral decision.

Conclusion

This study, titled control of the constitutionality of international treaties, suggests that international treaties may contain conditions that are contrary to the provisions of the Constitution or the procedures required by the Constitution to conclude and ratify them. We conclude that it is essential that the constitutionality of these treaties be subject to control, like the laws, as they have the force of ordinary laws or even a force greater than that of ordinary laws. We made this clear when we talked about the legal value of international treaties. In this paper, we clarified the meaning of the international treaty which is subject to constitutional control. We also addressed the ways of applying control over the constitutionality of international treaties, by the French Constitutional Council and the Constitutional Court in Jordan. Our findings and recommendations are as follows:

First: The international treaty, that is subject to constitutional control in accordance with the jurisprudence of the French Constitutional Council, is an international undertaking that binds the State to something, even if it does not require the intervention of Parliament to approve and ratify it. Fortiori, treaties requiring parliamentary approval are also subject to constitutional control. As for the position of the Jordanian Constitutional Court, it distinguishes between two types of international treaties, as the treaties that require the intervention of Parliament to approval and ratify them are subject to the control of the Constitutional Court. Treaties that do not require parliamentary approval are therefore not subject to the control of the Constitutional Court.

Second: A special provision for the control of the constitutionality of international treaties is absent in the current Jordanian Constitution. That is unlike the current French Constitution, which included a special provision for the control of the constitutionality of international treaties, in accordance with Article (54). In Jordan this control is exercised in accordance with Article (4) of the Constitutional Court Law, which is empowered to oversee the constitutionality of laws and regulations. It is based on Article (33) of the Jordanian Constitution, which gave the international treaty after its conclusion, ratification and publication the force of law. The Constitutional Court exercises control over international treaties as laws of the state.



Third: The ways of controlling the constitutionality of international treaties before the French Constitutional Council are different from the controls before the Jordanian Constitutional Court. That is due to the methods differing between the French and Jordanian constitutions. The control of constitutionality in France is political and precedent to the issuance of the law, while it is considered in Jordan judicial and subsequent to the issuance of the law.

Fourth: The French Constitutional Council, in the framework of controlling the constitutionality of international treaties, may declare that an international treaty contains a clause or a text that contradicts the constitution. This clause or text is not amended, but the Constitution itself is amended. On the contrary, we find that when the Constitutional Court in Jordan rules that a provision of the international treaty is unconstitutional, such a provision shall not be applied from the date of such a ruling.

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