“ACTES“

of the
VIth Congress of

the Conference of Constitutional Jurisdictions of Africa (CJCA)

Under the theme

“African *Constitutional Jurisdictions and International Law*”

Content

VIth Congress of

the Conference of Constitutional Jurisdictions of Africa (CJCA)

Rabat-Kingdom of Morocco, from November 22 to 24, 2022

Under the theme

"African *Constitutional Jurisdictions and International Law*"

" Program "

Monday 21.11.2022

- Reception of participants at the airport
- Transfer of participants to Hotel Sofitel-Jardin des roses

4:00 p.m. - Meeting of the Executive Bureau of the CJCA at the Seat of the Constitutional Court ***(Reserved for members of the Bureau)***

6:00 p.m. - Welcome reception at the Sofitel hotel

Tuesday 22.11.2022

Scientific event

9:00 a.m. - Welcoming participants
9:30 a.m. - **Opening session**
10:30 a.m. - Coffee break

10:45 a.m.

"Status of the international norm in the Constitution and Procedures for monitoring the international commitment" (1st session)

Moderator: HE Fahmi BOULOS, President of the Supreme Constitutional Court (Egypt).

- **Presentation of the summary of the questionnaires (15 minutes)**
- **Interventions by Constitutional courts**

- Mr. Diallo MAMADOU BATHIA, President of the Constitutional Council (Mauritania) (15 mins)
- Mr. Meaza ASHENAFI, Chief Justice of the Federal Supreme Court (Ethiopia) (15 mins)
- Ms. Lucia DA LUZ RIBIERO, President of the Constitutional Council (Mozambique) (15 mins)
- Mr. Abdi Ismael HERSI, President of the Constitutional Council (Djibouti) (15 mins)

- Mr. Mohamed EL HAFI, ex. President of the Supreme Court (Libya) (15 mins)

12:30 p.m. **o** Debate
1:30 p.m. o Lunch at the hotel

2:45 p.m.

"Status of the international norm in the Constitution and Procedures for monitoring the international commitment" (2nd session)

Moderator: HE Marie-Madeleine MBORANTSUO, President of the Constitutional Court (Gabon)

- **Interventions by Constitutional courts**

- Mr. Cheikh Salim ATHOUMANE, President of the Supreme Court (Union of the Comoros) (15 mins)
- Mr. Abdelaziz Mohamed SALMAN, Vice-President of the Supreme Constitutional Court (Egypt) and Deputy Secretary General of the UCCCA (15mn)
- Mr. Tall SAIDOU NOUROU, Vice-President of the Constitutional Council (Senegal) (15 mins)
- Ms. Victoria IZATA, Justice of Constitutional Court (Angola) (15 mins)
- Mr. Mohamed BACHIR, Advisor to the Supreme Court (Libya) (15 mins)

4:00 p.m. Debate

5:00 p.m. **End of the work of the first day**
8:00 p.m. **Dinner offered in honor of the participants**

Wednesday 23.11.2022

Scientific event (continued)

9:30 a.m. **"Specific features and limits of the review of the constitutionality of international norms - Effects of the declaration of non-conformity of an international commitment with the Constitution" (3rd session)**

Moderator : HE Meaza ASHENAFI, Chief Justice of the Federal Supreme Court (Ethiopia)

- **Interventions by constitutional courts**

- Ms. Marie-Madeleine MBORANTSUO, President of the Constitutional Court (Gabon) (15 mins)
- Mr. Mipamb NAHM-TCHOUGLI, Member of the Constitutional Court (Togo)
- Mr. Carlos TEIXEIRA, Judge at the Constitutional Court (Angola) (15 mins)

11:15 a.m. **"Constitutional jurisdictions and international law: cross-references" (4th session)**

Moderator : HE Laurinda Jacinto Prazeres Monteiro Cardoso, President of the Constitutional Court (Angola)

- Mr. Arslan ZUHTU, President of the Constitutional Court of (Türkiye) (15 mn)
- Mr. Andrey BOUCHEV, Judge at the Constitutional Court of the Federation of (Russia) (15 mn)

11:45 a.m. - Debate

12:45 p.m. - Lunch at the hotel

Statutory event

2:00 p.m.

- **6th General Assembly of the CJCA**

- Adoption of the draft agenda
- Tribute to deceased presidents of jurisdictions (*Observe a minute of silence)*
- Reading and adoption of the activity report *(moral and financial)*
- Adoption of the program of activities and the provisional budget, 2022-2024
- Examination of membership applications
- Ratification of the Agreement signed with the Association of Francophone Constitutional Courts - ACCF
- Choice of the host country for the 7th General Assembly in 2024
- Election of the members of the Executive Board for the period 2022-2024
- Election of the Secretary General
- Presentation of the ***"banner of the CJCA"*** to the President of the Constitutional Court of the Kingdom of Morocco
- Speech by the President of the Constitutional Court of the Kingdom of Morocco, in his capacity as new President of the CJCA
- Reading and adoption of ***" press release Flap »***
- Closing of the work of the sixth General Assembly
- Brief meeting of the incoming Executive Board, chaired by Morocco

5:00 p.m. **Closing ceremony**

- Presentation of the general report
- Closing words

6:00 p.m. **Visit to the seat of the Constitutional Court**

8:00 p.m. **Tribute ceremony and dinner offered in honor of the participants**

Thursday 24.11.2022

Socio-cultural event

9:00 a.m. **Departure to the city of Fez**
11:00 **Visit of the old medina**
2:00 p.m. **Lunch**

" Welcome Address "

at the Sixth Congress of the Conference of Jurisdictions Constitutional of Africa

November 22, 2022

Presented by Mr. Said IHRAI
President of the Constitutional Court of the Kingdom of Morocco

Ladies and gentlemen, Presidents and members of the Conference of Jurisdictions Constitutional African women, brothers,

Ladies and gentlemen, Distinguished Presidents and members of participating constitutional judicial bodies and organizations from around the world,

national constitutional authorities and institutions, each in his own name, in his capacity, and with due respect and consideration, who honored the work of the Conference by attending the opening of its activities,

Ladies and gentlemen

It is with a feeling of gratitude and pride that I open today the work of the sixth conference of our continental organization, **the Conference of Jurisdictions Constitutional of Africa** , an important continental event which has benefited from the high patronage of **His Majesty King Mohammed VI** , may God assist him, and which is held in Rabat, capital of the Kingdom of Morocco, chosen by the constitutional judicial authorities of our continent, as the site of this historic moment of fruitful interaction and dialogue between cultures and schools of law and the constitutional judiciary on the path to building an African constitutionalism that contributes with pride and pride, with the organs and constitutional justice organizations in the rest of the Community around the world, as part of the global effort to consolidate standards of the rule of law and the supremacy of the Constitution, democracy and human rights.

The fact that **His Majesty King Mohammed VI,** may God assist him, granted his high patronage to the work of this conference is a decision of great symbolism, because it is part of the continuous effort of His Your Majesty, with all his brothers, African Heads of State, to raise a new African spirit, aware that a new continental era has begun, the beginnings of which have emerged over the past two decades, an era in which our continent, proud of its human resources, its balance of values, the richness of its experiences, the diversity of its cultures and its future, aspires to be heard and to play an active role in the process of cosmic production and the enrichment of standards and rules ,

so as not to remain its consumers, or simply to be the subject of external evaluations.

The experiences of our African constitutional judicial bodies, with their diversity and the richness of their jurisprudence, really deserve to be known and to be the subject of a fruitful exchange of visions with the constitutional judicial bodies of other continents. The choice to share our experiences on the treatment of international law by our judicial bodies, whether in its mandate, its procedure, or its practice, as the subject of the scientific event of this Conference, is a step in this direction.

Ladies and gentlemen

This conference is taking place and humanity is still in the process of overcoming the effects of the Covid-19 pandemic, which has limited the possibilities of meeting us in the presence, has claimed the lives of a good group of presidents and judges of constitutional judicial bodies on our continent and posed challenges to our bodies which they faced with creative diligence and appropriate practical solutions.

While our continental organization, **the Conference of Jurisdictions Constitutional of Africa ,** African constitutional judicial bodies, have been able to withstand this difficult situation, the likes of which humanity has not seen in this century, all thanks to the hard and fruitful work of the Angolan presidency , and to the perseverance of all the organs of the Organization, including an executive office and a secretariat, which have continued to hold their meetings remotely and in person as the circumstances of the pandemic permitted, and to the firm will of all our African constitutional judiciaries, who have defied the circumstances of the pandemic and continued their joint work in service of the judiciary. The constitution of our continent and its advancement.

Ladies and gentlemen

To conclude, I cannot fail to welcome you once again to Morocco, your second country, and I am convinced that the work of our Conference will be fruitful in its scientific aspect and that it will succeed in its organizational and systemic aspect.

Thank you for your kind attention and I wish you every success in the work of the Conference.

“Opening speech”

of the Sixth

Conference of Constitutional Jurisdictions of Africa

Novembre 22, 2022

By Ms. LAURINDA PRAZERES MONTEIRO CARDOSO
President of the Constitutional Court of Angola, President of the CJCA

Excellency Saïd IHRAI, President of the Constitutional Court of the Kingdom of Morocco;
Excellencies, Presidents, and judges of Constitutional and Supremes Courts, Members of the CJCA,
Your Excellency President Emeritus and Special Representative of the Venice Commission;
Distinguished guests and participants; ladies and gentlemen;

Welcome to the 6th Congress of the CJCA. It is with great satisfaction and great honor that I address you, so allow me to greet all those present, in particular the Judge Counselor President of the Constitutional Court of the Kingdom of Morocco, whom I thank for the understanding, the attention, the organization of this event, as well as for the excellent reception and working conditions created in this beautiful and welcoming city of RABAT.

Our Conference, thanks to the vicissitudes resulting from Covid-19, which has caused, worldwide, a set of restrictions in order to contain the spread of the virus, has forced us, the Constitutional Court of the Republic of Angola, to extend the mandate, which began in 2019, until the current date, when it should end, formally and materially, in 2021.

After mitigating the effects of this pandemic, our 6th Congress is being held today, which is a very important step in restoring stability to the actions, activities, and agenda of our Conference.

Congresses are meetings that allow, through a collective effort, to share ideas, exchange experiences, design strategies and take stock of the implementation of planned actions, in order to strengthen the institutional capacity of constitutional courts in Africa.

Excellencies.

Constitutional courts have the noble mission of defending and safeguarding constitutional principles and values, and the democratic governance of institutions is one of them.

For this reason, and also because, as has been said, it is governed by example, the constitutional courts must serve as a mirror of democratic values, with regard to the exercise of certain rotating functions.

It was an honor for us, the Constitutional Court of the Republic of Angola, to lead such a prestigious Conference. The exchange of experiences and experiences with other constitutional jurisdictions in Africa, represented here, has allowed us to increase our learning on certain issues and good practices, which, of course, has strengthened and will continue to strengthen and to strengthen our institutional capacity and respond to requests from citizens, individually or collectively appointed, and public authorities, in the context of constitutional issues in each of our respective jurisdictions.

By way of example, for this Congress the topic on the relationship between "Constitutional Jurisdictions and International Law" is on the agenda, and we believe that the approach to the subject will produce problems and solutions, will open doors to discussion and research, so that the constitutional courts are strengthened in their ability to respond to the problems, increasingly striking and abundant on international law, not only from the point of view of the relations between subjects of international law, but also in relation to citizens, more concretely, in the area of human rights.

In fact, wars and the Covid-19 pandemic are clear examples of how international law is increasingly influencing the lives of states and other subjects of international law, as well as their citizens, imposing restrictions to various rights, namely sovereignty, peace, liberty, life, public health, and others, which certainly raises problems that constitutional law, through the constitutional courts, is called upon to solve.

It is only fair to express here our thanks to the Secretary General and the Permanent Secretary of our Conference, respectively MM. Ndiaw DIOUF and Moussa LARABA for their support and their commitment in the zealous exercise of their functions in order to raise the level of maturation of our Conference.

Excellencies, Ladies and Gentlemen, Ladies and Gentlemen,

I reiterate to everyone the need to continue to defend the nobility of the judicial institutions competent in constitutional matters and to guarantee the fundamental principles and values of the Constitutions of the peoples of our countries.

I end my speech by thanking you for your hearing and President Saïd IHRAI, to whom I will have the honor of handing over the Presidency of the CJCA, I owe you the best success in the exercise of your mandate. Count on our unconditional support in the implementation of actions, tasks and programs aimed at improving and strengthening the spirit of cordiality, cooperation, friendship and solidarity in the relations between the members of our Conference.

THANK YOU.

Speech by Mr. Gianni BUQUICCHIO

Honorary President,

Special Representative of the Venice Commission of the Council of Europe.

Mister President,
Dear Presidents and Judges,
Ladies and gentlemen,

1. It is a great pleasure to meet many of you again since the 5th World Congress in Bali in October

2. I am very happy that the Moroccan Constitutional Court is hosting this Congress, which shows that it plays a central role in the field of comparative constitutional justice in Africa.

3. We can always count on you for the excellent organization of important Congresses.

4. If we dealt with the theme of peace during the World Congress, it was also a relevant theme for Africa which has known and knows too many conflicts. I strongly hope that the guns can continue to be silent in Ethiopia but also in other countries.

5. I am delighted that the African continent played such an important role in the World Congress and that so many African members participated actively.

6. I ask you to also contribute to the CODICES database actively. Mr. Dürr will tell you more about this tomorrow.

7. Those of you who are members of the World Conference already know that shortly after our Congress, we had to activate the so-called “Sant Domingo” mechanism to defend constitutional justice in the Central African Republic.

8. It was first you, the CJCA who made a declaration in favor of the Central African Constitutional Court of its president Prof. Darlan.

9. On behalf of the World Conference on Constitutional Justice, I have publicly supported your African statement to take it to the global level.

10. We have seen problems also in other countries. We have seen military coups and we have seen that the constitutional courts or councils were obliged to accept, even to ratify the situation.

11. These governments are abusing you; they are abusing democratic institutions to legitimize unconstitutional acts.

12. I can only appeal to the constitutional judges to block such machinations. I can understand that some of your institutions are forced to accept the unacceptable. However, I urge you to do your utmost to restore constitutional order as soon as possible. Your voice matters.

13. I am very happy that you, the CJCA and the Association of Courts and Councils of Asia were able to use the occasion of the 5 th World Congress to hold your bicontinental meeting.

14. We saw in Bali that the relations between groups and continents are very fruitful and with the declaration adopted [1]which was able to emphasize a very important theme.

15. For your congress today you have chosen a theme that is still relevant.

16. International law is essential for constitutional and supreme courts and councils; International law is both referential and subject to constitutional control.

17. In Africa, the African Charter on Human and Peoples' Rights and other international treaties and texts binding your countries allow the CC to refine the interpretation of the national constitution to arrive at an "interpretation in conformity" with these texts for ensure harmony between national law and international law.

18. On the other hand, international law can also be the subject of your jurisdiction, in particular when the CC calls for giving LE its opinion on the constitutionality of draft treaties. There too the harmony of the two spheres of national and international law is at stake, but from a preventive point of view.

19. Let end with a big thank you to the Secretary General of the CJCA, Mr. Moussa Laraba. You are lucky to have such an active and effective secretary general at the organizational and diplomatic level. In addition, he is a leading expert in comparative constitutional law. I don't care about the CJCA as long as it serves you as the Permanent Secretary General to steer the CJCA in the right direction.

Thank you for your attention.

REMARKS OF HON. LADY JUSTICE IMANI D. ABOUD, PRESIDENT OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Honorable Said Ihrai, President of the Constitutional Court of the Kingdom of Morocco
Honorable Justices present here
Honorable Judges of the Constitutional Court
Distinguished Guests and Dignitaries
All protocol observed

I bring to you warm greetings from Mount Kilimanjaro, and more precisely from the justice city of Africa, namely as the city of Arusha in Tanzania - a reputable peace country of Africa. I express my personal gratitude and that of the entire African Court for being associated to this important event. Conducting this event by bringing judicial minds from around the world further stresses the need for judicial dialogue.

Distinguished colleagues and guests,
Judicial dialogue has become a main feature of the globalization of law and justice. The language of law is intersectional and transversal. There is indeed a global agreement towards universalism of human rights and constitutionalism, especially in constitutional democracies. Today's event is also a celebration of such values to which the African Court fully adheres. As you are aware, the African Court was established in 1998 and has been operating as the only judicial institution of the African Union. The African Court's mandate to safeguarding fundamental rights, and freedom as well as values of constitutionalism is derived from the very commitment expressed by African States under Articles 3(g) and (h) of the Constitutive Act of the African Union. Aspiration No 3 of Agenda 2063 of the African Union, which can be considered as a coordinated regional integration plan for Africa similarly constitutes a pledge to the same values.

These general pledges under the umbrella of regional integration are translated into more specific commitment under the African Charter on Human and Peoples' Rights and the African Charter on Democracy, Elections and Governance. Africa's human rights Charter is rightly considered to be an

historical international instrument due to its unique features. The Charter speaks largely to fundamental rights and freedoms in both a universal and African ways. Firstly, it provides for all generations of human rights as interdependent, and correlated; secondly, it uniquely provides for peoples' and groups' rights; finally, it establishes the principle of duties to the community, to family, and society. Africa's human rights Charter can be seen as a regional text of constitutional value because of its large national recognition. Almost all African constitutions acknowledge the Charter either in the preamble or through an express or whole say inclusion in substantive provisions. This recognition has come to the fore in adjudicating cases for instance in situations where the Respondent State before the African Court had recognized the principle of national consensus as of such fundamental importance that the constitution may not be amended without an agreement across political groups in the country.

Distinguished colleagues and guests,
In its recognition of the inherent link between human rights and many components of constitutionalism, the African Union adopted another instrument that may actually be considered as a regional constitution at least from a normative standpoint. This instrument is the African Charter on Democracy, Elections and Governance. Africa's Democracy Charter indeed includes pledges by Member States of the African Union to principles such as the rule of law, democracy, independence of the judiciary and good governance. In light of its broad material jurisdiction under Article 3 of its Protocol, the African Court has determined that Africa's Democracy Charter is a human rights instruments in the sense that fundamental rights can be derived from the pledges that States made in the Democracy Charter. Some commentators have therefore suggested that the African Court plays the role of a regional constitutional court in Africa in respect of the protection it has afforded to fundamental rights and freedoms including those related to democracy, the rule of law, and other components of constitutionalism.

Now, permit me to share with you a few illustrations of how the African Court has contributed to safeguarding fundamental rights and freedom in Africa in the past 16 years. It is important to first mention that the African Court has adjudicated matters involving various issues and rights including fair trial rights, the right to political participation such as participation in elections, and the operation of electoral bodies. The case-law of the Court also includes matters pertaining to the right to life in connection to the mandatory imposition of the death penalty, the right to nationality, freedom of expression, as well as women's rights namely inheritance and child marriage. Through its case-law, the African Court has consistently endeavored to embrace an interpretation of norms that is progressive, purposive and liberal while being contextualized and bearing in mind a margin of appreciation of States.

These features are illustrated as follows. For instance, the Court has used the theory of bundle of rights to admit matters on issues that had not been explicitly examined in national proceedings where it is evident that domestic courts were or ought to have been aware of the said issues. Another example involves instances where the Court found that the mandatory imposition of the death penalty should be removed from the penal code of a country because such provisions breach fair hearing by taking away from the judicial officer the discretion to consider circumstances that are specific to the accused person. Such other purposive but contextualized interpretation involve affording certain types of reparations only in compelling circumstances or using legitimate expectation to exempt the applicant

from abiding by a too strict legal provision. In order to have a more comprehensive grasp of the Court's contribution to the interpretation of international human rights norms, I invite you to consult various volumes of the African Court Law Report which are available on the Court's website.

Distinguished colleagues and guests,
As I conclude my remarks, permit me to congratulate our dear host, Honourable President Said Ihrai and his team for convening this event to celebration fundamental rights and freedoms through the prism of **African Constitutional Jurisdictions and International Law**. Congratulations indeed for furthering judicial dialogue. In this vein, I would like to add that the share commitment to global cooperation for justice has inspired the holding, every two years of the African Continental Judicial Dialogue whose last edition was organized last November in Dar es Salaam, Tanzania. The African Court will be very pleased to have the Constitutional Court of the Kingdom of Morocco and indeed some of the apex judicial institutions here present attend the next edition of the African Judicial Dialogue.

Thank you again for inviting the African Court, and for your kind attention.

Imani D Aboud

“Answers to the Questionnaire”

“African Constitutional Courts and International Law”

Prepared by Mr: El Hassen BOUKENTAR
Member of the Constitutional Court of the Kingdom of Morocco

1. This work was based on the response of 26 African constitutional courts to the questionnaire proposed by the Moroccan Constitutional Court, which focused on the theme "Constitutional Courts and International Law", which is not without importance, given that the constitutional courts are called upon, on the one hand, to ensure compliance with the legal norms applied or to be applied, of the Constitution, which is the highest expression of the will of nations and peoples. The degree of interaction, if not overlap between states and their legal systems, to the point of speaking of the openness and internationalization of constitutions.

In fact, this contribution does not pretend to be an in-depth examination and analysis of all that is contained in the various forms. They reflect a great richness and diversity that is difficult to capture with precision. The main objective therefore remains more modest. It is simply an attempt to simplify the various responses in the most honest and unbiased way possible, based on the fundamental guidelines that govern the relationship of African constitutions to international law.

We have chosen to follow this based on three axes: the first is related to the international normative status in the constitution, the second concerns the procedures for monitoring international obligations, while the third and last focuses on the specificities and limits the control of the constitutionality of international normativity and its effects.

First: The status of the international norm in the Constitution

2. The sources of international law in African constitutions vary between references to ratified and generally published conventions and treaties, such as the constitutions of Benin, Gambia, Côte d'Ivoire, Comoros, Kenya, Madagascar, Niger, Togo, Egypt, Morocco and Somalia, and those which refer in particular in their preamble to certain international treaties and covenants in the field of human rights, such as the Declaration Universal Human Rights (1948) and the African Charter on Human and Peoples' Rights (1981).) as well as the International Covenants on Civil, Political, Economic, Social and Cultural Rights (1966), which appear in the constitutions of Mauritius, Mali, Gabon, Djibouti, the Central African Republic, Guinea Béton, Mauritania and Senegal.

3- Constitutions often do not distinguish between different international instruments, they are subject to the same legal status, but some of them have done so, some of them distinguish in their preamble between principles and rights fundamental rights, as stipulated by the charters of certain global and regional organizations, and between international treaties, in particular those relating to the rights of children and women (Comoros), and some of them distinguished between treaties and conventions Agreements (Côte d'Ivoire) and those which derive from international and regional conventions, and there is another category which distinguishes between treaties which must be ratified and those which do not require it because they are concluded in a simplified form, a distinction which does not is not tolerated by international law. Parliament often deals with issues related to state sovereignty, human rights or legislation.

This situation is enshrined in article 55 of the Moroccan Constitution. Other constitutions have followed suit.

4. In general, it is noted that conventions and treaties do not have immediate and direct applicability, this is only done after the process of ratification, which is often the prerogative of the Head of State. For some constitutions, this may require parliamentary approval (Egypt, Gambia, Guinea Béton, Mauritania and South Sudan). Or only it can be limited to the adoption of a law authorizing for categories of conventions concerning, as mentioned above, areas related to sovereignty, protection of human rights or legislation, as well as This is the case of Morocco and several African countries. But other constitutions have made powers of ratification in the National Assembly, as in the case of Djibouti, Ghana, Comoros, Mauritius, and Madagascar. The Constitution of Kenya exclusively empowers Parliament to pass treaties by statute.

5. It should be noted that while some African constitutions have considered ratification to be necessary for all conventions and treaties, others have not taken the same approach, as some conventions do not require ratification to come into force. Agreements with a simplified form are often not subject to this procedure. In addition, some constitutions refer exclusively and explicitly to international treaties subject to ratification, as is, for example, the Beninese constitution, which defines their status in international treaties subject to ratification, as is, for example, the Beninese constitution, which defines their quality in treaties Article 145 and the Cameroonian Constitution, which considered them unnecessary for jus cogens norms of international law or for United Nations resolutions.

6- Regarding the rank occupied by the international standard in the legal hierarchy of the State, it should be noted that the African constitutions agree unanimously on the supremacy of the constitution. In other words, there can be no international rule above that. Thus, the international standard remains in any case lower than the Infra-constitutional. Apart from this fact, it should be noted that some constitutions do not explicitly address this hierarchy (Mauritius, Malawi, Ghana, Kenya and Somalia), while the international norm remains superior to ordinary law, as is the case with the constitutions of Benin, Cameroon, the Central African Republic and Mauritania, or higher, but with the need to fulfill certain conditions, as is the case with the current Moroccan constitution. Meanwhile, the Egyptian constitution equated the international norm with ordinary legislation. However, there are some Constitutions ***(Comoros, Guinea Conakry, Gabon, Ghana, Gambia, Senegal, Togo, Mauritius, Malawi, Ghana, Kenya, and Somalia)*** are neither established nor defined as this transcendence, as it is with the Malagasy Constitution.

7. While African constitutions enshrine the supremacy of the constitution over other legal norms and vary in the position of international law regarding ordinary laws, they remain reluctant to declare a reservation to a treaty, as they do when It's about checking the constitutionality of laws. Some constitutions explicitly allow the possibility of reservations to international treaties (South Sudan, Malawi and Kenya), while other constitutions do not refer to it and may consider it only as falling within the competence of the authority. Executive with right of ratification, as in the case of the constitutions of Benin, Ghana, Gambia, Guinea Béton, Cape Verde, Mauritius, Kenya, Somalia and Zimbabwe. Some constitutions link this to reciprocity, such as in Mauritania, Cameroon and Comoros. Finally, some replies considered that the reservation was a principle of public international law (example of Egypt).

Second: International Compliance Monitoring Procedures

8- Regarding referral or notification mechanisms under the international standard, we find that there is a clear diversity, as to the Egyptian constitution, it allows payment, referral, and response. These are the same mechanisms that the Supreme Constitutional Court invokes when challenging the constitutionality of a law. Some constitutions authorize prior dismissal, that is, before ratification, and subsequent dismissal granted to each citizen (Benin, Mauritania, Senegal, Togo, and Kenya). However, some constitutions allow certain bodies under prior review (most often the head of state and the presidents of the two councils). Parliament and a quorum set by parliamentarians) to refer an international obligation before ratification to the constitutional judiciary (court or council), to check its status vis-à-vis the Constitution, in particular if it contains something contrary to its provisions. This is what the Constitution stipulates in Morocco, Gabon, Cameroon, Central African Republic, Côte d'Ivoire, Mali and Niger.

9- With regard to the question of the relationship of constitutional judicial bodies with international standards and their use as a reference, a number of them resort to them, in particular to strengthen freedoms and human rights and to work to expand their content, as is the order of the Supreme Constitutional Court in Egypt and Cape Verde. It can only be limited to the constitutional bloc referred to in the preamble, as in the case of Côte d'Ivoire Niger, or to those which have been ratified or to which they have acceded (Morocco, Central African Republic, Djibouti, South Sudan, Malawi, Ghana and Zimbabwe). With the exception, some constitutional judicial bodies do not take them into account because they do not come under the constitutional bloc (Gabon), or because there is no special mechanism that authorizes them, as long as they do not are incorporated into national law (Mauritius, Gambia) or can only be used whenever necessary (Cameroon).

10. In the same context, it should be noted that the Constitutional Courts and Councils have no objection to being guided and guided by case law regarding the neutralization of their decisions. For example, Mauritania, Togo, Angola, Mali, Morocco, Gambia, Egypt and Mauritius are concerned. However, other African constitutional judicial bodies do not take it (Benin, Central African Republic and Senegal).

11. One of the main issues raised by international norms in domestic law is the rank of the international treaty and its position among the legal rules of the State. The subject arises sharply in the event of a conflict between the requirement of an international obligation and national law. In answering this question, an agreement on the supremacy of the Constitution over the norms resulting from international law emerges. From this point of view, African constitutions do not

recognize any norm that transcends the constitution itself. The debate therefore remains on the supremacy of treaties over law. In this context, some consider that the Court does not prefer one to the other (Angola) and tries to reconcile them, but if it is not possible to do so, preference is given to national standards (Mauritius). While there are those who give priority to the international standard, if the treaty is ratified and published, (Djibouti and Guinea Conakry). As for the Moroccan Constitution, it makes international conventions, as ratified by Morocco, within the framework of the provisions of the Constitution, the laws of the Kingdom and its solid national identity, superior, immediately after their publication, to national legislation. Finally, regarding the response of the Egyptian Supreme Constitutional Court, the criterion that is most in line with the provisions and provisions of the Constitution is the first to follow. The same situation exists in Mozambique, where international standards have the same value as laws or decrees as laws.

12. Most constitutions do not allow dismissal or self-notification. However, some allow it, as in the case of Egypt, where this mechanism is one of the communication mechanisms of the Court for the constitutional case, or for Gambia, Togo or Benin, in the case of full text or motions, although they are inadmissible. For Ghana, self-cession is only possible in the contractual article and under an arbitration clause.

13. African constitutional judicial bodies base their jurisprudence on sources of an internal nature, such as the constitution, organic laws and internal regulations of certain constitutional institutions and others deriving from international law, such as treaties. and international conventions, in particular those relating to human rights, as well as case law and opinions of international case law. Various constitutional judicial bodies suggest that rights deriving from international law are accepted even if they have not been invoked by the parties, but some of them (e.g., South Sudan and Comoros (Comoros) or the Constitutional Court in Gabon, do not accept this because they are only monitoring the constitutional bloc.

14- In the same context, some constitutions allow citizens to have recourse to other judicial bodies to control international standards, whether before administrative or ordinary courts (Niger, Djibouti, Cameroon, Benin, Cape Verde and Angola) , or before regional courts, such as the Special Court of Justice for West Africa (ECOWAS) or the Court of Justice of the ECOWAS Community. (Gambia), the East African Court of Justice (Kenya), the African Court on Human and Peoples' Rights (Malawi) or competent courts, such as the Supreme Court (Gabon and Mali), but other constitutions do not allow it (Senegal, Mauritania, Madagascar, Guinea and Central African Republic).

15. African constitutions are almost unanimous in giving the Constitutional Court, the Constitutional Council or the Constitutional Chamber the power to declare a conflict between an international norm and the Constitution. However, practice highlights the lack of accumulation in this area. Most African constitutional courts have not heard such cases, except for Benin, Côte d'Ivoire, Cape Verde and Kenya. Modest, perhaps to ensure the legal stability of the state and its relations with its external environment since treaties and agreements are often the result of negotiations and mutual concessions.

Third: Particularities, limits and impact of control

16. In response to the question of the applicability of an international convention signed but not ratified, most constitutional courts and councils reject this proposition. Malawi and Zimbabwe

suggest that they can only use a signed and unratified treaty as a supplement to facilitate interpretation. In the same context, international standards of international human rights law and international humanitarian law vary, and the question of whether it is satisfied with the guarantees provided in the constitutions in the field of rights. Human. Some ***(Benin, Cameroon, Egypt, Ghana, Kenya, Malawi, Madagascar, Guinea Conakry and Mauritius)*** referred together at their request, while others considered that they applied only those provided for in the preamble (Niger and Senegal). Gabon and Mauritania are restricted to the NALC, which is part of the constitutional bloc.

17. International standard control methods vary as follows. There are bodies that can carry out subsequent monitoring, such as Egypt, Zimbabwe, Kenya, Mauritius, Ghana and Gambia. Others do so at the request of bodies designated by law (the President of the Republic, the Presidents of the Chambers of Parliament or a designated constituency of deputies and senators). This is the case of Angola, Benin, the Central African Republic, Mauritania, Madagascar, Senegal and Togo. But other experiences do not allow it (for Cameroon, Côte d'Ivoire, Gabon, Guinea Conakry, Comoros, Malawi and Mali). Morocco, South Sudan and Niger). At another level, certain constitutional judicial bodies may issue a reservation of interpretation when reviewing the constitutionality of an international obligation (Cape Verde, South Sudan, Angola, Mali, Niger, Côte d'Ivoire, Comoros and Mauritania). This power is not devolved to others (Mauritius, Cameroon, Morocco, Djibouti, Malawi, Senegal, Guinea Conakry, Madagascar and Djibouti). Gabon considers that nothing prevents this friction, but there is a difficulty in terms of implementation.

It should be noted that the cases of declaration of a conflict between an international norm and the Constitution remain limited. Indeed, the cases mentioned are rare and concern Cape Verde, Zimbabwe, Gabon and Côte d'Ivoire. In such cases, the requirement declared unconstitutional was excluded. A series of responses indicate that they do not have statistics or data on the investment of international law in their case law. Even if it is available, it is still limited.

18. Overall, however, regardless of limited decisions declaring an international norm unconstitutional, conceivable constitutional solutions oscillate between not ratifying it, i.e. excluding it, or amending the Constitution in a way that would to incorporate it into national law. At this level, however, the question remains of dealing with international treaties or conventions that prohibit the principle of reservation to their components. Similarly, subsequent censorship experiments may declare an international provision of an existing treaty unconstitutional. However, the achievement of this objective should not prejudice acquired rights, which are a fundamental concern of constitutional justice systems. This requires ensuring that its effects are not applied retroactively.

In conclusion, it goes without saying to recall the intensity of the links between African constitutions and international law. It reflects the deeply rooted dialectic between what is local and what is universal. At the same time, it defends the requirements of national sovereignty by enshrining the supremacy of the Constitution, which expresses the identity, values and aspirations of African nations and peoples, in the event of conflict between it and international normativity.

“The place of international law in the Constitution of Kenya “

Remarks by Lady PHILOMENA MBETE MWILU
Deputy Chief Justice and Vice President of the Supreme Court of Kenya

Our Gracious Host, The President of the Constitutional Court of Kingdom of Morocco,

The Guest of Honour, The President of the High Constitutional Court of Palestine and the Special Invited Guests,

Honourable Chief Justices, Deputy Chief Justices and Judges of Supreme Courts, Constitutional Courts and Tribunals of the Conference,

Observer Members of the Conference of African Constitutional Jurisdictions here present,

The Permanent Secretary General and the Secretary General of the Conference of African Constitutional Jurisdictions,

Representatives of the African Union, the African Court on Human and Peoples' Rights, the World Conference on Constitutional Justice, the Council of Europe's Commission for Democracy through Law,

Distinguished Panelists, Speakers and Participants,

Ladies and Gentlemen,

1. It is with great pleasure that I join you at this the 6th Conference of the African Constitutional Jurisdictions. On behalf of Her Ladyship the Chief Justice of Kenya, the Judiciary of Kenya and indeed on my own behalf, I thank the Kingdom of Morocco for hosting us so graciously and resplendently here in beautiful Rabat and I thank the Conference and its secretariat for facilitating us so dotingly and efficiently.

2. We meet once again this year to reaffirm our commitment under the Constitutive Act of the African Union to promote human rights, consolidate institutions and democratic culture, and promote good governance and the rule of law through our respective institutions. The Conference remains a unique, invaluable, and critical forum providing an opportunity to share experiences, jurisprudence, best practices and ultimately foster integration through the promotion of

constitutionalism across our continent. In line with this year's theme, "African Constitutional Jurisdictions and International Law" I have the distinct privilege to share with you the place of international law in the Kenyan legal system.

3. The Constitution of Kenya 2010 while recognizing the place of international law, emphasizes on the supremacy of the Constitution. Article 2(5) and 2(6) of the Constitution provide that the general rules of international law shall form part of the Law of Kenya and that any treaty or convention ratified by Kenya shall form part of the Law of Kenya under this Constitution.

4. Before the promulgation of the 2010 Constitution, the sources of law in Kenya were strictly as set out at Section 3 of the Judicature Act; they were the Constitution, Acts of Parliament, some specific laws of the United Kingdom, common law where no law was written, doctrines of equity and statutes of general application in force in England on the 12th of August 1897, and customary law in so far as it was not repugnant to justice and morality or inconsistent with any written law.

5. Having been a British colony, Kenya borrowed considerably from the United Kingdom where the principle of Parliamentary supremacy required the domestication of treaties ratified. This principle was reaffirmed by Kenyan courts which held that no law outside those set out in the Judicature Act could be applied in the resolution of disputes. Courts thus held that since international law did not form part of the sources of law under the Judicature Act, it could not be applied unless domesticated through a statute.

6. After the promulgation of the Constitution 2010, Kenyan courts have had opportunity to clarify the place of international law in Kenya's justice system. The High Court in Beatrice Wanjiku & another vs Attorney General & another [2012] eKLR stated

"The use of the phrase "under this Constitution" as used in the Article 2(6) means that the international conventions and treaties are 'subordinate' to and ought to be in compliance with the Constitution…a purposive interpretation and application of international law must be adopted when considering the effect of Article 2(5) and 2(6). These provisions should not be taken as creating a hierarchy of laws akin to that set out in the provisions of section 3 of the Judicature Act...Article 2(5) and (6) must be seen in the light of the historical application of international law in Kenya where there was a reluctance by the courts to rely on international instruments even those Kenya had ratified in order to enrich and enhance the enjoyment of human rights."

7. On the application of international customary laws and principles, the Court of Appeal in the case of Dennis Mogambi Mong'are vs Attorney General & 3 others [2014] eKLR, held that courts may apply ratified treaties and international customary law where there is no conflict with existing law or for purposes of removing ambiguity or uncertainty in our laws. It stated:

"…It is my considered view that Kenya has opted for a monist approach to international law under Article 2 (6) and a dualist approach under Article 2 (5) of the Constitution since a distinction is made between international law in the form of treaties and other rules of international law. Kenya is not a pure monist state, it is partly monist and partly dualist in approach to public international law."

8. Recently, we at the Supreme Court had the opportunity to interrogate the place of international law in the case of Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others (Petition 3 of 2018) [2021] KESC 34 (KLR). Amongst the issues for determination was the extent of application of Guidelines made by United Nations bodies in interpretation of human rights by Kenyan courts. We found that the meaning to the expression "shall form part of the law of Kenya" as provided in article 2(5) and (6) to mean that domestic courts of law, in determining a dispute before

them, have to take cognizance of rules of international law, to the extent that the same are relevant, and not in conflict with the Constitution, statutes, or a final judicial pronouncement. It was our finding that Article 2(5) and (6) of the Constitution embrace both international custom and treaty law, committing Kenya to act in accordance with its obligations under international and customary international law and its undertakings under the treaties and conventions, to which it is a party. It also requires Kenyan courts while resolving disputes to apply customary international law and the treaties and conventions Kenya has ratified as long as they are not in conflict with the Constitution.

9. In the said decision, we discussed the effect of UN Resolutions, Declarations, General Comments, and Guidelines and their norm-generating quality in international law and noted that the consensus emerging from such discourse is that, generally speaking, such resolutions, declarations, and comments do not ordinarily amount to norms of international law but constitute international soft law that can ripen into a norm or norms of customary international law, depending on their nature and history leading to their adoption.

10. It is important for me to point out that the treaty making and ratification process in Kenya provides for important checks and balances. The Treaty Making and Ratification Act No. 45 of 2012 was passed to provide the procedure for the making and ratifying treaties. The Executive maintains the power to initiate and negotiate treaties, however, once the Cabinet approves the ratification of a treaty, the Cabinet Secretary responsible submits the treaty and memorandum to the National Assembly for consideration. This consideration also includes incorporation of public participation in the process and thus giving members of the public an opportunity to give comment and input.

11. In conclusion therefore, in Kenya, international treaties and conventions and general rules of international law including international customary law, since the promulgation of the Constitution of Kenya 2010, enjoy immediate and direct applicability. That said, there is a mechanism for the insertion of treaties and conventions ratified after 2010 into the domestic legal order which is through the Treaty Making and Ratification Act. Our Constitution does not denote any prioritization between domestic law and international law; courts in Kenya can and do refer to rights and principles deriving from international law without these being invoked by the parties as they enjoy the discretion to invoke these laws and principles suo moto depending on the subject matter and circumstances of the case. Further, the case law of international courts has a persuasive influence on our courts. Other than Parliament which can make reservations of an international commitment during the process of its consideration of the same, the only other body that is competent to pronounce a possible contradiction of an international commitment with the Constitution is the Judiciary via the court system. Where there is a conflict between domestic statute and international law, the point of reference is always the Constitution. Conflicting international law and principle shall be construed with alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the Constitution.

12. I thank you for the opportunity to provide a brief exposition on international law within the Kenyan constitutional framework and I thank you for your kind attention.

“Status of the international norm in the Constitution of Mozambique and procedures of reviewing international engagement.”

Mrs. Lucia da Luz Ribeiro
President of the Constitutional Council of Mozambique

I. The hierarchical position of international law in the Mozambican legal order.

The Constitution of the Republic of Mozambique (CRM) establishes the principles of constitutionality and supremacy of the Constitution and the consequent subordination of the State to it, with the prevalence of constitutional norms over the other norms of the legal system. The principles of constitutionality and legality, which are the appanage of the rule of law, are generally established in paragraphs 2 and 3 of article 2 and in the last part of article 134, both of the CRM. The first precept binds the exercise of democratic political power to constitutional forms, the second determines the subordination of the State to the Constitution and its foundation in legality and the third imposes on the organs of sovereignty the duty to respect the Constitution and the laws.

What, then, will be the status of the international norm in the Mozambican legal order?

In accordance with paragraph 2 of article 17 of the CRM, the Charter of the United Nations and the Charter of the African Union are sources of international law regardless of ratification. International Treaties and Agreements are also sources of international law, in accordance with the provisions of Article 18(1) of the CRM.

The Constitution establishes the hierarchical position of International Law in the domestic legal order in a particular way compared to the common Portuguese-speaking countries, by establishing in paragraph 2 of article 18 that the "norms *of international law have in the*

domestic legal order the same value as the infra-constitutional normative acts emanating from the Assembly of the Republic and the Government".

2-with regard to the distinction between treaties and conventions of other international standards, the Constitution of *the* Republic, in paragraph 1 of article 18, refers only to international treaties and agreements, not expressly ruling on other sources of international law. However, we can understand that the constituent legislature in using the expression "norms of international law", as opposed to "international treaties and agreements" intended to cover, in general terms, all existing sources of international law. In this diapason, it is understood that the Republic of Mozambique recognizes the potential of incorporating into its internal order the "international norms" that may be found in international law, namely in international customs, in treaties and in international agreements, and also in derived acts of law issued within the framework of the international organizations of which it is a member. An embodiment of this guidance can be found in paragraph 2 of article 132 (Central Bank), when it is established that *the "functioning of the Bank of Mozambique is governed by its own law and by international standards to which the Republic of Mozambique is bound and are applicable to it".*

3-in Mozambique, international treaties and conventions do not enjoy immediate and direct applicability. The question of the method of incorporating the sources of international law into the Mozambican legal order is answered in Article 18. Before their validity they must be approved, ratified and published in the Bulletin of the Republic, as provided for in Article 18 (1) of the CRM.
The constituent legislature provides in Article 43 of the same Basic Law that "*the constitutional precepts relating to fundamental rights shall be interpreted and integrated in accordance with the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights."* The sources of international law are incorporated into the Mozambican legal order without losing their international legal nature.

4-the CRM has adopted a one-tier system that provides for the conditional reception of international treaties and agreements, paragraph 1 of article 18 of the CRM, and, as we have already referred to the automatic reception of the other sources of international law, paragraph 2 of article 18 of the CRM, being the s competent bodies for the ratification of international treaties and conventions are the Assembly of the Republic and the Government. As can be seen, the validity of international treaties and agreements in the Mozambican legal order depends on the cumulative fulfillment of three conditions, namely: (i) they have been validly approved and ratified; (ii) be published in the Bulletin of the Republic; (iii) bind the Mozambican State internationally. Therefore, the internal applicability of international treaties and agreements depends, in the first place, on the constitutional conformity of the procedure adopted for their conclusion. This is the meaning that should be given to the expression "validly approved and ratified" included in Article 18(1) of the CRM.
The second condition that treaties and agreements must meet in order to be applied in the Mozambican legal order is the publication of the resolutions that ratify and approve them, paragraph 1 of article 18 and point f) of article 143, both of the CRM. These are published in Series I of the Bulletin of the Republic and must include, in annex, the full Portuguese version of the texts of the international instruments to which the Republic of Mozambique has been bound.

Failure to publish results in the impossibility of internal application of the treaty or agreement. The requirement to publish the wording of international treaties and agreements is particularly significant, since it allows access to international links to be made under conditions equivalent to those of the other sources of law that make up the Mozambican legal order. International treaties and agreements can only be applied "as long as they bind the State of Mozambique internationally.
It should be noted that in relation to the Conventions that were in force before national independence and extended to overseas colonies, their validity in the new State was based on the Constitution of the People's Republic of Mozambique of 1975, which provided in its article 71 that all previous legislation in what was not contrary to the Constitution remained in force until it was modified or repealed. It should be noted that this constitutional wording accompanied the constitutional reform of 1990 and the revision of 2004 and the most recent one of 2018.

5-the Assembly of the Republic has reserved the task of confirming the expression of consent of the bindings designated as treaties, in accordance with points (t)) and (u)) of paragraph 1 of article 179, to be consecrated that it is the "exclusive competence of the Assembly of the Republic" "ratify (...) international treaties" and "ratify the treaties of Mozambique's participation in international defense organizations." With this act, the Assembly of the Republic confers validity and effectiveness on international norms in the domestic legal system, enabling their application.

6-international instruments only begin their validity after ratification and publication in the Bulletin of the Republic, with the exception, as we have already mentioned, of the Charter of the United Nations and the Charter of the African Union that are considered sources of international law regardless of ratification. In addition, international customs, international principles and Declarations without general binding force, such as the Universal Declaration of Human Rights, because they constitute *soft law,* do not need ratification to be invoked.

7-the Constitution of the Republic explicitly determines the hierarchy between domestic and international law, in the sense that international instruments have the same value as infra-constitutional acts emanating from the Assembly of the Republic (Law) or by the Government (Decree or Decree-Law), depending on their form of reception, paragraph 2 of article 18 of the CRM.

8-regarding the question that arises whether the rights arising from international standards are or are not subject to the principle of reservation of the possible is important to note, that within the scope of the Constitution of the Republic we find the enshrinement of the right to housing and urbanization, fundamental social right, in the sense that this will be implemented by the State, *In accordance with* National Economic Development, Article 91(1). In other words, the State's obligation to guarantee the right to decent housing for citizens depends on national economic capacity and cannot be exercised beyond this capacity.
This constitutional reality allows us to conclude that international norms, such as those of the International Covenant on Economic, Social and Cultural Rights (ICESCR), would be applicable in Mozambique taking into account the principle of the reservation of the possible. Moreover, the instrument itself provides that "Each of the States Parties to the Covenant must act, either with its own efforts or with international assistance and cooperation, especially at the

economic and technical levels, to the maximum of its possibilities and resources, so as to ensure progressively the full exercise of the rights recognized in the Covenant.

II. Procedures for the review of international instruments

9-the mechanisms of application of international standards in the Mozambican constitutional jurisdiction is the ratification, either by the Assembly of the Republic, or by the Government and publication in the Bulletin of the Republic, in accordance with paragraph 1 of article 18 of the CRM.

The Constitutional Council has sometimes invoked international norms in force in Mozambique in its decisions in the grounds of its judgments and deliberations. We can cite here the example given in Judgment no. 1/CC/2022, of 14 January, of [2]Case no. 06/CC/2021, Successive review of constitutionality and legality, in which the Most Honourable Attorney General of the Republic requested the Constitutional Council, the assessment and declaration, with general mandatory force, of the rules contained in paragraphs 2 and 3 of article 23, Article 26 and paragraphs 1 and 2 of article 27, all of Law no. 23/2007, of 1 August, Labour Law (LT) and the rule contained in article 1 of Decree no. 68/2017, of 1 December, which approves the list of jobs considered dangerous for children.

Among other grounds, the Constitutional Council was based on the definition of a child in the Convention on the Rights of the Child, in the precise terms:

> "In fact, Law no. 7/2008, of 9 July, "Law for the promotion and protection of the rights of the child", considers child " *... any person under eighteen years of age*." This definition of child is compatible with the provisions of Article 1 of the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989 and ratified by Mozambique by the Resolution of the Assembly of the Republic No. 19/90 of 23 October, according to which *"a child is any human being under the age of 18, unless, in accordance with the law applicable to him, he reaches the age of majority earlier*."

10 - It is important to take into account that the Constitution of the Republic makes use of some concepts whose exact content can only be clarified through recourse to international law, with particular emphasis on the Law of the Sea. This category includes references to "maritime area", "territorial waters", "exclusive economic zone", "contiguous zone", "seabed" and "airspace», contained in Article 6 (Territory), and "inland waters", "territorial sea", "continental shelf" and "exclusive economic zone", within the scope of Article 98 (State property and public domain). In addition, in paragraph 2 of Article 117 (Environment and quality of life) references are also made to concepts such as "sustainable development" or "rights of future generations" whose proper understanding implies that account be taken of their international legal origin.

11 - As regards the case-law of international courts, it has never been invoked as a basis for the decisions of the Constitutional Council.

12- Faced with a conflict between norms of domestic law and those resulting from international law, the Constitutional Council does not favor one over the other, since

[2] Published in the Bulletin of the Republic, n. I Série, n.º 31, of 15 February 2022 and available on the website

international norms, already ratified by the Assembly of the Republic, have the same value as the norms of domestic law, therefore, a hierarchy is not established in the application of international and internal norms. There is, therefore, no primacy or higher hierarchy.

13 - Regarding self-reference in subsequent decisions of the Constitutional Council after the Body has adopted a similar decision in previous Judgments, the Council, however, is not a system of precedent, (auto-referral/auto-saisine), has done so, making reference to previous decisions on legal matters/issues of the same nature. For example, in Judgment No. 21/CC/2014, of 29 December, (Electoral Litigation) the Constitutional Council, referring to the imperative of compliance with the dictates of the Constitution and the law by candidates and electoral administration bodies, asserted:

> "In Judgment no. 30/CC/2009, of 27 December, the Constitutional Council signed the jurisprudential guidance to the effect that "the electoral administration bodies are bound by law not to perform acts without legal cover either for the benefit or to the detriment of the proponents or the candidates themselves. Any acts committed in breach of the law are not capable of producing legal effects'

Another example is the one reflected in Judgment no. 06/CC/2021 of 13 July, Case no. 04/CC/2021 - Concrete review of constitutionality and legality, relating to the Emergent Action of Employment Contract, where the Body stressed in its reasoning that.

> "Had already ruled on the unconstitutionality of the rules contained in paragraphs 1 and 2 of article 184 of the Labor Law, especially in Judgments No. 03/CC/2011, of 7 October[3]; 03/CC/2017, July 25[4]; 9/CC/2017, of December 27[5], all processes of concrete review of constitutionality and legality, whose reasoning is accepted in this judgment".

As can be seen, a clear support of your decision in previous decisions taken by you.

14 - We can also mention that in its decisions the Constitutional Council may use all kinds of sources or legal references, such as the Constitution of the Republic itself and ordinary legislation, including the international instruments in force. You can also use other normative sources. This is the meaning of Article 4 of the Constitution of the Republic, entitled "legal pluralism" insofar as it states that "The State recognizes the various normative and conflict resolution systems that coexist in Mozambican society to the extent that they do not contradict the fundamental values and principles of the Constitution."

15 - On the question of the possibility of citizens having recourse to other jurisdictions for the supervision of international conventions, it is necessary to observe that international conventions to be subject to supervision in Mozambique must, first of all, enter the domestic legal system through ratification and publication in the Bulletin of the Republic. Once ratified, the competence to review the constitutionality and legality of these as norms already accepted and in force, will be exercised by the Constitutional Council. The procedural mechanisms for the review are those established for the other normative acts.

[3] Bulletin of the Republic, Series I, no. 41, 4th Supplement, of 18 October 2011.
[4] Bulletin of the Republic, Series I, no. 164, of 20 October 2017.
[5] Bulletin of the Republic, Series I, no. 203, 8th Supplement, of 29 December 2017.

16-the Constitution, understood as the source of the legitimacy of political power and the sovereignty of the State, functions as the referent of validity used for the assessment of all normative acts of the legal order, regardless of their origin or nature. The competent body to rule on a possible contradiction between an international norm and the Constitution is the Constitutional Council, Article 240, paragraph 1 of the CRM.
In the case of concrete successive review this takes place through the preliminary ruling procedure by the judge of the pretext case and or through the abstract successive review by the entities with legitimacy for this purpose, paragraph 2 of Article 244 of the CRM, specifically a) the President of the Republic; b) the President of the Assembly of the Republic; c) at least one third of the deputies of the Assembly of the Republic; (d) the Prime Minister; e) the Attorney General of the Republic; (f) the Ombudsman; g) two thousand citizens.

17 - With regard to the reference to rights deriving from an international norm without these being invoked by the parties, we can say that the Constitutional Council may refer to any norms that are in force in the domestic legal system and have correlation with the case in question and with the request made regardless of whether it is invoked by the parties including international norms, such as the provisions of Article 132 (Central Bank) of the CRM. Thus, for the rights derived from an international standard to be applied, it is necessary that the norm that enshrines them must first have been ratified and be in force in the domestic legal system.

18 – The Constitutional Council has never been confronted with conflicts between rules of domestic and international law. Because international norms, subject to all procedures, have the same value as rules of domestic law, a higher hierarchy cannot be established between them in their application and the Constitutional Council could not under any circumstances favor one over the other. If, perhaps, any conflict occurs, this would be seen as a conflict between infra-constitutional normative acts.

III. Specificities and limits of control

19 - *(PT)* In view of the number of decisions taken by the Constitutional Council in the almost 20 years of its existence, we can consider the proportion of international law incorporated in the decisions of the Constitutional Council concerning the review of constitutionality to be small.

20 - The Constitutional Council cannot apply an International Convention that is not in force in the Mozambican legal order. International instruments only apply internally after ratification, either by the Assembly of the Republic or by the Government, depending on their respective form of reception, and after publication in the Bulletin of the Republic, in accordance with the provisions of paragraph 1 of article 18 of the CRM. Simply signing is not sufficient for the application of the international instrument.

21 - Human rights violations break down borders, a problem that plagues humanity at a global level. Thus, it is necessary that the States, within a certain standard and even if there is dissent, agree on the protection of the human being, establishing mechanisms to defend the citizen, regardless of nationality, against the violation of said rights, including that carried out by the States themselves. Such treaties, after ratification by the States, become obligatory

observance by all national powers and institutions, and for example the Legislature may not draw up laws that are contrary to international treaties. All public bodies and state entities, regardless of the sphere of government or even the Power to which they belong, have the unequivocal duty to fulfill the commitments internationally signed by virtue, among other grounds, of the principle pacta *sunt servanda*.

Since the organs that exercise jurisdiction is part of the structure of the State, they are also clearly obliged to respect the norms arising from the pacts that bind the Mozambican State. The task of the Constitutional Jurisdiction is not limited to the preservation of the norms provided for in the text of the Constitution of the Republic, but also to the observance of the international norms received. Thus, in the context of the review of constitutionality, the Constitutional Council can indeed invoke international instruments arising from international human rights law and international humanitarian law to support its decisions (not in the vertical sense). In fact, the CRM enshrines in Article 43 (Interpretation of Fundamental Rights) that "The constitutional precepts relating to fundamental rights are interpreted in accordance with the Declaration of Human Rights and the African Charter on Human and Peoples' Rights.

22-the Constitutional Council may apply any rules that are in force in the domestic legal system and have correlation with the case under consideration and with the request made, to substantiate its decision, regardless of whether this has been invoked by the parties in the pretext process or by the judge in the grounds of its referral. Thus, for the rights derived from an international standard to be applied, it is necessary that the standard has been ratified and is in force in the domestic legal system.

23-one of the main instruments used to ensure the supremacy of the Constitution in the legal system is the review of constitutionality. It is, in short, an inquiry of vertical compatibility between ordinary legislation and the Constitution. This inspection can be carried out in an abstract or concrete way.

There are no express specific mechanisms for reviewing the constitutionality of an international norm. The Constitutional Council is responsible for reviewing the constitutionality of the Laws and legality of the normative acts issued by the organs of the State, namely the Assembly of the Republic and the Government (paragraph a) of paragraph 1 of article 243 of the CRM). Therefore, for the Constitutional Council to supervise an international norm, it must first enter the domestic legal system through ratification and publication in the Bulletin of the Republic. Once the process of receiving the rule is completed, it will also be subject to constitutional review.

It should be noted that if international norms had in the Mozambican legal system the nature of constitutional norms, these would frame the block of constitutionality, that is, international human rights treaties could clearly serve as a parameter for the review of constitutionality.

24-the reservation of interpretation is not a mechanism provided for in the Constitution of the Republic of Mozambique. In certain situations, the rule under review may be interpreted as conforming to the Constitution if, and only in the case where a particular condition can be ascertained. This reservation of interpretation presupposes that Parliament revises the rule. If so, the declaration of constitutionality proceeds. Otherwise, the declaration of unconstitutionality proceeds.

IV - Effects of the declaration of non-conformity of an international standard

25 - The Constitutional Council has never declared the non-conformity of an international instrument to the Constitution.

26 - If so, what was the fate of that standard?
(not applicable)

27 - What are the general effects of the declaration of unconstitutionality on the International Act?
Impaired by the above response.

28 – With regard to the question of what are the effects of the declaration of unconstitutionality of an international rule already in force, declared in a posteriori review procedure, *we can affirm that* the possible declaration of unconstitutionality of the international act a posteriori, in the context of successive review of *constitutionality, would have the same effects as the declarations of unconstitutionality* of the other normative acts of the organs of the State. In the case of concrete successive review effects passed on in *casu* and in the case of abstract successive review effects would be general i.e. *erga omnes*.

“The Constitution

and international treaties in Libyan legislation “

Presented by: Mr Mohammed Al Hafi
President of the Libyan Supreme Court

Presentation-

The Constitution is the main basic document on which the organization of the State, its structure and its political, economic and social system is based, and is a pillar of its legislation governing aspects of life in the State.

The Constitution is the one that establishes the constants and systems on which any country is based, and it is therefore forbidden for anyone in the territory of the State to violate it, including laws promulgated by the legislative authority, and treaties and agreements concluded by the State with foreign bodies must not exceed the limits set by constitutional rules. for the Constitution transcends and transcends all legal rules or international agreements that contradict it.

International treaties are considered a source of written legitimacy in the State when they are concluded and ratified by the competent authority and form part of the domestic legal order.

The rank of treaties in the hierarchy of domestic laws varies from one State to another depending on the data and regulations adopted by its legislation.

Today, international treaties play an important role in regulating international relations, so many countries have made the provisions of treaties superior to constitutional rules, because today's world has become a village and the international organization has become an important element in the life of States and societies.

State constitutions regulate treaty oversight, whether pre-treaty compliance or subsequent review by the courts or through parliamentary or political committees and bodies.

In this paper, we will deal with the definition of treaties and their place in the scale of national legislation, how they acquire legal authority and how treaties are judicially controlled.

I. The concept of international treaties and agreements

International treaties and agreements are contracts by which one or more countries are bound by other States or international organizations.

Treaties are the most common form of regulation of international relations between subjects of public law.

The Vienna Convention on the Settlement of International Relations defines a treaty as an international agreement concluded between two or more States in writing and subject to international law and intended to produce international legal effects.

The concept of treaty is broader and more comprehensive than agreement, because the agreement is usually concluded between two subjects of international law to regulate a specific subject, while the treaty includes several States, territories or organizations, and its subjects are more important and comprehensive.

International treaties have become an important tool and means of regulating relations and a source of written legitimacy in the State once they have been concluded and ratified by the competent authority, since, after ratification, they become an integral part of the domestic legal system and public authorities and other persons of the State comply with their provisions.

Public international law determines the rules and controls on the basis of which such treaties are concluded, in addition to the controls provided for by domestic law.

For an agreement to qualify as an international treaty, it must have been concluded between one or more subjects of international law, whether States or international organizations, and the agreement must be emptied of its scope to qualify as a treaty, which is reflected in the Vienna Treaty governing international relations, which removed oral treaties from its scope.

We recall that Article 102 of the Charter of the United Nations requires the registration of international treaties with the Secretariat of the United Nations and requires that this be invoked as a document submitted to the United Nations.

The number of treaties registered with the United Nations from its inception until today has reached tens of thousands, reflecting their status and importance in regulating international relations.

Secondly, the means of acquiring legal authenticity in the Treaties.

Since international treaties are a legal act, it is necessary that their validity be maintained by the formal and substantive conditions of contracts in general, so that the signatory must have legal capacity and the object of the treaty must be legitimate and possible.

When the formal and substantive conditions are met, the signed agreement has acquired the status of being transmitted to the competent ratifying authority, and the means of control preceding and accompanying the conventions play their role in determining whether the treaty has been defective in form or substance that prevents it from being submitted to the approving authority.

Depending on the importance of the purpose of the treaty, there are treaties that must be ratified by the competent authority of the State, for example, treaties that relate to the borders and integrity of the State and affect aspects of public life.

However, there is a type of treaty that does not require it, such as treaties governing cultural or educational affairs or treaties of friendship between countries or cities.

The body mandated by the Constitution to ratify the treaty varies from country to country, and usually this task is entrusted to parliament, the National Assembly, the Senate or both, and in some legal systems this task is entrusted to special commissions as granted to the king or head of state, and the Libyan Constitutional Declaration issued in 2011 entrusted this task to the Transitional Council, then in the National Congress and then in Parliament. This was confirmed by the Skhirat agreement concluded in 2015.

Third: The authority of treaties in the national and international spheres.

The jurisprudence of public international law considers treaties to have the force of law between their parties, since they bind ratifying States pursuant to the pacta sunt Servando rule.

However, its rank in the hierarchy of legal rules varies from country to country, in Egypt, for example, the treaty has the force of ordinary law after ratification and publication, while in France it has a rank higher than the law and lower than the constitution, according to the text of Article 55 of the French Constitution, which is set out in Article 13 of the draft Libyan Constitution, Provided that its provisions do not violate the provisions of the Constitution and by virtue of the provisions of the Constitutional Declaration in force, the treaty occupies a rank of Common Law after ratification and publication, if its provisions are contrary to the provisions of an existing law, apply the rules of interpretation and annul the previous one that was in conflict with its provisions and apply its own provisions instead of the general provisions of the laws In summary, treaties concluded by Libya and after ratification by the competent authority have the force of ordinary law, and Libyan law has imposed a restriction on the application of the rules of national law if that law conflicts with a treaty or agreement signed by Libya, which is referred to in Article 23 of the Libyan Civil Code, Article 411 of the Code of Procedure and Article 493 of the Code of Criminal Procedure, as well as in other special laws, contain provisions referring to the priority of the Treaty over its provisions, as stated in the Health Act No. 106 of 1975 and the Foreign Investment Promotion Act No. 5 of 1997.

The Supreme Court has confirmed in many of its decisions on this subject, including the judgment rendered by it in Civil Appeal No. 156 of 21 BC, saying: "The accession of Libya to the Warsaw Convention signed on 12/1/1929 AD on the Unification of Certain Rules of Air Carriage and amended by the Hague Protocol signed in 1955 AD and the Rent Existence Agreement signed on 18/9/1961 AD, under Act No. 29 of 1968 AD makes it a law applicable to air transport... »

The Supreme Court's ruling in Constitutional Appeal No. 1/57 also stated: "It is decided that international agreements to which the Libyan State is bound shall enter into direct force as soon as the ratification procedures by the legislative authority of the State have been completed and shall prevail over national legislation, so that in the event of a conflict between its provisions and the provisions of national legislation, the provisions of the Convention will be the first to be applied... " .

Ratification of the treaty may be carried out by the competent authority, but it is subject to the commitment of the other party to a certain action, such as requiring the second party to ratify and implement the terms of the treaty or obliging it to take a certain action, for example, the France suspending the instruments of ratification with the Libyan State for the Treaty of Amity and Good-Neighborliness concluded in 1956 provided that Libya demarcates the borders Lebanese-Algerian during the French colonization of Algeria.

It should be noted that some scholars of public international law have stated that, given the importance of the vital treaty of the State and the terms of which it violates the constitutional rules of that State, it is a question of striking a balance between the adoption of that treaty and its application, or of invoking the text of the constitution if the interest of the State requires the existence of that treaty. the balance of the major interests of the State requires the amendment of the constitutional text, and another aspect of the case law is that there is no need for this budget and that any challenge to the terms of the Treaty is addressed. On the one hand, violating the Constitution under the pretext of political action and sovereign acts that prevent the judiciary from considering the appeal.

Fourth: Competence to review the constitutionality of treaties.

It is known that the treaty, after its adoption by the competent authority, becomes part of national legislation or even higher according to the legal regulations of each country.

If there is a conflict between its provisions and the provisions of internal law for systems which assimilate the treaty to its internal laws, it works on them by the rules of interpretation, the subsequent one prevails over the previous one and the special restricts the general, but in countries where the treaty is in a higher rank than the national law, its provisions are applied, and some systems even work with the provisions of the treaty, even if they violate the Constitution, because these countries have undertaken at the international level the rules of this treaty and are aware of their national legislation, which is something The International Court of Justice showed this trend by ruling in the French Free Zones case, which was ruled on 6/12/1930 AD and the Court stated that the France cannot rely on its national legislation to restrict the scope of its international obligations, "which the International Court of Justice has done in the cases of Polish nationals in Dar Nenzing, because the provisions of the Treaty of Versailles of 1919, which Poland has signed, have prevailed. The laws of the State of Poland.

There is no doubt that the increase in international and regional activity and the entry of States into closely related relations have increased the importance of treaties and have become superior to the local legislation of States, because of their great importance in the world of relations between States, national law regulates the relations of members of the same region, whereas treaties concern a more general and global organization, which is the relations of States and regions, and which is the largest and most important in the life of the world, and even in countries that still maintain their constitutional rules on these treaties. Our Supreme Court has shown this trend in a number of cases, holding that the treaty is a political and sovereign act and has not accepted the appeal.

If we address the question of competence to examine the constitutionality of treaties of the Libyan State, we find that the control of this type of international contracts in Libya is mainly subsequent to the control, but the practice of the Libyan Parliament, which is competent in accordance with the terms of the political agreement signed in Skhirat, Morocco, to ratify the terms of international treaties concluded by the Libyan State, we note that, in accordance with Parliament's Rules of Procedure and Rules of Procedure, it must discuss the terms of the Treaty point by point before ratifying and adopting it. This is sufficient to ensure that these clauses do not undermine the constitutional rules and constants on which the State is founded.

The question of agreements signed by the Libyan government and effective in signing them is important for post-monitoring if it is the judicial system.

Article twenty-three of Act No. 6 of 1982, as amended by Act No. 17 of 1994, defines the jurisdiction to hear appeals against treaties through the Constitutional Chamber of the Supreme

Court. or the method of constitutional defence put forward by the litigant in a substantive legal action against which the provisions of the Treaty are intended to be applied and which he considers unconstitutional.

The Constitutional Chamber of the Libyan Supreme Court, the first Arab constitutional court established since 1953, has issued numerous rulings on appeals for unconstitutionality of treaties.

The Supreme Court, together with its Constitutional Department, when such appeals are presented to it, first examines the conditions for acceptance of prosecution, does not accept an appeal lodged by a person without interest, capacity, and then examines the subject-matter of the application and may consider its acceptance or interpretation of the ambiguous provisions of the Treaty or the rejection of the application.

The Supreme Court has followed the approach of scholars of public international law and constitutional courts in many countries, so that it has prevailed over and broadened the concept of acts of sovereignty, as found in its judgement in Administrative Appeal case No. 151 of 64 concerning the memorandum of understanding on joint cooperation in the fields of combating migration concluded with Italy. It realizes its interests and, as such, it is not considered an act of administration, but rather an act of sovereignty from which judicial control moves away.

It should be noted that this judgment was contrary to the appeal judgment in Case No. 30 of 2017 by the Tripoli Court of Appeal, which decided to suspend the implementation of the provisions of the above-mentioned agreement and was based on the fact that this agreement poses a threat to the entity of the State of Libya by opening refuges for refugees on its territory and that the State of Libya incurs significant risks. material obligations (which are good reasons in my opinion). The Egyptian Constitutional Court confirmed this approach, emphasizing the considerations on which the Court bases its assessment of these acts, which are due to the nature of the acts themselves and not to the method or procedures for their conclusion, approval and ratification, which was set out in its Appeal Judgment No. 10 of 15 BC.

In the area of the Supreme Court's exercise of its work on international treaties, its competence extends to the interpretation of treaties to which the Libyan State is a party if the text of the agreement is ambiguous and capable of being interpreted in more than one sense, and the Supreme Court's judgment in Civil Appeal No. 21/8 stated that: "The Court has jurisdiction to interpret agreements to which the Libyan government is a party if the contested text is closed, but if the text is clear and apparent and does not tolerate any interpretation or jurisprudence, the lower court to apply the text of the Convention and not to suspect it in it", and the competence to interpret the competence of the treaties prevents the Constitutional Chamber of the Supreme Court, in accordance with the provisions of Article XVII of the Supreme Court Act promulgated in 1953, which was subsequently abolished by virtue of the provisions of Act No. 6 of 1982 AD, so that it became any subject court to which the text of a mysterious treaty is presented to take charge of its interpretation and application as if it were a legal text intended to be applied to the subject-matter of the dispute, taking into account the rules relating to the interpretation of legal texts and the first here that When interpreting the provisions of an international treaty, the judge must be guided by international rules and not by the rules of domestic law.

The conclusion

After the rapid development of the provisions of public international law and the growth and development of international relations, it has become necessary to recognize the important and central role of international treaties and conventions in all aspects of life for life on this earth.

It was necessary for these treaties to have a distinct position even above the rules of the Constitution, because the constitution regulates the life of a state, while the international agreement and treaties govern the life of many countries at the global and regional levels.

Therefore, many countries have adopted a compromise approach between their constitutional rules and what they have committed themselves to in the field of international law of commitments and agreements, so that there is no prejudice to the constitutional structure and organization of the State and no violation of the sanctity of an international agreement promised by the State, and the tribal oversight authorities of parliament and special committees aligned with the constitution and international agreement, in order to safeguard the interests of the supreme State and preserve the prestige and authority of the State, and the judiciary, which provides interpretation and subsequent oversight, has an important role to play in maintaining the constants. On which the state rests while respecting the state's commitments to safeguard higher interests, and the simplest way for the judiciary in this context was to expand the theory of acts of sovereignty.

States should, when undertaking treaty clauses, exercise great caution and prudence in drafting texts, in order to achieve their interests at the local and international levels and not to expressly violate the provisions of the Constitution on which the State was founded.

The constitutional judiciary, in particular, has the duty to balance the provisions of the Constitution with the obligations of the State, and it must realize that the rules of international law and the obligations to which they refer for the signatories of the international commitment have become rules corresponding to the provisions of the constitutional texts, so as not to reach the point of collision between the rules of international law and the rules of international law. national law.

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“The Status of International Law in the Turkish Constitution”

Presented by: Mr Zühtü Arslan
President of the Constitutional Court of Türkiye

Honourable Presidents and Justices,
Distinguished participants,
Ladies and gentlemen,

It is a great pleasure to be here and address such eminent participants of the 6th Congress of CCJA.

I would like to thank Mr. Said IHRAI, the President of the Constitutional Court of Morocco for his warm hospitality and for the organization of this Congress.

Today I am going to talk about the status and role of international law in constitutional system of Türkiye. I will first refer to the constitutional provisions concerning the status of the international treaties, and then touch upon the Turkish Constitutional Court’s (Court) interpretation and application of the international human rights conventions.

Before proceeding to the case of Türkiye, I would like to say a few conceptual words on the moral purpose of the law in general and international law in particular.

1. Introduction: Remarks on the Purpose of Law

As you all know, the main purpose of the state based on rule of law is to provide a peaceful environment for the co-existence of human beings with their diversity, rights and freedoms.
We can find the roots of this idea in the thoughts of Al Fârâbî who lived eleven centuries ago. According to Al Fârâbî, a society in which people help each other to achieve the real happiness is a virtuous society. A nation where all cities help each other for the same purpose is a virtuous nation. Furthermore, a virtuous or excellent universal society can be achieved if all nations help each other to achieve the happiness. In Al Fârâbî’s words “the excellent universal state will arise only when all the nations in it co-operate for the purpose of reaching felicity”.

I must recall that Al Fârâbî's concept of "sa'ada" (سعادة) is much more comprehensive than the English words "happiness" or "felicity". He invokes this term as an "absolute good" which is desired for its own sake in this earthly life and afterlife as supreme happiness. The term sa'ada" (سعادة) refers to well-being of individuals in every sense, simply because "there is nothing greater beyond it for man to obtain".

Therefore, it wouldn't be wrong to say that Al Fârâbî laid down the foundation of international community as peace and happiness to be attained through solidarity and cooperation of the nations.

Long after Al Fârâbî, Kant formulated the idea of peaceful and cosmopolitan international community in more concrete terms. In his famous essay entitled "perpetual peace", Kant explained the ways of securing peace at national and international levels.

He argued for the national constitutions founded on the principles of freedom and equality for all members of a society. Kant also proposed to create what he called "a pacific federation" which would secure a general agreement between the nations on seeking "to end all wars for good". Irrespective of the question of whether the thoughts or rather dreams of Al Farabi and Kant came true today, they suggest that it is crucial to establish a national and international public order to attain peace and happiness.

Now I would like to dwell upon the relationship between national and international law in the Turkish Constitution. Let me start with the status of the international law in our legal system.

2. The Status of the International Law in the Turkish Constitution

Article 90 of the Turkish Constitution is devoted to the issue of the status of international treaties in domestic legal system. It explicitly stipulates that international treaties duly put into effect have the force of law. In other words, any provision of the international treaties, which were properly signed and ratified by the state, shall form part of our domestic law.

Article 90 of the Constitution also provides some answers, albeit vague, to the questions as to the position of the international treaties in the hierarchy of legal norms. First of all, Article 90 makes it clear that "no appeal to the Constitutional Court shall be lodged with regard to these treaties, on the grounds that they are unconstitutional". Therefore, the Constitutional Court is not entrusted with the power to review the constitutionality of international treaties. It is argued that the ban on constitutional review of the international treaties is one of the indications of their superiority to domestic law.

Secondly, Article 15 of the Constitution states that in times of emergency, fundamental rights and liberties shall be restricted or suspended as contrary to the guarantees enshrined in the Constitution. However, according to Article 15, the obligations arising from international law must be respected in derogating the constitutional rights and liberties during the times of emergency. This provision is also invoked to argue that international treaties are superior to domestic law.

Thirdly, and more importantly, Article 90 of the Constitution was amended in 2004 to give a special power and privilege to international human rights treaties vis-à-vis national law. It states that "In the case of a conflict between international treaties, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international treaties shall prevail."

I must note that the amended Constitution resolved the problem of hierarchy between human rights treaties and ordinary act of parliaments in favor of the former, but it remains silent as to any possible conflict between international human-rights conventions and the Constitution itself.

It is at least theoretically true that the Constitution prevails in such a conflict. However, in reality the Turkish Parliament amended the Constitution for several times in order to solve the conflict between the international treaties, most notably the European Convention on Human Rights, and the Constitution. The constitutional amendments concerning the periods of pre-trial detentions, abolition of capital punishment and abolishment of state security courts are a few examples of parliamentary steps taken to make the text of the Constitution in conformity with the jurisprudence of the European Court of Human Rights.

Apart from such amendments to the Constitution, the Constitutional Court of Türkiye plays a vital role in preventing possible conflicts with the international law. Now we can address the details of this role.

3. The Role of International (Human Rights) Conventions in the Jurisprudence of the Constitutional Court of Türkiye

The Constitutional Court has interpreted and applied Article 90 of the Constitution on several occasions. Referring to the ban on constitutional review of the international treaties, the Court has declared that this "attaches privilege to these treaties, more than the laws, thus attributing a greater weight to the former."

At this moment it must be noted that in Turkish legal system, the Parliament enacted a law to ratify the international treaties (art. 90/1), and this law approving ratification is subject to review of the Constitutional Court. In a judgment of 1995, the Court held that an application may be lodged with the Constitutional Court against any law approving the ratification of treaties, independent of such treaties.

In 2012, the Court determined the scope of the constitutionality review of the laws ratifying the treaties. The Court stated that the review of the laws approving ratification shall not lead, even indirectly, to the possibility of reviewing the content of these treaties. It therefore distinguished between those ratifying laws, which have separate contents and meaning independently of the treaties, and those which are simply referring to the relevant provisions of the treaties. For the Court, it is only the former, not the latter, that is subject to substantial review of the Constitutional Court. In brief, the Court has abstained from a review that may amount to an indirect review of the treaty provisions.

When it comes to adjudication of cases involving constitutional rights, the Constitutional Court takes into account the international obligations and refers systematically to the international and European human rights instruments. As a matter of the fact, the introduction of individual application system (constitutional complaint) in 2010 has radically changed the relationship between the European human rights law and national law of Türkiye.

Amended Article 148 of the Constitution provides everyone with the right to apply to the Constitutional Court on the allegation that one of the fundamental rights and freedoms under joint protection of the Constitution and the European Convention on Human Rights has been violated by public authorities. Accordingly, an individual application can be examined by the Court if the relevant right or freedom falls within the joint realm of protection of the Constitution and Convention. Otherwise, it would be declared inadmissible as being incompatible ratione materiae with the provisions of the Constitution.

In its judgments concerning constitutional rights, the Constitutional Court considers not only the European Convention and the case law of the Strasbourg Court, but also other international treaties ratified by Türkiye. To give one example, in a judgment of 2015, the Court found a violation of the right to respect for family life on the ground that the dismissal of the request for the return of the child within the scope of the Hague Convention on the Civil Aspects of International Child Abduction was not relevant and sufficient for protecting the applicant's right.

Last, but not least, I would like to mention a judgment of the Court which clearly reveals its role in interpreting and applying the constitutional provisions in line with the European Convention and the case law of the Strasbourg Court. This judgment is also a clear example of the rights-based approach adopted by Constitutional Court in adjudicating individual applications.

Article 187 of the Turkish Civil Code prevents women from using maiden name after marriage. According to this article, women have to take their husband's surnames first, and then if they desire, their maiden names alongside the surname of the husband. In 2011, in reviewing the constitutionality of this article, the Plenary of the Constitutional Court declared that it was not contrary to the Constitution. The Court also stated that Article 90 of the Constitution was not relevant to the concrete case at hand.

After the adoption of individual application, the Constitutional Court had to reconsider its view on this issue. This time in an individual application, the Court found a violation of the right to the protection of spiritual existence on the grounds that the surname is one of the distinctive elements in shaping the identity of an individual.

The Court held that in case of conflict between the provisions of the international treaties and domestic law, the courts must give priority to the former as stipulated by Article 90 of the Constitution. The Court emphasized that in resolving the conflict between Article 187 of the Civil Code and the relevant case law of the Strasbourg Court, which found this article incompatible with Article 8 of the Convention, the domestic court should have taken into account the latter.

4. Conclusion: Borrowing the Earth from Children

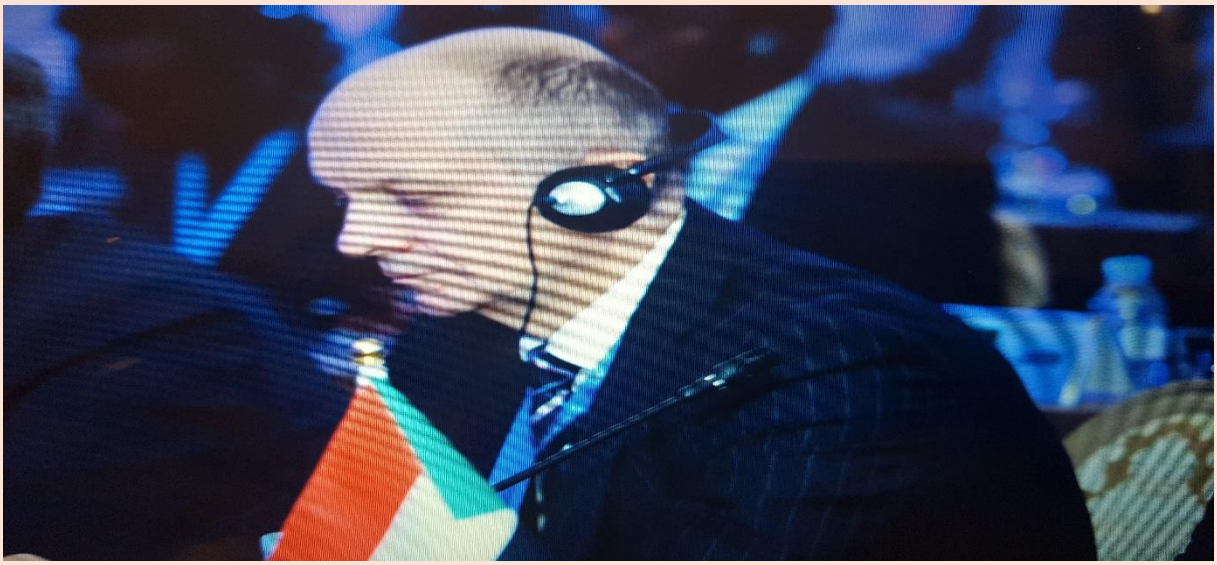
In conclusion, the Constitutional Court of Türkiye played a very significant role in mitigating the possible conflicts and interpreting the constitutional provisions in line with the provisions of the international treaties. However, the relationship between international law and domestic law is too complicated to settle permanently. This is also the case in the legal and constitutional order of Türkiye as I tried to explain in my speech.

Today we are quite far away from realizing the dreams of the philosophers like Al Fârâbî and Kant. Nevertheless, the ideals such as "supreme happiness" and "perpetual peace" are still relevant in contemporary world. More importantly, the international law and institutions have still certain potentials to bring the human race nearer to a peaceful co-existence of human beings as free and equal members of the humanity.

It is our responsibility towards next generations, our children and grandchildren to leave a world in which they live freely, happily and peacefully. We should keep in mind the important message of following proverb: "We don't inherit the earth from our ancestors; we borrow it from our children."

Thank you very much for your attention.

“The Russian Constitutional Court and international obligations”



Presentation of A. Bushev
Judge of the Constitutional Court of the Russian Federation,

Dear President of the Conference!
Dear Secretary General and Members of the Conference! Dear Colleagues!

It is a great honor and pleasure for me to represent the Constitutional Court of the Russian Federation at the 6th Congress of the Conference of Constitutional Jurisdictions of Africa. First of all, please allow me to express gratitude to His Majesty King Mohammed VI under whose high patronage this Conference is organized. I would like to thank the Constitutional Court of Morocco and the Government of Morocco for the excellent organization of this event. We would like to specially thank also the Secretary General of the Conference, Mr. Moussa Laraba for his unwavering support and help.

The Constitutional Court of the Russian Federation has been an observer member to the Conference since 2018. But even before that, cooperation with colleagues from the African continent was important to us. We have concluded a number of bilateral cooperation agreements with constitutional jurisdiction bodies of Africa, and we were glad to welcome many of you to our conferences, which before the pandemic were held under the auspices of the St. Petersburg International Legal Forum. Together, we are united by friendship and mutual respect with both participants and observer members of the Conference.

Following the yesterday presentation of my dear colleague from Djibouti I would like to underline the uniqueness of African experience. Africa is a distinctive, dynamic and rapidly developing region. In a certain way it resembles Russia, with comparable territory, and also a multitude of communities, cultures and religions. Experience of African countries attracts well-deserved attention in many areas. This is also true for constitutional justice. In this respect, African countries are characterized by a combination of tradition and innovation, a fusion of different legal cultures, a true convergence of

legal systems. Suffice to recall the insightful presentation of the delegation of Cameroon, which took place at the 10th Summer School organized by the Constitutional Court of Turkey this autumn; our representatives also had the honor to contribute to this important event. In preparation of our Judgments, we often study the experience of our foreign colleagues, and in this regard the case-law of constitutional justice bodies in Africa is always interesting.

We are glad to see that constitutional justice bodies of Africa are united in their desire for meaningful dialogue and exchange of experience.

The subject of the conference «African Constitutional Courts and International Law» is highly relevant. It is well known that creation of modern international law is closely linked to Europe, while the international law itself claims to be universal. This peculiar paradox placed at its very root more and more questions, where does the universal obligation of a state end, given that its scope is not determined by the state itself, and to what extent a state can rely on its own legal traditions and values.

In my submission I would like to present to your kind attention the approach developed by the Russian Constitutional Court on the matter of cooperation between the national judiciary called by definition to protect national values, and, on the other hand, the international court, interpreting commitments provided for in the texts of international treaties.

In this respect, I will share a few examples of where and how the discrepancies arose and were resolved, and in the meantime the instances where the Constitutional Court as a result of constructive professional dialogue between national and international bodies has further developed the views proposed by its international counterpart.

Let me hope that the approach in question, the logic and methodology worked out by the Russian Constitutional Court might be of interest for our colleagues from the African continent.

In Russia, the Constitution is the legal reference point to answer the issue of hierarchy between international and national law. In this respect I wholly concur with my learned colleagues from Morocco, Kenya, Mauritania, Mozambique, Cape Verde, and others who had accentuated the importance of constitutional provisions. Under part 4 of Article 15 of the Russian Constitution, I quote, “universally recognized principles and norms of international law as well as international agreements of the Russian Federation shall be an integral part of its legal system. If an international agreement of the Russian Federation establishes rules, which differ from those stipulated by law, then the rules of the international agreement shall be applied”. At that, it is commonly recognized that the Constitution of a State differs from ordinary legislation. Even the Universal Declaration of Human Rights of 1948 in its Article 8 notes, that, I quote “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”. Thereby it accepts the different status of these acts. Moreover, in my opinion, Article 46 of the Vienna Convention on the Law of Treaties implies that consent to be bound by a treaty is not limitless, it is not absolute. In particular an international treaty must not be in breach of internal law of fundamental importance. Clearly, such norms are first and foremost enshrined in the Constitution.

There is no doubt that constitutional judiciary is in the best position to determine common ground between national and international law, and to establish the “limits of tolerance”, or in other words «the borders of readiness to compromise» - a term coined by the President of the Constitutional Court of the Russian Federation Mr. Valery Zorkin. European practice yesterday recalled by our colleague from Niger shows, that in some cases the constitutional justice bodies have defended the

sovereignty of state from aggressive globalization. The Constitutional Court of the Russian Federation has developed a number of legal positions that take into account the international obligations of the State but protect its constitutional identity. These legal positions were embraced by the legislator, and in 2020 were included in the Constitution after the popular vote. The current provisions of the Constitution provide that decisions of international bodies adopted on the basis of provisions of international treaties in their interpretation that contradict the Constitution shall not be executed.

This constitutional provision can be implemented through a special constitutional-judicial mechanism. At that, this mechanism does not serve to refuse to fulfill international obligations, but rather to find a compromise, to ensure a dialogue between national and supranational legal systems, but with due respect of the unconditional supremacy of the Constitution.

The necessity to develop such a mechanism became evident for the Russian authorities after the European Court Judgment of 2013 in the case of «Anchugov and Gladkov v. Russia», where this Court directly criticized the provision of the Constitution of the Russian Federation depriving citizens who are kept in places of imprisonment under a court sentence from the right to vote in election of the public officials. Essentially the interstate court declared that this prohibition should be abolished notwithstanding clear provisions of the Constitution. Strictly speaking, the relevant international treaty contained no provision that would contradict the Constitution of Russia. The discrepancies were fully conditioned by the interpretation of the international treaty by the interstate court. This interpretation posed a difficult question before the Russian legal experts since the constitutional provision cannot be cancelled by a decision of an international court. Moreover, in this case it concerned an unchangeable constitutional provision that could not be repealed without the adoption of a new Constitution, since this provision directly regulates the rights and fundamental freedoms of citizens (Chapter 2 of the Constitution).

After adoption of this Judgment, the representatives of Parliament lodged a request with the Constitutional Court. This request challenged procedural provisions ensuring implementation of the European Court judgments and the Law on ratification of the European Convention for the protection of Human Rights and Fundamental Freedoms.

The Constitutional Court thought to find a compromise. In its judgment of 14 July 2015 No. 21-П, the Constitutional Court found the challenged provisions of the Russian law to be compatible with the Constitution. It suggested the federal legislator to develop a mechanism to resolve similar conflicts in the future. As a result, on 14 December 2015, the legislator established such a mechanism in a special Chapter 13.1 of the Law on the Constitutional Court. The relevant provisions allow state bodies to submit a request to the Constitutional Court if they find it impossible to execute the decision of an interstate body in accordance with the Constitution of the Russian Federation.

The first activation of this mechanism was connected to the said Judgment in «Anchugov and Gladkov». Once again, let me emphasize – in this case the international court demonstrated its activism by interpreting the provision of international treaty far beyond its text. In the meantime, the general norm of this treaty establishes obligatory nature of the international court for the Member states. Is such obligatory nature absolute? In the Judgment of 19 April 2016 No. 12-П, the Constitutional Court excluded the possibility of executing the European Court Judgment in part demanding for amendment of Article 32 of the Constitution in light of impossibility to change this provision without adopting a new Constitution. However, the Court did not exclude possibility to solve the issue by way of optimization of the system of criminal punishments, including through the transfer of certain regimes of serving the sentence into alternative forms of punishment, associated with forced restriction of freedom but not involving restriction of voting rights. The legislative

implementation of this approach presented itself in the refinement of the forced labor punishment which in some cases replaces deprivation of freedom.

The Constitutional Court took certain steps towards the interstate court because it held that the Russian legislature had the right (but not the obligation) to grant voting rights to some prisoners, but only by exercising its sovereign rights, and not under instructions from the supranational body. This compromise solution effectively resolved the contradiction caused by Anchugov and Gladkov judgment. In September 2019, the Committee of Ministers of the Council of Europe recognized judgments of the European Court of Human Rights in the Anchugov and Gladkov case and the similar Isakov and Others case as executed. The Council of Europe representatives appreciated the approach proposed by the Constitutional Court in the said Judgement with regard to partial execution of the «Anchugov and Gladkov» judgment as harmonizing the provisions of Constitution and the Convention in the relevant interpretation.

To reiterate, the protective mechanism of control over the constitutionality of international standards in no way derogates from the principle of «pacta sunt servanda», rather seeking to protect sovereignty and national values. The Constitutional Court is afforded an opportunity to find an acceptable, optimal legal solution in a situation of contradiction caused by a supranational body, i.e. in the situations where such body makes an extensive interpretation of an international treaty, going beyond the scope of its authority. At the same time, the application of this mechanism is possible only under strict conditions ensuring guarantees against arbitrary non-fulfillment of international obligations.

Another major problem with the judgments of the European Court was connected to its position with regard to certain values as «universal» or «general» for the Member states to the Council of Europe. Clearly, the states united within a single region may have different understandings of even such terms as «prohibition of discrimination» or «freedom of expression». Their broad interpretation has more than once led to conflict based not just on law, but on values. This problem yesterday was precisely pointed out by the representative of Senegal.

A good example of this is the Alexeyev case. An LGBT activist appealed to the Constitutional Court and the European Court, challenging the federal prohibition of LGBT propaganda among minors. While in Europe this prohibition was found to be inconsistent with the Convention, the Constitutional Court called for a more detailed examination of the circumstances of each alleged violation related to propaganda in question.

In its Judgment of 23 September 2014 No. 24-П, the Constitutional Court stated that in every case it must be clarified whether the interests of minors had been violated. In this context it noted that sometimes public events of the applicant and his supporters were held in front of schools and a library for children. The Constitutional Court also emphasized that the provision itself is not a prohibition of LGBT, and does not entail violation of the rights of members of this community, but is aimed to protect the rights of the child.

Subsequently, in the case «Bayev and Others» the interstate court rejected the position of the Constitutional Court. It stated that the authorities had not provided evidence of violation of interests of children. However, the international Court also ignored the fact that applicants did not conceal provocative nature of their pickets, motivated by adoption of the law prohibiting propaganda of non-traditional sexual relationships. No account was taken of the vulnerable position of children, and the right of parents to bring them up as they see fit.

It follows that while the Constitutional Court viewed prohibition of discrimination (including on the basis of sexual orientation) in terms of everyone's right to live their own lives, its European counterpart, as we see it, relied on its broad understanding including the ability to promote one's lifestyle among person who are unable to critically evaluate such propaganda due to age.

Another example of similar divergence of values is the so-called «Pussy Riot case». In the Judgment «Maria Alyokhina and Others v. Russia» the applicants complained of being prosecuted for criminal hooliganism after holding a so-called «punk prayer» in the largest and one of the most revered Orthodox Christian temples in Russia – the Cathedral of Christ the Savior. Indecently dressed women in ski masks danced and shouted in front of the altar – before the sacred images of the most revered orthodox Christian saints. Actions of the applicants were considered provocative and unacceptable by national authorities, especially since they took place at a place of worship. Interference with religious rights protected by the Constitution was the starting point for Russian law enforcers. One of the applicants appealed to the Constitutional Court in connection with her criminal prosecution. By decision of 25 September 2014 No. 1873-O, her complaint was denied. The Constitutional Court emphasized that religious issues are sensitive, and that provocative and blatant disregard for religion and believers goes beyond the freedom of expression guaranteed by the Constitution. Nevertheless, the European Court decided that the applicants' actions were realization of their right to freedom of expression, and fell under protection of the Convention.

Last, but not least example, in 2021 case «Fedotova and Others v. Russia» the authorities were essentially recommended to recognize legal status of same-sex marriage contrary to constitutional provisions.

Therefore in some cases the international court has demonstrated values that are in a deep contradiction with the values of Russian society embodied in the Constitution as the Basic Law of state. The Constitutional Court, being in «direct contact with the vital forces» of society took into account the special place that religious and «traditional» values have in Russia. The interstate court on the other hand relied on «universal European values» which by and large do not take into account the social and cultural specificities of the national identity.

It seems to me that the mentor-like attempt of an international organization to apply universal standards to moral and ethical relationships such as family, marriage or religion is essentially contrary to jus cogens principle of sovereignty. This is so not because of intention of a particular state (in this case, Russia) to oppose the international community, but to the difference in moral ideas about what is fair and proper, which cannot be formally reduced to a single meaning.

Despite certain tensions, even if related to fundamental issues of identity of the Russian nation, I must underline with satisfaction that many approaches of the international court positively influenced the development of Russian law.

Overall, the case-law of the European Court was in demand and was gradually implemented by the Russian authorities. The Constitutional Court of the Russian Federation contributed to this work significantly. One can remember the prohibition to implement capital punishment, that was imposed temporarily in accordance with the Judgment of 2 February 1999 No.3 and further confirmed by the Decision of 19 November 2009 No. 1344-O-R. The Court relied inter alia on the Protocol to the European Convention, even though it was not ratified by Russia. The Constitutional Court was often like-minded with its European counterpart when it ensured effective legal remedies available to Russian citizens. Among the relatively recent examples one can name the case on compensation for unlawful placing a minor in a, so called, restrictive educational institution. In this regard, in its

decision in the case “D.A. v. Russia” the European Court confirmed that legislative problems were effectively dispelled under the rulings of the Constitutional Court of Russia.

The Russian experience is based on necessity to create a legal mechanism, a clear process for working out a compromise, as opposed to the ad hoc solutions sometimes present in international practice. This approach ensures a structured procedure and is consistent with the principle of legal certainty, making the state's response to external challenges predictable. In this sense, it seems that the experience of the Russian Federation can be useful for other countries.

One of the worldwide famous Russian writers Fyodor Dostoyevskiy in his philosophic short novel “House of the Dead” wrote: «The highest and the most characteristic feature of our nation is a sense of justice and a desire for it». I think that in the legal sphere the search for justice leads to development of balanced, stable, and foreseeable regulatory framework. From this point, in the era of globalization one can see that what is necessary or even unavoidable is a constitutional supervision over constitutionality of international organizations’ judgments. However, the limits and scope of such a mechanism must be strictly defined. It should take into account the internal socio-cultural features of the relevant nation, and at the same time it must not prevent the positive aspects of different legal systems coming close to each other. In other words, the supervision should aim to achieve balance between the competing national and international standards.

Undoubtedly, we are open for discussion, exchange of opinions and ready to provide more details on operation of the Constitutional Court of the Russian Federation. Please do not hesitate to contact me and my colleagues both on the premises of this high-level Conference or afterwards, should you have any specific questions or require further information.

Thank you for your attention!

“Status of the international norm in the Constitution of Angola”

PRESENTATION by Mrs. Victoria IZATA
Judge at the Constitutional Court of Angola

I am deeply pleased to be before you, and in particular at this 6th Congress of the Conference of Constitutional Jurisdictions of Africa (CJCA), whose Constitutional Court of Angola has had the privilege of presiding over the institution for the past two years and to pronounce on the status (state) of international standards in the Constitution of my country.

International law, since the annals of Angola's history as an independent country, has been an integral part of our legal order. It had constitutional consecration and protection in the first constitutional law No. 1/75, approved with the proclamation of our national independence on November 11, 1975, when Angola assumed itself as an independent and sovereign state and was always revered in subsequent amendments, until the approval of the Constitution of the Republic of Angola in 2010.

As they say, international law tends to regulate interests of transnational or border scope, it is something that transcends the sovereignty of a State, but results from coordination between different States. Today's international law is dynamic and flexible, but it does not escape the classic concerns, tending to regulate and discipline conflicts and interests between States, international organizations or NGOs.

Today, the enshrinement of international law in our legal order is supported by the Constitution in the section on fundamental principles (article 13), which states: "General or common international law, received under this Constitution, shall be an integral part of the Angolan legal order".

In Angola, the sources of international law invoked in the Constitution, and this applies, under Article 12, paragraph 1, are the Charter of the United Nations and the Charter of the African Union. It should be noted that, with regard to fundamental rights, the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights are also invoked under article 26.

Our Lex Mater enshrines international treaties and agreements as sources of international law, provided that they are regularly approved or ratified, in force in the legal order after their official publication and entry into force in the international legal order.

It is necessary to mention that the hierarchical position of constitutional norms in relation to other norms always places them in a position of supremacy, even in relation to the norms of international law, provided, however, that the norms of international law, provided that they are approved by Parliament, ratified by the President of the Republic and published in the Official Gazette, be part of our internal legal order, in a hierarchical position just after constitutional norms and above ordinary norms.

The Angolan Constitution does not make a formal distinction between treaties and conventions and other international norms.

The international treaty is densified in ordinary law like any agreement, whatever its particular name, that is to say whether it is a treaty, agreement, convention, statute, charter, protocol, that is to say that the name of the treaty does not matter, implying only that it is a document of an international nature.

The main source of Angolan law is the Constitution, which condenses these issues into an ordinary law, namely the Law on International Treaties, which classifies them as: solemn treaties, executive agreements and agreements in simplified form, differentiating them by the body competent to approve these legal instruments.

Under our sub-constitutional law, solemn treaties must be signed by the President of the Republic, the Minister for Foreign Affairs or another duly authorized member of the executive, and their entry into force in the domestic legal order is subject to prior review by the Council of Ministers, formal approval by the National Assembly and ratification or accession by the President of the Republic.

It is also important to note that the solemn treaties deal with matters relating to treaties relating to the participation of Angola in international organizations, treaties establishing international organizations, treaties on questions of rectification of borders, treaties of friendship and cooperation, treaties relating to peace, treaties of defense and those concerning military matters and treaties involving amendments in the national legislative issues; namely, the status of persons and property, nationality agreements, consular agreements, etc.

In view of what has been mentioned, in the Angolan legal system, international treaties, although they have constitutional dignity, are not immediately and directly applicable, in accordance with article 13, paragraph 2, read in conjunction with article 161 (k) and article 121 (c) of the Constitution. They are submitted to the National Assembly for approval in plenary session by resolution and to the ratification or accession of the President of the Republic and, at the end, to publication in the Official Gazette.

In addition, our Constitution enshrines the political and legislative competence of our Parliament to approve with a view to their ratification and accession treaties, conventions, agreements and other international instruments dealing with matters within its legislative competence.

Therefore, at the level of the Constitution, our Magna law, Parliament has a decisive, crucial and unique role in the approval of international treaties. There is no overlapping body with competence to approve these international instruments.

Consequently, Parliament is the legislative body par excellence that approves solemn treaties and the President of the Republic alone is competent to ratify them.

However, other international agreements (executive agreements and agreements in simplified form) by the nature of their object and importance or which do not establish any legal formality after

signature, for their entry into force, fall within the competence of the President of the Republic, in the field of international relations, as Holder of the Executive Power and Minister of Foreign Affairs, respectively.

In this regard, we believe it is equally appropriate to mention that, according to Angolan infra-constitutional law, executive agreements are all others that are not mentioned in solemn treaties and agreements in simplified form are those dealing with the exchange of notes, notes verbales, navigation agreements and memoranda.

Excellencies!

As we mentioned earlier, the Constitution of the Republic of Angola is our Magna law, our standard law. It represents the agenda of structuring principles with which the functioning of our country is organized and governed.

With the enshrinement of constitutional norms on international relations and international law, several resolutions have been approved previously by the People's Assembly and today by the National Assembly (our Parliament) which have inserted into our domestic legal order several treaties and conventions emphasizing:

1. Universal Declaration of Human Rights man; - Adopted and proclaimed by the General Assembly of the United Nations (Resolution 217 A III) on 10 December 1948;

2. Resolution 15/84 of 19 September – Approves the accession of the People's Republic of Angola to the Convention on the Elimination of All Forms of Discrimination against wives;

3. Resolution No. 20/90 of 10 November – Approves the ratification of the International Convention on the Rights of the child;

4. Resolution No. 1/91 of 19 January – Approves the accession of the People's Republic of Angola to the African Charter on Human and Peoples' Rights, also known as the "Banjul Charter";

5. Resolution 26-B/91 of 27 December - Approves with a view to its accession the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil Rights and Policies;

6. Resolution No. 25/00, of 1 December – Approves the accession of the Republic of Angola to the Rome Statute establishing the International Criminal Court;

7. Resolution No. 33/03 of 9 December - Approves for ratification the Protocol establishing the Peace and Security Council of the Union African;

8. Resolution No. 21/02 of 13 August – Approves the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography children;

9. Resolution No. 23/07 of 23 June – approves, for accession, the Optional Protocol to the United Nations Convention on the Elimination of All Forms of Discrimination against Women wives;

10. Resolution No. 25/07 of 16 July – Approves for accession the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;

11. Resolution No. 2/13 of 11 January – Approves for accession the Optional Protocol to the Convention on the Rights of Persons with Disabilities, adopted in New York on 30 March 2007;

12. Resolution No. 11/13 of 11 April – Approves the ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa – Convention of Kampala;

13. Resolution No. 38/16 of 12 August – Approves accession to the Convention on the Recognition and Enforcement of Arbitral Awards Foreign;

14. Resolution No. 50/18 of 31 December – Approves for the accession of the Republic of Angola, the Protocol of the Court of Justice of the African Union;

15. Resolution No. 4/19 of 18 February – Approves for ratification by the Republic of Angola, the African Union Protocol on the Statute of the African Court of Justice and Human Rights;

16. Resolution No. 35/19 of 9 July – Approves the accession of the Republic of Angola to the International Convention on the Elimination of All Forms of Discrimination Racial;

17. Resolution No. 37/19 of 9 July - Approves the accession of the Republic of Angola to the Second Optional Protocol to the International Covenant on Civil and Political Rights, with a view to the abolition of the death penalty death;

18. Resolution No. 38/19 of 9 July - Approves the accession of the Republic of Angola to the Convention against Torture and Other Cruel, Inhuman or Other Cruel, Inhuman or Other Cruel, Inhuman or Other Punishment or Degrading;

19. Resolution No. 3/20 of 2 January – Approves for ratification, the African Charter on Democracy, Elections and Governance;

20. Resolution No. 14/22 of 7 April – Approves for ratification, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa;

21. Resolution No. 15/22 of 7 April – Approves for ratification, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa.

As is obvious, the Republic of Angola has acceded to and applied many international instruments, and it is important to note that the Constitutional Court of Angola, in which we are integrated, has proliferated in the application of certain international instruments to offend the fundamental guarantees enshrined, inter alia, in the Universal Declaration of Human Rights. in the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Cultural Rights. Politicians.

It was also suggested that we briefly address the principle of reservation of the possible in our Basic Law.

In this regard, we would first like to mention that the principle of the reservation of the possible since its creation in Germany has been superimposed in many States with the aim of limiting the requirements in favor of fundamental rights, always taking into account the financial component of the State, its possible adequacy and the need for the request made by the citizens, with proportionate discretion.

The principle of the reservation of the possible is closely linked to the welfare state. It turns out that there are social rights whose implementation is intrinsically linked to the ordinary legislation approved by Parliament and this can be verified with the general state budget which presents the financial forecasts for each calendar year.

The Constitution of the Republic of Angola can be understood as the principle of reservation of the possible in article 28, paragraph 2, by enshrining "The State shall adopt legislative initiatives and other appropriate measures for the progressive and effective implementation, within the limits of available resources, of economic, social and cultural rights".

The reservation of possibility indicates that the realization of fundamental rights is subject to the presence of financial resources from the State to bear the costs of the rights enshrined in the Constitution.

As the Angolan João Valeriano told us, during the celebration of the 12th anniversary of the Constitution of the Republic of Angola, "From the principle of the reservation of the possible, what emerges is that social rights are inscribed in vague norms, of indeterminate content conceived and positive only through principles, leading to their effectiveness always according to the score, As always, opposing rules and principles, referring to the budgetary conformation of the legislator, more concretely, to the clause of the reservation of the possible.

Similarly, it also stipulates that "the reservation of possible conditions as an extreme limit, the desires for social benefits, linking them to the financial capacity of the State which, regardless of financial availability must be respected the essential core of this right".

It is never an exaggeration to emphasize here that, in the context of fundamental rights, the Angolan Constitution enshrines in its article 26 and here, for a better elucidation, it is transcribed ipsis verbis that "the constitutional and legal precepts relating to fundamental rights must be interpreted and integrated in harmony with the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights".

In this context, whenever a fundamental rights dispute arises, the Court must have recourse to international instruments, such as the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights.

It is one of the international instruments that our Constitution expresses exhaustively that in the assessment of disputes by Angolan courts in matters of fundamental rights, the same applies even if they are not invoked by the parties.

Thank you very much for your attention!

“Status of the international standard in the Constitution of Comores”

Presented by Mr Idrisse Abdou
Judge at the Supreme Court of the Comoros

The international norm, over the decades, has developed both in the matters, the fields and the subjects of its intervention, while the constitutions, formerly disconnected from social and economic considerations, are now working to affirm and guarantee a number of fundamental rights and freedoms provided for by various international conventions.

Could this vision have inspired in its development, the Comorian constitution adopted by referendum on August 6, 2018? In any case, it shows an interest in the international standard through its preamble and the chapter entitled “international relations and international law”.

A status is certainly recognized by international standards through constitutional provisions. To define it, we will examine on the one hand, the aspects of the authority granted in relation to the hierarchy of norms before wondering what guarantees this status is based on, on the other hand.

I) The Primacy of the International Standard

The constitution of August 6, 2018 of the Union of the Comoros evokes in its preamble the attachment of the Comorian people to the principles of fundamental rights as they are defined by various charters, pacts and declarations as well as by international conventions, in particular those relating to the rights of children and women, to then indicate that the international relations of the Union of the Comoros are governed in particular by respect for international law (Article 11), and to recall the principle of the primacy of international standards in terms similar to many French-speaking constitutional provisions according to which " the treaties or agreements duly ratified or approved have from their publication an authority superior to that of the laws of the Union, subject, for each agreement or treaty, to its application by the other party ” (article 12 al 3).

The terms of attachment and respect tend to emphasize international law, those of higher authority attach legal effects to the principle of a supremacy, admittedly conditional, which should be examined in its aspects.

II) A Conditional Supremacy

The constitutions of certain States grant treaties an infra-constitutional but supra-legislative value. The primacy of the international norm over the norms of domestic law is not, however, automatic. It presupposes regular ratification or approval. Categories of treaties mentioned by name can only be ratified or approved by virtue of a law and do not take effect until they have been ratified or approved. However, the higher authority is expressly attached to prior publication, in particular in the official journal, failing which its inapplicability or unenforceability could be invoked. Certain treaties must be incorporated into the internal legal arsenal. It will then remain later to wonder about the rule of reciprocity or application by the other parties. The control of a reciprocal application can moreover be a difficult exercise for the judge.

This rule now seems more theoretical and doomed to obsolescence because many conventions are incorporated directly into domestic law and govern relations between legal persons and individuals. To illustrate our point, we will take the most vivid example in the Comorian legal system; that of the Ohada Treaty. This provides that the uniform acts are directly applicable and binding in the States Parties, notwithstanding any contrary provision of domestic law, prior or subsequent. These are the rules relating to company law and the legal status of merchants, the collection of debts, sureties and means of execution, the system of company recovery and judicial liquidation, and arbitration law. A Common Court of Justice and Arbitration ensures the common interpretation and application of the Treaty.

It can be seized by means of an appeal in cassation, the Court rules on the decisions rendered by the Courts of Appeal of the States Parties.

What happens when an international commitment includes a clause contrary to the constitution? Would it be stillborn, as one author maintains, in the absence of a constitutional revision. It is to be feared, however, that the authorized public authorities may refrain from initiating the preliminary procedure of referral to the Supreme Court for various reasons, in particular the situation of poverty with which certain States are confronted.

The fact remains that the international standard is confronted in its effectiveness with socio-economic and political realities and with the absence of organic and procedural guarantee to be prevailed.

III) Absence of Organic and Procedural Warranty

If respect for the hierarchy of norms on the internal level is ensured by effective procedural mechanisms of legality and constitutionality, it is otherwise with the superior authority recognized in treaties and international agreements on laws.

The courts cannot generally, except to exceed their jurisdiction, make international law prevail over a government decision or a contrary law. They cannot criticize the action of the government, nor appreciate the regularity of the acts of the legislator. “There is therefore no guarantee that the state order or its various organs of expression will always have the desire or the will to submit to the obligations imposed by international law. There is the tendency to retain what is in conformity with the interests and to dispute in good or bad faith the scope or the validity of the norms which hinder them or decide to violate international law by giving the national interest as supreme law. ".

Today, however, some treaties establish bodies and mechanisms to control and unify the application of the standards they provide. We can cite that of Ohada. This instituted, as indicated above, a Common Court of Justice and Arbitration.

It is common ground that the international standard enjoys a privileged status in the constitution of the Union of the Comoros and precisely one category expressly referred to benefits from the constitutional guarantee. That however a jurisdictional control of conventionality like France would be desirable in the judicial system of the Union of the Comoros to allow the judicial and administrative jurisdictions under the control of the Supreme Court to set aside laws which would not be in conformity to international standards. The fact remains that the prevalence of the international standard, moreover, requires the good will of the various institutions and public authorities, each in its role and actions to ensure its effectiveness.

“The Status of the international standard in the Constitution: The experience of the Senegal constitutional justice”

By: Mr Saidou Nourou Tall
Vice president of the Constitutional Council of Senegal

INTRODUCTION

Ubi societas ibi jus … This aphorism could not better translate the necessities of international life through international treaties and those of national public authorities through their internal laws, in particular constitutional ones.

Depending on whether one considers the internalization (here, constitutionalizing) of Public International Law (hereafter DIP) or the externalization of Constitutional Law, the question of the articulation of internal rights to the DIP comes up as a leitmotif each time. that a court is called upon to verify the conformity of international commitments, thus leading to questions about the degree of validity and opposability of international standards (conventional or non-conventional) in the face of the national and primordial adhesion of constitutional standards.

Like the French-speaking West African constitutional jurisdictions with which it initially shared the common source of inspiration (French Constitution of 1958 and its model of constitutional justice), the Senegalese Constitutional Council (hereinafter CCS) added its own coloring, both formally and materially, the decalcomania not being absolute.

This jurisdiction of the Constitution is part of a specific environment of a country heir to a rich legal legacy and credited with an undeniable democratic experience with the successive Constitutions which have strengthened the rule of law.

At the international level, this commitment is manifested by participation in normative or constitutive treaties of international organizations or in numerous peacekeeping operations of the UN, the OAU/African Union or ECOWAS. (ECOMOG). In fact, the diplomatic prestige of Senegal is not measured by its low demographic or economic weight but by the quality of its activities within

international organizations such as the UN, the AU, the OIF, the OCI, the ECOWAS, UEMOA or the Non-Aligned Movement, etc.

As for the Constitutional Council, like a switchman in its control tower, sometimes censor, pedagogue, overseer of respect for the distribution of powers between the executive, legislative and judicial powers, sometimes judge of elections and referendum consultations.

In this register, the constitutionalizing of the international standard is revealing of the double attraction of the conventionality of national law but also of the reception-insertion of community law. Also, this status of the international norm is identified with textual references in the Constitution (I) thus composing an enlarged block of constitutionality whose spirit and letter raise the question of the primacy of the PIL over domestic law (II) .

I – REFERENCES TO INTERNATIONAL STANDARDS IN THE CONSTITUTION

In the examination of conformity between the DIP (international agreements and treaties) and internal law (here, limited to constitutional law), the Senegalese constitutional justice favors the establishment of a control whose comfortable basis remains the international references to the levels of the Preamble and the corpus juris, elements of a block of constitutionality with a specific spirit (A) and a complex statement (B).

A. The spirit of international references

In this regard, it is often customary to report these words of General De GAULLE: “A Constitution is a spirit, institutions, a practice”. The presence of international references in the French-speaking Constitutions of Africa seems a priori to draw an arc of mimicry with the French Constitution of 1958 but in no way leads to a weakening of the singularities detected here and there, relating both to ambient contexts of sub- development but also particular socio-cultural aspects, a crucible for receiving the pan-Africanist momentum and the universalist anchorage.

This anchoring is based on a diplomatic and strategic field of the end of the 1990s and the beginning of the third millennium (Speech of La Baule, fall of the Berlin wall, implosion of the USSR, triumph of liberal ideology and decline of Marxist values Leninists) which builds a bridge between micro nationalism and macro nationalism, leaving no entity out of its grip.

With respect to Senegal, it is fortunate that the Preamble emphasizes both rootedness and openness, while ending with the incise of the peremptory affirmation of its constitutional value. By this assertion, the Senegalese Constituent makes the economy of the sharp doctrinal controversies which had stumbled on the legal value of the Preamble.

Also, the Senegalese Constitutional Council, inspired by the French CC, makes the constitutionality of the Preamble the justification of references relating to international law by inserting the latter in a specific spirit, namely the achievement of African unity requiring not to spare no effort, including by an abandonment of sovereignty subject to “reciprocity and respect for the Rights of Man and Peoples as well as fundamental freedoms, guaranteed by the provisions of constitutional value ” . Also, the procedure of reception of the international law in the internal law is accompanied by the reiterated will of the Constituent to arrange the possibility of concluding "agreements of association or community" or of cooperation comprising either "partial or total abandonment of sovereignty with a view to achieving African unity" (Art. 96 al. 4 Senegalese Constitution. This provision reflects the limitations of sovereignty operated by participation in community organizations (UEMOA, ECOWAS, OHADA) with an original or derived community law taking the step on the national law.It thus constitutes a bet on the future of the integration of the continent.

The spirit of the Constitution here seems to be tied around preambular prescriptions referring to a globalization of the State and of the Law

The globalization of the state imposes an openness towards the sub-regional, regional and universal levels and the globalization of law puts into orbit the values attached to democracy, human rights and the rule of law.

At the regional level, the Constitution magnifies the idea of the Republic's attachment to "the ideal of African unity", the echo of which resounds through the national anthems and the numerous diplomatic actions in favor of the rapprochement of peoples and States of the continent, whether within the framework of sub-regional or regional integration within the OAU/AU, ECOWAS or UEMOA.

The universal level is also solicited in its spirit by the statement of membership values such as the "determination to fight for peace and fraternity with all the peoples of the world" , values widely shared by the Togolese Constituent which mentions the determination " to cooperate in peace, friendship and solidarity with all the peoples of the world enamored of the democratic ideal on the basis of the principles of equality, mutual respect and sovereignty", or even by the Beninese Constituent which affirms of the " willingness to cooperate in peace and friendship with all peoples who share (…) ideals of freedom, justice, human solidarity on the basis of the principles of equality, reciprocal interest and mutual respect, national sovereignty and territorial integrity " .

These principles guide the implementation of the foreign policies of French-speaking West African States through their participation in international organizations or bilateral or multilateral friendship and cooperation agreements. However, these ideals perfectly overlap with the values that underlie the main axiology of the United Nations Charter (Preamble and Art. 2) and the legal and political principles of Art. 3 of the Constitutive Act of the African Union (successor organization to the OAU).

As for the globalization of Law, it is based on the consecration of the primacy of international law over domestic law (art.27 of the Vienna Convention of 23 May 1969 on the law of treaties between States) through major UN or OAU texts. The idea underlying the inclusion of references to international law is part of the universalist movement for the protection and promotion of human rights through the triptych: democracy / human rights / rule of law.

The spirit of the references is nourished by a concretization by the statement of the major international instruments.

B. Writing international references

The valorization of public international law by the Constituent is expressed here by the predominance of the conventional source. Indeed, apart from the Declaration of the Rights of Man and of the Citizen of 1789 (text of internal law but source of inspiration for human rights treaties), the Preamble lists, in a striking shortcut, the founding texts of the protection of Human Rights at the international level (Universal Declaration of Human Rights of December 10, 1948, Convention on the Elimination of All Forms of Discrimination against Women of December 18, 1979, Convention on the Rights of the Child of November 20, 1989) and on the continental level (African Charter on Human and Peoples' Rights of 1981).

Is the enumeration exhaustive? Asked the Senegalese Constitutional Council in the opinion on the referendum in 2000. Indeed, if we are at the continental, universal and/or human rights levels, Senegal has signed and ratified many international treaties under the auspices of the UN and the OAU/AU , not to mention the sub-regional treaties and protocols, including complementary texts to

the UDHR such as the 1966 international pacts, texts which, by way of teleological interpretation, deviate neither from the spirit nor from the letter of the preamble.

Undoubtedly, any enumeration is restrictive in that it imprints a direction and a choice between international texts. Also, the Senegalese Preamble has the good fortune to guard against certain omissions, by affirming adherence "to the international instruments adopted by the United Nations and the Organization of African Unity". Consequently, a first tendency can emerge in favor of an extensive and not unreasonable interpretation encompassing any treaty of these two Organizations. However, uncertainties can be detected at this level: does the list stop at conventional texts or does it cover secondary legislation (regulations, directives, recommendations) adopted by the main bodies or subsidiary bodies of the international integration or cooperation organizations?

Similarly, how to explain the absence of any reference to international custom or general principles of law within the meaning of Art. 38 of the Statute of the ICJ and which irrigate public international law?

With respect to custom, its absence may arise from the difficulty of assembling the evidence of its formation (the material element or consuetudo as the psychological element or opinion juris sive necessitatis) and its malleable character, justifying its rarity in most French-speaking Constitutions .

As for the exemplary value of the references, it must lead the interpreter or the exegete to attach them to the very body of the Constitution which provides more precisely for provisions relating to women, children, certain public freedoms or fundamental rights, but which also refers to the process of reception of international law into domestic law as expressed in the Constitution.

The spirit and the enumeration of the norms find their extension in the reception procedure and in the relationship between the Constitution and international law.

II – THE QUESTION OF THE PRIMACY OF INTERNATIONAL LAW OVER DOMESTIC LAW

The particular atmosphere of international relations, dominated by the sovereignty of States and the need for their consent to be bound by international commitments, explains the frequent appeals addressed to internal law. Thus, if it is important to establish a dialogue between the constitutional judge and the other domestic judges, it is just as imperative to avoid assonance and dissonance between the domestic judges and the international judges. However, de lege lata , there is no shortage of friction and de lege feranda , the noted intrusion of regional or sub-regional African law augurs possible adjustments to make relations with internal law more fluid.

The examination of international treaties and agreements is established to test the solidity / validity of the conventional commitment vis-à-vis the constitutional writing, through a quartet of formal and substantial conditions (A). But this conditioned primacy of the DIP must also be analyzed in the light of the vagaries of the application of Community law(B).

A. A conditioned primacy

The constitutionalizing of the DIP, like the externalization of constitutional law, places the domestic judge and the international judge in an alchemy of relationships whose dialectical character passes through the primacy of the DIP over domestic law depending on whether the international judge evokes domestic law or whether the national judge deals with international commitments. The affirmation of the superiority of treaties over laws is frequent in modern constitutions. Like Art. 55 of the French Constitution, article 98 of the Senegalese Constitution, conditions this primacy of respect for reciprocity, publication, regularity of ratification or approval.

The determination of the competent national authorities to negotiate (Art. 7, Vienna Convention of 1969), ratify or approve treaties, is exclusively a matter of constitutional law. In this regard, Art. 95 of the Senegalese Constitution, entrusts the President of the Republic with the powers of negotiation, ratification, or approval.

These provisions are the result of certain case law, in particular the International Court of Justice which, in an obiter dictum, made the following observation: "In accordance with international law, there is no doubt that any Head of State is presumed to be able act on behalf of the State in its international relations" . The general statement of art. 95 relates to the fact that the Head of State is the principal authority disposing of the Treaty Making Power and being able to authorize any other person by a written document (full powers) to act in his place. But these articles leave open the question of the extent of the powers of a government in the event of cohabitation with the predominant competition of a President endowed with these constitutional prerogatives.

In this respect, the successive Fundamental Laws of Senegal are characterized by the remarkable resumption without interruption of these formalities, which appear in the French Constitution of 1958 and which expressed the state of constitutional law of the former colonial metropolis.

Thus, the Constituent appears to leave a choice to the executive body through the Head of State to implement the relevant provisions of Article 95: "The President of the Republic negotiates international commitments.

It ratifies or approves them, if necessary, with the authorization of the National Assembly " or even those of art. 98. "Treaties or agreements regularly ratified or approved have, from their publication, an authority superior to that of laws, subject, for each agreement or treaty, to its application by the other party".

The imperative of ratification or approval falls within the reserved domain of States, that is to say matters falling within the national jurisdiction of States (Art. 2 §7 of the UN Charter) and, in the case of Senegal, constitutes an exclusive prerogative of the President of the Republic.

In fact, the distinction lies in the departure between treaties subject to ratification and agreements requiring approval. But this distinction, if it is still operational in domestic law, has no relevance in DIP, even if it moves the cursor towards the distinction between treaties in solemn form and treaties in simplified form. As for the effects of ratification, they fall under both domestic law and PIL. In accordance with the Vienna Convention on the Law of Treaties between States of 23 May 1969, the DIP, which is not very formalistic, places ratification and other means of expressing a State's consent to be bound on an equal footing. by a treaty, under Article 11 which reads: " The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, 'acceptance, approval or accession, or by any other agreed means '. Considered within the meaning of international law, ratification must be understood, according to Article 14 of the convention: "1. The consent of a State to be bound by a treaty is expressed by ratification:

(a) when the treaty provides that such consent shall be expressed by ratification;

(b) it is otherwise established that the negotiating States were agreed that ratification should be required;

(c) when the representative of that State has signed the treaty subject to ratification; Or

(d) the intention of that State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification ".

As the ICJ declared in its Judgment of July 1, 1952, in the Case Ambatielos : " the ratification of a Treaty is an essential condition for the entry into force of the treaty; it is therefore not a mere formality but an act of essential importance" .

The distinction between ratification and approval is reflected in domestic law. In Senegal, the Constitution does not define either, preferring to leave it to practice obviating it. In practice, approval is a formality required in some States for less important or more technical treaties, the Constitution of which does not require passage through ratification or the intervention of the President of the Republic. It can be operated either by the Head of State, or by the Prime Minister or the Minister for Foreign Affairs to confirm the signature of the plenipotentiary or to certify the absence of a disqualifying objection on the part of the Government or the President of the Republic. Moreover, the distinction between treaties in solemn form and treaties in simplified form is then revived. Simplified treaties are final after the sole formalities of negotiation and signature, while solemn treaties follow a long procedure including, in addition to the two previous formalities, ratification, registration and publication, including the intervention of the Head of the State or any national authority vested with special powers.

In addition, it follows that in Senegal, only parliamentary authorization (law) can empower the Head of State to ratify certain particular treaties listed. This ratification is a procedure of domestic law left to the discretion of the State and parliamentary intervention in this area does not deprive the competent authority of the right to use or not to use this authorization or to set its limits.

No doubt, the terms of Articles 95 and 96 suggest the possibility of not having recourse to the National Assembly in the case of simplified treaties, but the importance of treaties involving the cession or addition of territory requires prior consultation of the populations concerned. Inspired by Art. 53 of the French Constitution in force, they could possibly lead to the organization of a referendum.

However, the approval or ratification of a treaty or agreement by the President of the Republic must pass through the vote of a law authorizing one or the other and in the following seven matters referred to in art. 96 of the Constitution: peace treaties; commercial treaties; treaties or agreements relating to the international organization; those which commit the finances of the State; those that modify provisions of a legislative nature; those relating to the status of persons; those involving cession, exchange or addition of territory .

But the indeterminacy of the two concepts whose international effects are indistinct has pushed the Senegalese constitutional justice to ignore their definitions, characters, and contents.

The approval/ratification alternative is supplemented by the requirements of publication and reciprocity.

These additional requirements are incompressible formalities, as stated in Article 98 of the Constitution, which reads as follows:

"Treaties or agreements regularly ratified or approved have, from their publication, an authority superior to that of laws, subject, for each agreement or treaty, to its application by the other party".

From the compact wording of the article are revealed the additional conditionalities of publication and reciprocity ("implementation by the other party").

If it goes without saying that the reservation or reciprocity clause is inherent in the application of bilateral treaties with the sanction of the exceptio non adimpleti contracts in the event of a breach (apart from the inoperability of reciprocity for the Human Rights treaties referred to in Article 60 § 5 of the Vienna Convention of 1969), the satisfaction of this formality becomes highly uncertain in the event of multilateral treaties. It is practically impossible, if the States exceed ten, to know the extent and the limits of the respect of their mutual commitments despite the principle pacta sunt servanda, all the more so as these complexities are reinforced by the interplay of reservations. At this stage, a certain number of uncertainties emerge: should the constitutional judge always refer to the services of the Ministry of Foreign Affairs to find out about the state of ratifications, reservations and the application of reciprocity in the case of the treaty submitted to his sagacity? Is he free to infer from the importance of the matters of the treaty a tacit reciprocity? On reading the decisions rendered in this matter by the Senegalese constitutional judge, there is no evidence of a preference for one or the other option.

On the other hand, publication is part of the requirements established in DIP and in domestic law. In international law, its basis is to be found in article 102 of the United Nations Charter which expresses positive law:

“1. Any treaty or international agreement concluded by a Member of the United Nations after the entry into force of this Charter shall, as soon as possible, be registered with the Secretariat and published by it.

2. No party to a treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke the said treaty or agreement before any organ of the Organization”.

A priori, it is easy, in domestic law, to fulfill this formality by inserting in the Official Journal of the Republic of Senegal either the text of the decree of promulgation and/or the law authorizing the ratification of the treaty concerned or by the verbatim reproduction of the conventional text.

Regarding the publication of treaties, it is customary to cite the Séga Seck Fall case in which the interpretation provided by the Supreme Court apparently lacks solidity. The Supreme Court, regarding art. 79 of the 1963 Constitution (art. 98 of the 2001 Constitution) noted the non-publication in Senegal of ILO Convention No. 87 of July 9, 1948, the violation of which was alleged by the applicant and even seemed to impose it is up to the latter to provide proof of this publication.

But it is another part of the reasoning which arouses curiosity, that in which, in a superabundant way, the Court considers that even supposing that the said Convention was actually applied in Senegal "it could not under these conditions prevail over the provisions of the law which served as the legal basis for the contested decision ”. This phrase opened the way to all the suppositions. Do we set aside the Constitution only because of the absence of publication?

The argument has been made that the Convention was ratified when Senegal was part of the Federation of Mali, which would militate in favor of the circumstances of the case for a new legal order of rupture but would not be justified on the legal field because of the principle of succession continuity. Be that as it may, the current constitutional judge has made more respect for the principle of the primacy of conventional commitments.

B. A disputed primacy

Senegalese constitutional justice is characterized here by the undoubted consecration of the authority of international treaties on laws. Regarding international commitments, this control of non-contrary is the procedure by which the Senegalese Constitutional Council examines whether an international commitment does not contain clauses contrary to the Constitution before its revision. This control of international commitments, by way of action or exception entrusted exclusively to the constitutional jurisdiction, can intervene at two times: initially, after the signature of the treaty but before the vote of the law authorizing the approval or ratification. If a clause is contrary to the fundamental law, “its ratification or approval can only take place after the revision of the Constitution”. In a second step, if the Constitution is revised (if the Executive has not renounced to ratify the treaty), the referral to the Constitutional Council will allow the verification of the absence of contrariety of the treaty in question compared to the revised Constitution.

As for the relationship between Community law and domestic law, Community law takes precedence over any national provision. The principle of primacy implies for the State, prohibition to apply a measure contrary to the Community Treaty. It also entails the obligation for the State to interpret all its national law in conformity with Community law and, if necessary, to repair the harmful consequences of its non-respect.

The WAEMU Court recalled this in its Opinion No. 001/2003 of March 18, 2003 : " Primacy benefits all community norms, primary as derived, immediately applicable or not, and is exercised against of all national, administrative, legislative, jurisdictional and even constitutional norms, because the Community legal order takes precedence in its entirety over the national legal orders (…); Thus, the national judge, in the presence of a contradiction between Community law and a rule of domestic law, will have to make the first prevail over the second by applying one and dismissing the other ” .

Community law is a system of standards, commanding a hierarchy to its advantage Also we distinguish the main community law (originating or primary) composed of the treaties and protocols of the organizations, from the derived community law, which is formed by the acts adopted by the organs or institutions of these organizations acting as implementers.

If, in general, the legal treatment of Community Treaties and Protocols is identical to that of other international conventions, the difficulty encountered by the constitutional court is related to secondary law, the normative plurality of which has different effects for directives, Acts Uniforms, Supplementary Acts, Regulations, Decisions, Opinions and Recommendations.

The national judge is therefore required to guarantee the supremacy of Community rules over national laws.

But there is a risk that the courts of different countries will conceive Community law differently. The advantages of a reference for a preliminary ruling are the centralization of problems of interpretation of Community law, the subsequent protection of the rights of litigants and the elaboration of a body of case law capable of clarifying the understanding of the domestic courts and thus avoiding divergences of interpretation likely to undermine the foundations of community integration. It also makes it possible to develop this famous "judges' dialogue" which is so desired in many places.

In the same vein0., we will not fail to underline the particularity of OHADA appeals. Here, the CCJA seized of an appeal in cassation, decides on all the decisions rendered, as a last resort on the national level, in all the cases raising questions relating to the application of the Uniform Acts and the Regulations. Art. 14 para. 3 of the Treaty and art. 28 of the Rules of Procedure entrust the CCJA with

the handling of questions relating to the application of the Uniform Acts and the Regulations provided for in the Treaty. In the event of cassation, the CCJA evokes the case (art. 14 § 5) and decides without referral.

Thus, to attest to this primacy of Community law in Senegal, it is admitted, in the opinion of Idrissa So that, "from now on any case in which one of the means of cassation implements the application and interpretation of a provision of a uniform act is systematically referred to the Common Court of Justice and Arbitration.

Because the CCJA accepts that it is not enough to base its own jurisdiction on the mere invocation, for dilatory purposes, of the disregard of an OHADA standard, the Supreme Court of Senegal in a judgment of 2012 acknowledged competent to hear a decision relating to a lease for commercial use, yet governed by OHADA law, considering that the grounds in support of the appeal did not call for the application or interpretation of a Uniform Act .

It is in this sense that we must understand the position of the current Supreme Court of Senegal which sanctioned the violation by article 2 of the public procurement code of a community directive of the West African Economic and Monetary Union (UEMOA) , or even that of the former Council of State of Senegal favorably welcoming the means developed, by applicants, foreign students, on the basis of article 96 of the Treaty of UEMOA to challenge the legality of a decision of the Rector of the University Cheikh Anta Diop which instituted a differentiation of the tariffs of the registration fees according to the nationality .

It appears that if the treatment of community treaties and protocols in relation to the Constitution follows the solutions offered by articles 95 to 98 of this Fundamental Law (Constitutionality control), however, it would be in vain to apply these solutions for the acts of derived law or in the case of the control of conventionality.

Regarding this control of conventionality, the position of the CCS is as follows: “It is not for the Constitutional Council to assess the compliance of the law with the stipulations of an international treaty or agreement”.

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“Specificities and limits of the constitutionality review of international norms; the case of community law”

Mr. NAHM-TCHOUGLI Mipamb
Judge at the Constitutional Court of Togo

The mission of the constitutional judge is to guarantee the constitutionality of the entire national legal system. It does so essentially through the review of the constitutionality of laws and also through the exception of unconstitutionality.

The control of constitutionality is a jurisdictional control to ensure that the norms of internal law (law , regulation), but also external (treaty) respect the Constitution which is placed at the top of the hierarchy of norms . This control must extend to community acts whose particular characteristics blur the constitutional distribution of the field of law and regulations.

Indeed, the international legal order essentially governs relations between States. It is characterized by decentralization leaving the States direct control over the sources, its implementation (execution by the States themselves), its sanction (no recourse to the courts without the consent of the States).

On the other hand, community law was originally the law of the European Union or the law of the European communities. It is a new right since it appeared from 1951 with the conclusion of the treaty establishing the European Coal and Steel Community (ECSC). Planned for a period of 50 years, the ECSC disappeared in 2002. Community law is made up of a set of rules which found the European Union and which apply to all the Member States.

It should also be noted that Community law is its own legal system, integrated into the legal systems of the Member States. This means that it gives individuals rights that they can invoke in court, possibly against a national rule that does not comply with the Community rule. Community law has a sui generis character, it is therefore of immediate applicability, of direct effect and it prevails over the internal law of the Member States of the European Union:

- The constituent treaties of the European Union;

- Acts drawn up by European institutions or bodies (Council of Ministers, Parliament, etc.), in particular regulations, directives, decisions, opinions, recommendations, case law of the Court of Justice of the European Union;

- Interstate agreements…

Moreover, with the process of globalization, of globalization, which prevails nowadays, Community law is no longer the sole fact of Europe. All the continents in the world like Europe come together through community organizations according to their affinities with a view to integration, social, political, legal and above all economic.

On the economic level in particular, the Community approach which underpins most regional economic groupings is part of this dynamic through which several sovereign States undertake to harmonize their economic policies, to eliminate all forms of barriers in order to intensify their commercial exchanges and, beyond that, to undertake joint development actions.

Two technical and correlative questions therefore arise:

- The first consists in questioning the possibility of carrying out a review of the constitutionality of Community law, and, if necessary, the reference standards for such a review?

- The second consists in asking whether Community law can serve as a standard of reference in the context of the constitutional review of laws carried out by a constitutional court?

The relevance of the relationship between the Constitution and community law first requires a presentation of community law in Africa. And then, we will see the problem of the guarantee of the supremacy of the Constitution in the face of Community law.

I- The presentation of community law in Africa

One of the major characteristics of the contemporary world is the formation, on all continents, of regional economic blocks reflecting the awareness of the challenges of a world that is becoming globalized from all points of view. Africa does not escape this movement of regionalization with a characteristic identity.

A- The proliferation of economic groupings in Africa

African community law is therefore developed by institutions whose presentation is necessary for the mastery of this law. These institutions form the structural or organic framework of community normative production. We will present the essential regional organizations that are proven to work

1- THE AFRICAN UNION

By taking over from the Organization of African Unity (OAU), the African Union (AU) aims to renew and consolidate the political and economic integration project whose foundations were laid in 1963 . To this end, the Constitutive Act of the new organization, the outlines of which were drawn in the declaration of Sirte (Libya) of September 9, 1999, set objectives and established an institutional framework going well beyond the approach diplomacy ultimately favored by the OAU. The African Union takes over the objectives that have been assigned to the OAU, however it now includes issues relating to economic integration, democracy, the rule of law, good governance or the rights of the man.

West African states have been divided since independence by their different colonial experiences, linguistic and cultural divides as well as differentiated legal, economic and administrative systems. These States will therefore express the desire to come together through community organizations in order to strengthen their relations in specific areas. The creation of ECOWAS comes in the same logic to reinforce this desire to unite.

2- THE ECONOMIC COMMUNITY IN WEST AFRICAN COUNTRIES

Created by the Treaty of Lagos on May 28, 1975, ECOWAS originally brought together sixteen States, namely: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo. The number of States is now reduced to fifteen following the withdrawal of Mauritania in 20013.

3- THE WEST AFRICAN ECONOMIC AND MONETARY UNION (UEMOA)

In monetary matters, the West African countries of Benin, Burkina Faso (formerly Upper Volta), Côte d'Ivoire, Niger, Senegal and Togo, later joined by Mali and Guinea Bissau, established the West African Monetary Union (UMOA) by the Treaty of May 12, 1962. By this act, these countries which constituted a large geopolitical unit, within the framework of the former federation of Afrique Occidentale Française (AOF), are committed to establishing a zone of monetary cooperation, based on deep solidarity, convinced that this constitutes one of the levers for the accelerated development of their economies.

Founded on the principles of solidarity and equality of member states, WAMU is organized around the following elements:

- A common currency, the Franc of the African Financial Community (FCFA), the issue of which is entrusted to the BCEAO, the common issuing institution;

- The free movement of monetary signs and the freedom of transfers between Member States;

- The centralization of exchange reserves in a common pool;

- Harmonization of monetary, banking and exchange legislation.

Without prejudice to the objectives defined in the WAMU Treaty, the Union pursues, under the conditions established by this Treaty, the achievement of the following objectives:

- Strengthen the competitiveness of the economic and financial activities of the Member States within the framework of an open and competitive market and a rationalized and harmonized legal environment;

- Ensure the convergence of the performance and economic policies of the Member States through the establishment of a multilateral surveillance procedure;

- Create between the Member States a common market based on the free movement of persons, goods, services, capital and the right of establishment of persons exercising a self-employed or salaried activity, as well as on a common external tariff and a policy common commercial;

- Institute coordination of national sectoral policies through the implementation of common actions and possibly common policies, particularly in the following areas: human resources, land use planning, transport and telecommunications, environment, agriculture, energy, industry and mining;

- Harmonize, to the extent necessary for the proper functioning of the common market, the laws of the Member States and particularly the tax system.

4- THE ORGANIZATION FOR THE HARMONIZATION OF BUSINESS LAW IN AFRICA (OHADA)

The treaty establishing the Organization for the Harmonization of Business Law in Africa (OHADA) was signed on October 17, 1993 in Port-Louis (Mauritius).

The main purpose of this treaty is to harmonize the national business laws of the signatory countries, in order to promote their economic and monetary stability. This makes it possible to remedy the legal and judicial insecurity that exists in these countries. The purpose of the treaty is therefore "the elaboration and adoption of simple, modern common rules adapted to the situation of their economies, by the implementation of appropriate legal procedures, and by the encouragement of recourse to arbitration for the settlement of contractual disputes" (article 1 of the OHADA Treaty). Indeed, very few reforms had been undertaken until then, each State legislating without taking account of the legislation of the States of the franc zone: Most of these legislations date from the colonial era and clearly no longer correspond to the economic situation and current international relations. Added to this was the enormous difficulty for litigants and professionals alike in knowing the applicable legal texts.

From now on, business law as harmonized by means of OHADA allows litigants and professionals to easily determine the legal texts applicable in the areas covered by OHADA. This will result in the facilitation of transactions between member countries.

5- THE ECONOMIC COMMUNITY OF CENTRAL AFRICAN STATES (ECCAS)

ECCAS was created on October 18, 1983 in Libreville and has 10 member states. Its purpose is "to promote and strengthen harmonious cooperation and balanced development in all areas of economic and social activity". Article 4 of the treaty establishing ECCAS.

The fundamental objective pursued by the Community concerns the promotion and strengthening of harmonious cooperation and dynamic, balanced and self-sustaining development in all areas of economic and social activity, in particular in the areas of industry, transport and communications, energy, agriculture, natural resources, trade, customs, monetary and financial matters, human resources, tourism, education, culture, science and technology and the movement of people with a view to achieving collective autonomy, raising the standard of living of the populations... ECCAS leads the process of regional integration in Central Africa and is recognized by the African Union.

The treaty establishing the EAC was signed on November 30, 1999. The EAC comprises 5 member states. Its objective is to broaden and deepen economic, political, social and cultural integration in order to improve the quality of life of the people of East Africa through increased competitiveness, value addition to production, trade and investments. The East African Community (EAC) is an international organization of five East African countries comprising Burundi, Kenya, Uganda, Rwanda and Tanzania.

It was originally founded in 1967, then dissolved in 1977 before being re-created on July 7, 2000. In 2008, after negotiations with the Southern African Development Community and the Eastern African Common Market and Southern Africa, the East African Community grants an expansion of the free trade market including the member countries of the three organizations. The East African Community is one of the pillars of the African Economic Community.

6- THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

It was created by treaty in 1992 to succeed the Southern African Development Coordination Conference. Its creation responds to the concern to emphasize the integration of economic development. This organization which has its headquarters in Gabarone (Botswana) and has 15 members. According to article 5 of the said treaty (1992), the objectives of this community are as follows:

7- CEMAC

The Economic and Monetary Community of Central African States (CEMAC) brings together 6 countries, namely Cameroon, Congo, Gabon, Equatorial Guinea, the Central African Republic and Chad. Its mission is to promote the harmonious development of the Member States within the framework of the institution of a true common market.

The current CEMAC was born from the ashes of the former UDEAC, the Customs and Economic Union of Central Africa (UDEAC), preceded by the Equatorial Customs Union (UDE).

8- THE EAST AFRICAN COMMUNITY (EAC)

The treaty establishing the EAC was signed on November 30, 1999. The EAC comprises 5 member states. Its objective is to broaden and deepen economic, political, social and cultural integration in order to improve the quality of life of the people of East Africa through increased competitiveness, value addition to production, trade and investments. The East African Community (EAC) is an international organization of five East African countries comprising Burundi, Kenya, Uganda, Rwanda and Tanzania.

It was initially founded in 1967, then dissolved in 1977 before being recreated on July 7, 2000 In 2008, after negotiations with the Southern African Development Community and the Common Market for Eastern Africa and southern,

9- THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)

COMESA was established in 1994 as a successor to the Eastern and Southern Africa Preferential Trade Area (ZEP), which had existed since 1981 under the Lagos Plan of Action and the Lagos Final Act of the Organization of African Unity (OAU). The ultimate objective of the PTA was to create an economic community whose people enjoy a high standard of living.

10- THE ARAB MAGHREB UNION (UMA)

According to article 2 of the treaty establishing AMU, the Union aims to:

-Strengthen the bonds of brotherhood which unite the Member States and their peoples;
- Achieve the progress and prosperity of the societies that compose them and the defense of their rights;
- Contribute to the preservation of peace based on justice and equity;
- Pursue a common policy in different areas;
- Work gradually to achieve the free movement of persons, services, goods and capital.

The common policy mentioned in the previous article aims to implement the following objectives:

- At the international level: the achievement of harmony between the Member States and the establishment of close diplomatic cooperation based on dialogue

- In terms of defense: safeguarding the independence of each member state;

- On the economic level: the achievement of the industrial, agricultural, commercial and social development of the Member States and the gathering of the means necessary for this purpose, in particular by setting up joint projects and by drawing up global and sectoral programs;

- On the cultural level: the establishment of cooperation aimed at developing education at different levels, at preserving the spiritual and moral values inspired by the generous teachings of Islam and at safeguarding the Arab national identity by acquiring means necessary to achieve these objectives; notably for the exchange of teachers and students and the creation of academic and cultural institutions as well as Maghreb research institutes. This union includes the following countries: Morocco, Tunisia, Algeria, Libya, Mauritania

B- The characteristics of Community law

Community law is therefore the set of uniform substantive rules applicable within the European Union. These rules apply equally to the European Institutions, to the Member States, and to European citizens. These rules of law consist of the Treaties as amended over the years (primary law) and acts taken by Community bodies in application of the Treaties (secondary law). They aim to establish a community legal order allowing the achievement of community objectives.

Community law constitutes “a specific legal order, integrated into the legal system of the member states” CJCE 15/7/1964 Costa c/ Enel. It is a legal order because it regulates the “powers, rights and obligations of the subjects, as well as the procedures to make note and sanction any violation” (ECJ 13/11/1964 Commission c/ Luxembourg and Belgium). It is a specific legal order, that is to say that there is autonomy of Community law in relation to international law.

Primary law is made up of the founding treaties, namely since the entry into force of the Treaty of Lisbon, the Treaty on European Union and the Treaty on the Functioning of the European Union

The expression “secondary law” refers to all the acts adopted by the institutions of the Union for the implementation of the Treaties. Article 249 of the EC Treaty listed and defined several legal acts:

- regulations,
- instructions,
- decisions,
- recommendations and opinions.

The regulations: The regulations are general in scope. It is binding in its entirety and is directly applicable in all Member States. The regulation is the most complete, the most supranational and the most effective act in the panoply of instruments available to these institutions. It is distinguished by two properties that are quite unusual in international law:

- its capacity to create the same law throughout the legal order without taking account of frontiers and by being valid uniformly and completely in all the Member States. Thus, Member States are prohibited from applying the provisions of a regulation incompletely or from making a selection from among them;

- its direct applicability in all Member States. This means that, without the need for any measure receiving acceptance into national law, it has automatic validity in the legal order concerned and is, as such, capable of conferring rights and/or imposing obligations on the Member States, their bodies and to individuals, as national law does. Essentially normative in nature, it is not addressed to limited, designated or identifiable recipients, but to categories of persons envisaged in a general and abstract manner.

The directive: It binds any Member State to which it is addressed as to the result to be achieved, while leaving the national authorities with jurisdiction as to form and means.

The directive constitutes an instrument of indirect legislation which is addressed to the Member States to which it fixes a result to be achieved but to which it leaves the choice of the form and the means which they will adopt to achieve the Community objectives within the framework of their domestic legal order. It seeks to reconcile the search for the essential unity of Union law and the preservation of the diversity of national particularities. It is therefore an instrument of harmonization. The Member States can thus take account of national specificities when achieving Community objectives.

The provisions of a directive do not automatically replace national legal rules but impose on Member States the obligation to adapt their national law to the provisions of the directive. The competence of the Member States is however doubly linked:

- as to the deadline: the directive always sets a fixed deadline for the national authorities to transpose it.

- as to the terms: even if the Member States are, in principle, free as to the form and means of transposition, the freedom of the national authorities is not complete. The means and forms implemented must be consistent with the intended purpose. In general, it is necessary to adopt binding national legal acts, or even to cancel or modify existing laws, regulations and/or administrative provisions.

The implementation of the directives is monitored by the Community bodies. States that do not take national measures to implement the directive are referred by means of an infringement action before the Court of Justice.

The decision: The decision is binding in all its elements for the recipients it designates. The decision is therefore an act of individual scope. It must have recipients who must be determined or determinable and are only individually bound. It confers rights on them or imposes obligations on them.

The decision is binding in all its elements. When it designates recipients, it is only binding for them.

The uniform acts of OHADA: The founders of OHADA wanted to create simple, modern and adapted business law. The texts adopted for the adoption of the common rules provided for in Article 1 of the Treaty are Uniform Acts. They carry a law common to all the States parties, in other words a uniform law.

Each year, the Permanent Secretary submits a business law harmonization program for approval by the Council of Ministers. The Uniform Acts are prepared by the Permanent Secretariat in consultation with the governments of the States parties to which the draft Acts are communicated. The governments have a period of ninety days from the date of receipt of this communication to forward their written observations.

At the end of this period, the draft, accompanied by the observations of the States parties and a report by the Permanent Secretariat, is immediately transmitted for opinion by this body to the Common Court of Justice and Arbitration (CJCA) which must give its notice within thirty days. Once this period has expired, the Secretariat is finalizing the final text of the draft Uniform Act, which it proposes to include on the agenda of the next Council of Ministers.

The text is adopted by the Council of Ministers if at least two thirds of the States Parties are represented and if it is voted unanimously by the States Parties present and voting, abstention not

being an obstacle to adoption. The same procedure must be followed for the modification of the Uniform Acts at the request of any State Party.

Such a procedure amounts to transferring national legislative sovereignty to OHADA because, when a Uniform Act enters into force, it becomes directly applicable and binding "notwithstanding any contrary provision of domestic law, prior or subsequent"; it replaces the rules of internal law.

Relations between internal law and the law derived from integration organizations do not operate according to the principle of the dualist system nor according to that of the monist system which characterize the relationship between internal law and international law.

In international law, States have the choice of opting for a monist system which gives direct effect to the international norm in domestic law, the State reserving the right to define the conditions making the norms of international law effective in the domestic legal order. On the other hand, the dualistic system according to which the internal legal order is separated from the international legal order, it is necessary, so that the measure of international law is creative of rights, that a measure of introduction of internal law is taken.

In community law and in OHADA law, the principle of integration does not allow the autonomy of States. This right applies immediately and can be invoked by nationals or citizens of Member States.

1- The direct applicability of secondary law

This is purely a matter of international law. A first aspect of the principle concerns the introduction of international law into the internal legal order as well as its place in this order: in the event of a conflict between the international standard and the Constitution, the Constitutional Court may be seized to declare one or more clauses of the international norm contrary to the Constitution, thus paving the way for a revision of the Constitution to bring it into line with international law.

A second part of the answer consecrates the supra-legislative value of international law.

Can international law create for the benefit or at the expense of individuals rights and obligations which they can invoke directly, without it being necessary for them to invoke national implementing provisions?

Treaties concluded between States are not in themselves sources of internal law unless this results from the will of the signatory States. But Community law is integrated into internal legal systems, direct applicability being the rule.

In WAEMU, the principle of direct applicability results indirectly from Article 6 of the Treaty and more directly from Article 43 thereof. And in similar terms, s. 10 of the OHADA Treaty lays down the same principle. Direct applicability has two dimensions; a formal dimension which relates to the introduction of the community standard into the national legal orders and a material dimension relating to the capacity of the community or uniform standard to create rights or obligations for the benefit or at the expense of individuals including those these can be invoked directly without a national implementing measure. In the first case, it is about the immediate applicability and in the second, about the direct effect.

Immediate applicability establishes the relationship that must exist between the community or uniform standard and the domestic law of the Member States. Unlike international law, it derives from monism, that is to say that the community or uniform standard applies immediately as such, without reception or transformation (with the exception of the directive) in the internal order. of the States parties to the original treaty and imposes respect by the Member States.

The monist approach results firstly from the consecration of the OHADA (art. 10) and UEMOA (art. 43) treaties which state that community acts are directly applicable in all Member States. In addition, the establishment of the procedure for preliminary rulings by the WAEMU Treaty and an advisory procedure aimed at the interpretation of uniform law by the OHADA Treaty, by allowing national courts to refer to the Common Court of Justice and Arbitration of OHADA and the Court of Justice of UEMOA the interpretation or assessment of the validity of community or uniform law, presupposes that it is applicable by national courts. But monism stems just as much from the nature of the WAEMU and OHADA Communities, that is to say from the entire system of the two treaties, as the Court of Justice of the European Communities had clearly underlined in the COSTA case; "by establishing a community of unlimited duration, endowed with its own attributions, personality, legal capacity... and more precisely real powers resulting from a limitation of competences or a transfer of attributions from the States to the Community , these have limited, although in restricted areas, their sovereign rights and thus created a body of law applicable to their nationals and to themselves".

Thus, the right secreted particularly by OHADA and UEMOA is of direct applicability in that it produces direct effects vis-à-vis their recipients.

The Court of Justice of the European Communities (CJEC), which has become the Court of Justice of the European Union (CJEU) has often had to condemn all the dualist techniques adopted in the Member States, such as in Italy. France, for its part, applies a one-tier system and is therefore in line with the principle of direct applicability.

a- Link between applicability and invocability

The question is whether individuals can invoke the said standards before the national authorities and the courts because of the application of a law or a provision that is not in conformity with Community law. The ECJ has identified the principle of the direct effect of Community standards in domestic law: they have direct effect despite any question of enforceability but are, moreover, enforceable. Reliability therefore has a broader scope than direct effect.

b- Standards benefiting from automatic direct effect.

Indeed, within WAEMU, an eminent role is entrusted to the Council of Ministers and to the Commission to enact common rules. Similarly, at OHADA level, it is the Council of Ministers which is competent to adopt the Uniform Acts. Thus, within these two organizations, standards are produced, and these are immediately applicable and have direct effects in the internal legal order. Thus, a private person can invoke this Community provision in any dispute, whether against a public authority and therefore a vertical dispute or against another private person, therefore a horizontal dispute.

The regulations can be invoked as of right in all their provisions and for all types of disputes, community decisions having the same effect of authority. The general principles, for their part, are invoked by all individuals and for all disputes.

vs- Standards with conditional direct effect

These are the constitutive or original treaties. Directly applicable are all provisions which include the explicit attribution of rights and obligations in favor of or at the expense of individuals, as well as all those which impose a well-defined obligation on both States and institutions.

2- The principle of primacy of Community law

The primacy of Community norms gives them the status of positive law in the internal legal order of States. This therefore means that the rules of direct effect, "in so far as they form an integral part, with priority, of the legal order applicable in the territory of each of the Member States" must be applied as soon as they come into force, despite the subsequent adoption of an incompatible law. It follows that, apart from the Constitution, the community or uniform standard is binding to the detriment of any contrary or incompatible national provision and to all national authorities.

Thus, the community or uniform standard cannot be challenged, and to guarantee its effectiveness, community jurisdictions are established alongside national jurisdictions to ensure uniform application. This combination leads to the establishment of genuine Community legal orders.

When we affirm the principle of primacy, we affirm a characteristic of federalism which is that federal law is superior to local law. It is difficult to identify this principle explicitly but nevertheless, the ECJ questioned by the national judges gave it birth and consistency. This principle finds its foundations in the notion of the common market because it implies the uniformity and homogeneity of the law. The notion of community implies that States are subject to a duty of solidarity and that they respect the equality between them, which is inherent in the very nature of a community. It is a component of Community public order and it is therefore applicable to any legal, constitutional, administrative conflict... It applies to any act of internal law and a Member State cannot invoke the provisions of its Constitution to obstruct to the application of Community law.

Only the infringement action before the Community judge can be used and indirectly concerns the principle. National authorities and courts have all the means to implement the principle of primacy. If the principle is not respected, it can be established by the infringement action that a State has adopted or maintained a rule of internal law contrary to Community law. If the action is brought before the Community judge and the breach is noted, the action does not cause the incompatible act to disappear and does not render the provision inapplicable. The action only obliges the State to take measures to put an end to the breach. The ECJ has laid down rules for national courts to limit their autonomy.

- Non-application of incompatible national law

The 1963 judgment shed light on the principle and the role of the national judge. In the Simmental judgment of 9 March 1978, the ECJ defined the mission of the national judge in the event of a conflict between national law and Community provisions. The judgment specifies that the judge must apply Community law, disapplying any contrary provision of national law in order to ensure the full effect of Community law. The judge is entitled not to apply the national rules which delimit his jurisdiction.

- The consistent interpretation of national law

The national authorities must, in case of doubt, interpret the national provision with regard to Community law, this is a jurisprudential principle which has been identified by the ECJ and then reiterated on many occasions. This principle is not limited by the theory of direct effect, all national provisions must be interpreted according to Community law. Compensation for the consequences resulting from a conflict between a national act and a standard of Community law is necessary because the national authorities must erase the financial consequences linked to any act.

The ECJ first referred to the States the task of organizing the conditions for invoking this liability. Then it became attached to it, conferring advantages such as a better effectiveness of the Community standards and a protection of the private individuals which would be reached if they could not obtain repair when their rights are harmed by a violation of Community law attributable to a State. The

principle is that the right to compensation finds its basis in Community law. National courts have an obligation to consider such a claim even if they do not have jurisdiction under domestic law. However, the ECJ refers to the provisions of national law to find the internal basis of liability.

However, the Constitution enjoys normative primacy over all the standards applicable in the domestic legal order since it determines the conditions for the enactment and validity of the rules applicable in domestic law. In this respect, the primacy of international law and Community law derives from the Constitution, and this is indeed how the French Constitutional Council, like the ordinary courts, interprets constitutional provisions. But this normative primacy, or supremacy of the Constitution, can be reconciled with the primacy of norms resulting from international law and community law, implying that these norms prevail over internal norms, whatever they may be, in the event of contradiction.

II- The problem of guaranteeing the supremacy of the constitution in the face of community law

The principle of the primacy of international law and Community law means that these standards are essential and sometimes require the modification of the Constitution in order to ensure their conformity with it. Any lower block norm (e.g. ordinary law) must conform to it on pain of nullity. The question also arises as to whether a standard derived from regional economic integration or legal integration treaties can serve as a reference standard in the context of a constitutional review?

The relevance of the relationship between the Constitution and the law derived from community economic and legal integration organizations requires a new appreciation of the block of conventionality.

A- Community constraints: “community control”

The control of the conformity of international commitments with the Constitution most often proceeds from the law authorizing the ratification. The common feature of all constitutional devices is that control can only be carried out between the signing of the commitment in question and its ratification or approval. Once the international commitment has been ratified or approved, it is no longer possible, in principle, to challenge its conformity with the Constitution: this is the “contentious immunity” of international law. But the law derived from economic and legal integration organizations cannot benefit from the status of international law because of its specific characteristics.

The constitutional court must obviously take into account the particular legal status of derivative acts and particularly directives which are subject to the obligation of transposition. (The regulations benefit from immediacy and direct applicability in the legal order of each Member State.)

The laws transposing a community directive must be the material reflection of the directive. The transposition leaves no room for maneuver to the national legislator.

The French constitutional judge, following the constitutional revision of 1992 which introduced art. 88-1 identified on the basis of this provision a constitutional obligation to transpose the directives. It follows that, according to the French Constitutional Council, compliance with the Community obligations resulting from this participation and that of the obligation to transpose the directives become constitutional requirements.

It should be understood that art.88-1 does not directly establish the principle of primacy; by enshrining France's commitment to the European Union, it offers a “constitutional basis for France's consent to all the principles and mechanisms arising from this commitment. These include the

mechanism for transposing directives, but also and primarily the principle of the primacy of Union law.

The requirement of transposition and that of compliance with the principle of primacy constitute facets of the constitutional requirement. Thus, the French constitutional judge now accepts to make a distinction between:

- the so-called classic international treaties whose primacy is organized by art. 55 of the constitution

- and community law which is specifically governed by art.88-1 of the constitution.

Community law in the African context does not differ from European community law. Also the procedures for the constitutionalizing of Community law can follow the same paths.

B- The process of constitutionalizing of Community law by the French Constitutional Council

While primary Community law enjoys the status of a classic treaty (with some nuances), the same is not true for secondary Community law. The latter is, in fact, liable to be indirectly called into question during appeals contesting the constitutionality of the internal acts which ensure its implementation. Also, "legislative prescriptions which are not limited to transcribing provisions of direct effect may be challenged before the constitutional judge under the conditions of common law"

The review of the constitutionality of a Community directive can then take place through the examination of its act of transposition. The constitutional court can therefore only declare unconstitutional a legislative provision that is manifestly incompatible with the directive it is intended to transpose. It is therefore a control of the "manifest error of transposition". Similarly, the constitutional court is competent to assess the validity of a Community act in the event that express constitutional provisions are at stake.

C- The law derived from organizations for economic and legal integration ; an element of the block of constitutionality?

The French constitutional judge, in a series of decisions, has made a special place for community law in three stages:

First step :

- Decision No. 2004-496 DC of June 10, 2004; “Law for confidence in the digital economy”: the French Constitutional Council had been seized by two identical appeals from deputies and senators of the opposition against the aforementioned law aimed at transposing it into the internal order the Community directive of June 08, 2000 on electronic commerce (Directive n°2000/31/EC).

The High Court, on this occasion, lays down a first rule: "[...] under the terms of Article 88-1[...] the transposition into domestic law of a Community directive results from a constitutional requirement to which it could not be impedes only by reason of an express constitutional provision". This means that only the Constitution can stand in the way of Community law

- Decision no. 2004-497 DC of July 1 , 2004 ; “Law relating to electronic communications and audiovisual communication services”. This decision enabled the Constitutional Council to specify the scope of its first decision. Indeed by this, the French constitutional judge thus modulated his control of the content of the transposition law according to whether or not the criticized articles were limited

to drawing the necessary consequences from unconditional and precise provisions of a Community directive.

- Decision no. 2004-498 DC of July 29, 2004 ; “Bioethics Act”. By this decision, the Council had been led to specify the extent of the “constitutionality reservation” issued earlier.

All of these decisions, sometimes called “the case law of the summer of 2004”, have completely renewed the framework of the relationship between constitutional law and Community law.

Second step :

- Decision No. 2004-505 DC of November 19, 2004 ; "Treaty establishing a Constitution for Europe": Article 88-1 and its new implications are at the heart of the Council's reasoning, which will take care to frame the principle of the primacy of Union law by considering that the latter does not does not call into question the supremacy of the Constitution within the internal legal order.

Third step :

A final major jurisprudential step was taken in 2006, when three important decisions were rendered:

- Decision No. 2006-540 DC of July 27, 2006; “Law on copyright and related rights in the information society”: this constitutes the culmination of the cycle of case law begun two years earlier.

The applicants invoke against the contested law not only provisions of constitutional rank but also provisions drawn from the transposed directive itself. In this decision, the Council made two essential clarifications:

- First of all, it changed the wording of its constitutionality reservation by replacing the concept of “express constitutional provisions” with that of “provisions inherent in the constitutional identity of France”.

- It has, on the other hand, for the first time clearly accepted and defined its competence to confront a law with the directive which it is intended to transpose, thus confirming that decision 2006-535 DC of 30 March 2006 (Law for equal opportunities) seemed already established by a contrario reading.

In this decision, the Constitutional Council expressly ruled that it is not for it "when referred to it pursuant to Article 61 of the Constitution, to examine the compatibility of a law with the provisions of a directive Community which its purpose is to transpose into domestic law" .

- Decision No. 2006-545 DC of November 30, 2006; “Law relating to the energy sector”: the Constitutional Council will give concrete expression to this new power for the first time to censure, within the framework of its review of the constitutionality of laws, a legislative provision which manifestly disregards the directive it is aimed at to transpose.

We can thus read in recital 18 "that it is up to […] the Constitutional Council, seized under the conditions provided for in Article 61 of the Constitution of a law whose purpose is to transpose into internal law a Community directive, to ensure the compliance with this requirement.

Ultimately, it should be considered that respect for Community law, whether primary or derived, also results from a constitutional requirement, according to the French constitutional judge, which is based on Article 88-1 of the French Constitution of October 4, 1958.

Moreover, the competence of the French Constitutional Council to control the conformity of all laws with Community law endowed with direct effect is based on solid Community case law according to which, according to the Court of Justice of the European Communities, "nothing, no even a constitutional norm, cannot defeat the application of Community law. The SIMMENTHAL judgment clearly states that: "every court of a Member State has the obligation to fully apply Community law and to protect the rights which it confers directly on individuals, disapplying any provision that may be contrary to national legislation. ".

This case-law requires that the national laws falling within its scope be extended to monitoring compliance with Community law as a whole. We could then speak of a real “community control” which differs from the control of conventionality provided for in article 55 of the French constitution of 1958.

The traditional refusal of the French Constitutional Council to integrate international standards as reference standards in its review of the constitutionality of laws is based on a motivation that is not applicable to Community law.

The attachment of Community law to the Constitution is the choice of the French constitutional judge to nationalize it. This results in a new postulate: “any violation of constitutional law entails the violation of article 88-1 of the 1958 Constitution”. The Constitutional Council then gives full effect to the principle of the primacy of Union law through its competence to monitor the compliance of laws with directives, which is an innovation.

Unfortunately, this provision has no equivalent in most constitutions of African countries. But the question that arises is the following: Should we not go in the direction of the case law of the French Constitutional Council to make community standards reference standards in matters of constitutional review in order to boost the process of economic integration? on the continent?

“Effects of the declaration of non-conformity of international instruments with the Constitution of the Republic of Angola”

By: Mr Carlos Manuel dos Santos Teixeira
Counselor Judge at the Constitutional Tribunal of Angola

Despite the existence of a diffuse system of control of unconstitutionality in our legal system, according to the Constitution of the Republic of Angola (CRA), the body competent to decide on a possible contradiction between an international norm and the Constitution is the Constitutional Court.

Article 228 of the CRA provides that the President of the Republic may request the preventive assessment, before the Constitutional Court, of the constitutionality of any norm contained in a law degree submitted for promulgation, of an international treaty submitted for ratification. or international agreement submitted to him for signature, since it is the responsibility of the President of the Republic, under the terms of paragraph c) of Article 121 of the CRA, to sign and ratify, as the case may be, after approval, treaties, conventions, agreements and other international instruments.

January 14) which establishes the President of the Republic as the competent entity to promulgate international treaties after approval by the National Assembly.

It should be noted, however, that with regard to international norms, there is only a preventive control of unconstitutionality, since, due to the current system of reception of international norms, the incorporation of norms of law international law in the Angolan legal system, it is necessary to incorporate it through an internal legislative act, in accordance with the provisions of the Constitution. It should be noted that the Constitution enshrines in its article 13 the incorporation of the norms of international conventions ratified by Angola as norms of domestic law.

In terms of preventive inspection, the decisions of the Constitutional Court can take two forms: the pronouncement in the sense of unconstitutionality or the non-pronunciation in the sense of unconstitutionality, and it is never up to it to decide on the constitutionality (in the positive sense) of the standards whose assessment has been raised.

It is within his power of decision "to consider that a certain future norm which he considers is or is not in conformity with his parameter for measuring validity, which is the fundamental law, but it is

absolutely excluded that he it is up to him to affirm. , definitively, that this norm is, 'urbi et orbi' , compatible with it, allowing possible revision, focusing on the same matter, in abstract or concrete successive inspection" (CORREIA, José de Matos: Introduction to Constitutional Procedural Law , Universidade Lusíada Editora, Lisbon: 2011, page 102).

That said, we will limit ourselves to the effects of the declaration of unconstitutionality of international norms resulting from a process of preventive review of constitutionality.

- **pronunciation of unconstitutionality**

The effects of a declaration of unconstitutionality are determined by Article 229 of the CRA, which are also set out in Article 25 of Law No. 3/08, of 17 June, Law of Constitutional Procedure (LPC).

If the Constitutional Court considers that the existence of a violation of the fundamental law has been verified and, as a logical consequence, declares that it is unconstitutional, the impossibility of signature or ratification occurs as an automatic and immediate effect, and the resulting return of the text to the governing body from which it originated (Article 229, para. 2, of the CRA).

Thus, given the declaration of unconstitutionality, the treaty/covenant in question must be vetoed by the President of the Republic who, under the terms of paragraph c) of article 121 of the CRA, is the entity competent to promulgate, sign or ratify it, as the case may be, after approval. It should be noted that the approval belongs, as a general rule, to the National Assembly, ex vi of paragraph k), of article 161 of the CRA and of article 11, paragraph 2 of law nº 4/11 , of January 14 , International Treaties Act

The pronouncement of unconstitutionality therefore determines, the imperative of a specific form of veto, which has been doctrinally designated by a legal veto (since they are grounds for legal non-conformity, and not of political judgment which determines it) or for unconstitutionality (since it is the occurrence of this vice which is at its base).

Moreover, it is a mandatory veto, since the President of the Republic is required, in such circumstances, to do so. This is moreover confirmed by the fundamental law which, in paragraph 2 of article 229, alludes in very clear terms to the existence of a real duty legal, because otherwise one cannot understand the use which is made of the term "he must".

In this regard, it is also important to stress that we are not we are faced with a simple return of the diploma tainted with body from which it comes. Indeed, the entity that freely formulated the request is not constitutionally relegated to the role of "letter box", it is rather required to practice a specific act of veto, although, he repeats, of a strictly binding. As a result, and contrary to what happens in the case of a political veto, the decision of the President of the Republic does not here need to be based on itself, since the reasons on which it is based are those contained in the judgment of the Constitutional Court itself. To research.

In other words, the entity competent to veto is not obliged - we would even say that it is not authorized - to explain the reasons for its negative attitude, since these are, "ex natura" , those contained in the decision of the constitutional court.

After the declaration of unconstitutionality, the veto and the subsequent return to the authority from which the diploma emanates, the procedural evolution is differentiated according to the nature, internal or international, of the act in question.

For logical reasons, as these are not acts of the exclusive responsibility of the Angolan internal order, neither the purge nor the reformulation constitute an open hypothesis. These instruments, whose content derives from negotiations established with other subjects of international law, prevent any hypothesis of unilateral intervention. Thus, in the event of a judgment of unconstitutionality, an alternative hypothesis to solve the problem thus posed would be to resort to the figure of reservations, which can be formulated in relation to the vitiated norms, thus making it possible to solve the problem of the incompatibility noted by the Constitutional Court, in light of the provisions of the Vienna Convention on Treaty Rights (Article 2(d) and Article 19).

Thus, any State may unilaterally, in the act of ratifying, accepting or approving a treaty, declare that it excludes or modifies the legal effect of certain provisions of the international instrument.

The problem raised by the judgment of the Constitutional Court will only be resolved, however, if the reservations envisaged are authorized - or, at least, not expressly prohibited - by the treaty in question. And that not being the case, and since the reservation does not constitute, in international law, a unilateral legal act, its production of effects will necessarily depend on its acceptance by the other Contracting Parties. That is to say that the solution to the crisis dictated by the nature of the decision of the constitutional court may ultimately depend on the will of third parties, who may prevent it, either for political reasons or for reasons legal, to resort to the figure of the objection to the reservation.

If accession with reservations is not possible, the logical consequence seems to be the withdrawal of the approval of the international instrument given its non-compliance with constitutional norms and principles, and the impossibility of renegotiating the text. of the treaty, therefore the preventive inspection of the constitutionality of conventions international texts is based on a particular objective of avoiding binding Angola to international texts that are not in conformity with the Constitution.

In the situation of admissibility of purge of the unconstitutional international standard and in the event of possible reformulation of the Treaty, because of modification or non-application of the purged standard, the President of the Republic or the deputies who challenged the constitutionality of the latter may again request the preventive assessment of any of the provisions of the recast treaty (Article 229(4) of the CRA).

- At this point, it is important to summarize the following information to remember:

 The President of the Republic may request a preventive assessment, before the Constitutional Court, of the constitutionality of any norm contained in an international treaty submitted to him for ratification or an international agreement submitted to him for signature;

 The entity competent to rule on a possible contradiction between an international norm and the Constitution is the Constitutional Court;

 If the Constitutional Court pronounces on the unconstitutionality of the norm contained in the international diploma, it will become impossible to sign or ratify it, and therefore the diploma must be returned to the body from which it came (article 229 (2)). CRA);

- Given the declaration of unconstitutionality, the treaty/covenant in question must be vetoed by the President of the Republic, since he is, in such circumstances, required to act in this sense, in accordance with the provisions of section 229(2) . .º of the CRA;

- Verified unconstitutionality can be overcome, in light of the provisions of the Vienna Convention on Treaty Rights (paragraph d) of Articles 2 and 19), with appeal the figure of reservations, which can be formulated in relation to tainted norms;

- If it is not possible to join under reservation and there is impossibility of renegotiating the text of the treaty, the logical consequence seems to be the refusal to approve the international instrument given its non-compliance with constitutional norms and principles, since the preventive control of the constitutionality of international conventions is based on the desideratum to avoid binding Angola to international texts that do not conform to the Constitution.

“The status of international standards in the Tunisian Constitution”

By: Mr Kchaou Moncef
First President of the Court of Cassation of Tunisia

International law defines the legal responsibilities of States in their conduct vis-à-vis each other as well as the rights enjoyed by persons present on their territory. Its field covers a wide range of issues, including human rights, migration, international trade and the conditions for the use of force. States have developed various international instruments by which they have established reciprocal rights and obligations, such as treaties, agreements, conventions, charters, protocols, declarations, memoranda of understanding, modus vivendi and exchange of notes.

Since independence, Tunisian domestic law has been impacted by a particular phenomenon, namely, the introduction of many norms from international instruments within the hierarchy of Tunisian legislation.

It is undeniable that when a constitutional provision refers to an international treaty, the incorporation of some of its provisions into the reference standards of constitutional review does not make them constitutional norms: they remain norms of a treaty nature.

Nevertheless, it remains necessary to determine the place occupied by this reference norm in the Tunisian legal order, since, in certain legal systems such as Austria and Portugal, the treaty norm enjoys either a constitutional or a legislative rank. They may also have an infra-constitutional rank without any precision, i.e. without pronouncing on their hierarchical rank.

However, given that these international standards are binding on the Tunisian State that ratified them, two problems quickly emerged after the approval of the constitution of 1 June 1959. On the one hand, it was necessary to know and decide where to position the hierarchical location of international standards in relation to domestic law. On the other hand, to resolve the difficulty of the place of international standards in relation to the Constitution itself. Hence the problem of this line of reflection is as follows:

What is the status of international standards in Tunisian domestic law, particularly with regard to the law on the one hand and the Constitution on the other ?

While international standards have a higher value than Tunisian domestic laws (I), the same is not true with regard to their status within the hierarchy of norms vis-à-vis the Constitution (II).

I. The supremacy of international norms over Tunisian laws

In a first configuration, the conflict between an international norm and a domestic law does not pose any particular problem: when the provisions of an international norm are directly applicable, they prevail over the previous rules of domestic law which are implicitly abrogated. It is the application of a general principle of interpretation according to which the later law derogates from the earlier law (Lex posterior derogat priori).

The difficulty arises in the presence of an incompatibility between a treaty and a subsequent law. Such a conflict should be resolved by the constitutional principle of the superiority of international norms over domestic laws. Indeed, from the entry into force of the Constitution of 1 June 1959, article 48 had provided that: "Duly ratified treaties have a higher authority than laws, even if they are in contradiction with the latter". This meant that international conventions were hierarchically superior to domestic laws. These same provisions were taken up by Article 20 of the Constitution of 27 January 2014: "Conventions approved by Parliament and ratified are superior to laws ... ".

Article 74 of the Constitution of 25 July 2022, for its part, reiterates the same idea by providing that: "Treaties ratified by the President of the Republic and approved by the House of People's Representatives are superior to laws ... "

However, Article 74 of the Constitution makes the superiority of treaties subject to two conditions:

– the regularity of their ratification and approval;

-their application by the other party or condition of reciprocity.

The Tunisian Constitutional Council gives in its opinion n 56-2006 (OGRT n 34 of 27 April 2007 p.p. 1055-1056), specifying that "considering that, pursuant to Article 32 of the Constitution, the Convention has an authority superior to that of laws, including organic laws".

The Tunisian Court of Cassation has a well-established jurisprudence: international treaties and conventions have superior authority and are hierarchically superior to previous and subsequent domestic laws. And it is up to the judicial judge to directly ensure respect for this superiority. Indeed, the domestic legal order defined by the Constitution requires the legislator to respect the stipulations of international treaties and agreements duly ratified or approved.

It should be noted that a law deemed contrary to a treaty is only not applied to the dispute. The unconventional law can therefore, theoretically, continue to produce its effects in the domestic legal order.

While it is undeniable that international conventions have, in Tunisian law, a hierarchically superior value to domestic laws, the situation is quite different with regard to their value vis-à-vis the Constitution.

II. The supremacy of the Constitution over international conventions

The place of the Constitution in the hierarchy of norms is torn between two ideas:

- The primacy of the international order over the internal order, because international law is based on the principle "pacta sunt cervanda" (respect for the word of the other). Under no circumstances can a State contravene an international commitment by availing itself of a norm of its domestic law, even if it were the Constitution. To do so, the State would undermine the principle of "pacta sunt cervanda" which is the basis of international law.

Despite its place at the top of the hierarchy of norms, the Constitution remains an internal rule of each country and can compete with international standards. According to this conception, the latter must prevail.

- The primacy of the Constitution over the international order. This is the path begun by the successive Constitutions adopted by Tunisia since independence. Indeed, in the Tunisian domestic legal order, the Constitution has primacy over international commitments, including treaties. This supremacy is affirmed by Article 74 of the Constitution of 25 July 2022: "Treaties ratified by the President of the Republic and approved by the House of People's Representatives are superior to laws and inferior to the Constitution."

It follows from that article that international treaties have supra-legislative and infra-constitutional rank. However, the superiority of the Constitution over international treaties plays out in the internal order, not in the international order. Indeed, in the international order, a State could not invoke its Constitution to refuse to apply a treaty. A dualistic conception of the Tunisian legal order is thus adopted, which leads to consider the national order and the international order as two independent systems that coexist in parallel.

The Constitution is considered the highest rule of the legal order of the Tunisian State, from which all other rules flow. But for the Constitution to truly be the supreme norm, it is necessary that there be a body that can disapply an international norm, a law or a regulation that would be contrary to it. The supremacy of the Constitution vis-à-vis international standards is effective only when there is a review of constitutionality. Tunisia has entrusted this function to a specialized court, which has the rank of Constitutional Court. Article 127-2 of the 2022 constitution provides that: "The Constitutional Court is competent to review constitutionality: [...] treaties submitted to it by the President of the Republic before the promulgation of the law on the approval of such treaties".

Initially, the Constitutional Council conceives the legal order in its pyramidic Kelsenian structure. Thus, ratified and approved international conventions are above the law but have an infra-constitutional rank.

This position is clearly set out in two opinions: Opinion No. 31-2007 (OGRT No. 58 of 20 July 2007, pp. 2454-2457 on a draft law approving the Protocol to the Court of Justice of the African Union) and Opinion No. 32-2007 (OGRT No. 58 of 20 July 2007, pp. 2458-2461 on a draft law approving the Protocol to the African Charter on Human and Peoples' Rights on creation of an African Court on Human and Peoples' Rights) by providing that "Considering that the primacy of treaties over laws thus recognized, does not elevate them to the rank of the constitution, that this primacy cannot then have the consequence of affecting the fundamental principles enshrined in the constitution or of limiting the prerogatives conferred on constitutional institutions ... ".

It follows from the foregoing that the review of conventionality is essentially intended to preserve constitutionality.

“Basis of Constitutional Review on international treaties: Between domestic law and international law”

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Introduction

With the spread of national constitutions and the emergence of rules of international law, problems have arisen in the relationship between public international law and domestic law, and what is the tool that links the two systems, the "international treaties and agreements" – whose importance is increasing day by day, and the relationship between national constitutions and the rules of international law? and the rank of the latter rules in relation to the legal rules of the State, in particular the constitution.

How is the constitutionality of international treaties reviewed, and on what basis? This is a subject of great importance, because it is linked to the protection of the supremacy of the constitution, and its sanctity before international law, in addition to the fact that this control in its ideal form constitutes an impregnable barrier against any violation of the sovereignty of the State, and avoids threatening its interests, especially when a conflict arises between these interests and the interests of certain international entities.

We address the transfer of constitutional control of international treaties between domestic law and international law through several themes:

Introductory topic

An overview of the definition of a treaty and the review of the constitutionality of international treaties in different systems

Definition of international treaties:

An international treaty is defined by case law as a written agreement between two or more persons governed by international law, whatever it may be called, concluded in accordance with the provisions of international law for the purpose of producing legal effects.

This definition derives from article II, paragraph 1/a, of the 1969 Vienna Convention on the Law of Treaties, as well as from the corresponding article of the Convention on the Law of Treaties between States and International Organizations signed at Vienna on 21, 1986.

What we learn from this definition is that the international treaty is based on basic elements, which are (1):

1- That the agreement is concluded between two or more persons governed by public international law.

2- That the agreement be in writing.

3- Conclude the agreement in accordance with the provisions of international law.

4- It aims to create or develop legal effects.

And Egypt's Supreme Constitutional Court dealt with the definition of the treaty "that the term international treaty need not be a general term, It extends to all forms of international agreement between two or more states if that agreement is recorded in one or more documents, and regardless of the questions it regulates or its purpose, and then what is related to its concept is included therein. , whether it be a pact, a charter, a declaration, a protocol, a system or an exchange of two notes" (2) .

The international treaty - under the jurisdiction of the Supreme Constitutional Court - adapts to all these models, all of which fall under the "agreement".

- The constitutional judge's control over international treaties:

The constitutional judge's review of the constitutionality of the international treaty has different modalities according to the systems established for the review of the constitutionality of laws, and these differ according to the constitutions Therapeutic Practice on laws after their publication and implementation.

As regards treaties, the position is no different, since the conduct of legal systems as regards their submission to review by the constitutional court is not the same.

In some countries, the method of prior censorship is sufficient to exclude others, as in France, Senegal and Mauritania.

In other countries, treaties are subject - essentially - to the method of prior checking, with the possibility of subjecting them also to subsequent control, like the rest of the legislation.

As is the case in Congo, Portugal, Spain, Algeria and Germany (1) .

The review of the constitutional judge can be exercised in two ways, the direct method and the indirect method.

Direct supervision: This involves subjecting the draft treaty itself to the review of the constitutional judge, and its control relates directly to him. This method works in France, Portugal, Spain and Algeria.

As for indirect control, it is a question of controlling the law ratifying the treaties, like the rest of the legislation. This method is qualified as indirect because the judge's examination of the constitutionality of the ratification law may lead him to examine the constitutionality of the treaty. himself.

Whether the Treaty has been the subject of prior examination, direct or indirect, the examination of its constitutionality concerns not only the review of its substantive provisions but must also concern the examination of the form of the Treaty to ensure that the provisions of its convening do not violate the Constitution, and also to ensure that the rules on the division of competences are respected.

The question of international treaties raises many problems, perhaps the most important of which is related to the question of the distribution of constitutional powers among the governmental authorities of the State and between the conclusion of the treaty or its ratification, as well as the question of the legal value of the international treaty in the domestic system, the extent to which it is considered a source of legitimacy, and the position of treaties on constitutional control of laws and the relationship of treaties to national constitutions.

These are questions we will try to answer later when we discuss the Egyptian regime.

The first section
The rank of international treaties and their relationship to laws in the Egyptian system

The rank of the international treaty signifies its position among the legal rules within the state, that is, its position in the scale of the legislative hierarchy. If we know that the principle of gradation of laws is a principle that describes the legal structure in a hierarchical way , in which each degree is bound by the degrees above it, then at the top there is the constitution, which is the set of rules that It shows how to establish the general legal rules called legislation, and the content of this legislation has been determined in a general way, inasmuch as it defines the body that undertakes the creation of the law, and shows its method in that, followed by this legislation, which are the rules that the Constitution shows how and how to create them, followed by regulations Then administrative decisions (1) . The link between these earlier rules is one of gradation and subordination, since the new rule derives its existence from the rule that established it.

The comparative constitutional systems have defined different models for determining the rank of international treaties among all other legal rules within the State, as follows:

Countries that make international law supremacy over the constitution:

This type of state places international law and its principles above its constitution, so that agreements concluded by these countries may violate the constitution, and courts are prohibited from declaring the agreement or treaty unconstitutional.

Among these very few countries is the Netherlands in its constitution published in 1922, amended in 1963, because it makes international law superior to it, and agreements concluded by the Netherlands can violate the constitution.

These countries give priority to the rules of international law in general over national ones, as well as to all domestic legislation, including the provisions of the constitution, and grant international treaties a status superior to that of the constitution. Treaty as long as it fulfills the procedures established internally in respect of it and stipulated in its Constitution.

- Other countries render the rules of international law inferior to domestic law:

We find its application in Great Britain, where international law is in reality inferior to domestic law, despite the formal equality between them. If international law is considered part of the law of the country, it is obvious that it concerns only customary rules. The UK Parliament can enact legislation that contradicts previous international legal rules, and international agreements are only valid if they are received through parliamentary legislation, particularly if these agreements relate to the rights and freedoms of British clientelism (1).

- Other countries in which international law occupies an intermediate position between the constitution and domestic law:

In these countries, international treaties and agreements are in the middle, because the constitution is superior to them, and they cannot be concluded in violation of its provisions, but they are superior to ordinary legislation. These include the French Constitution promulgated in 1958 in its article (55), which considers international agreements ratified or approved and published in accordance with the legal procedures in force as having a higher authority than the authority of domestic laws, but on condition of their implementation. Article (54) of the same Constitution prevents the ratification or approval of the international agreement declared unconstitutional by the Constitutional Council. This places the Convention below the rank of the Constitution.

- Other countries that have not specified a specific place for international treaties:

This country did not have a text in its constitution defining its status, these countries being at the head of the Italian constitution which only stated that domestic law had to be in conformity with international law.

The Italian Constitution has not resolved any problem that may arise from a conflict between the international treaty and domestic laws.

- Finally, there are countries that place the treaty on the same level as ordinary legislation:

At the head of these countries is the Arab Republic of Egypt, where Article (151) of the current constitution of the Arab Republic of Egypt, published in 2014, states that "the President of the Republic shall represent the country in its foreign relations, conclude treaties, and ratify them after the approval of the House of Representatives, and they shall have the force of law after their publication." In accordance with the provisions of the Constitution, voters must be invited to a referendum on treaties and questions of peace and alliance relating to the right to _____ In any case, it is not permissible to conclude any treaty which contradicts the provisions of the Constitution, or entails the renunciation of any part of the territory of the State.

What we learn from this article - in its first paragraph - is that the international treaty, after having been ratified and published in the Official Gazette under the conditions established, will have the force of law, that is to say at the same rank as the law.

The rank of the treaty is of the same force and in the same way, and it has been stipulated in successive Egyptian constitutions, starting with Article (43) of the 1956 Constitution, Article (56) of the 1958 Constitution, Article (125) of the 1964 Constitution and Article (151) of the 1971 Constitution.

The rank of international treaties has not changed throughout Egypt's constitutional history.

For it to be considered legal, four conditions must be met:

1- To conclude to the knowledge of whom the constitution has authorized this competence, that is to say the President of the Republic.

2- to be approved by Parliament.

3- To be endorsed by the President of the Republic after approval.

4- To be published in the Official Journal in accordance with the established conditions.

After fulfilling these conditions, the international treaty is like the law in everything. The law does not take precedence over the treaty, and the treaty does not take precedence over the law.

But they are equal in their rank in the tracks of legal rules, and if the constitution is superior to the treaty and the law, then they must comply with its provisions. The constitutional review authority must guarantee the force of the treaty to the extent that it accords with the provisions of the constitution.

- In any case, it is not permissible for an international treaty - whatever its purpose - to infringe the provisions of the Constitution in its formal or substantive aspects.

- And where there is a conflict between the content of the treaty and a law subsequent to it and the treaty has the force of law, priority is given to the law rather than to the treaty.

- This is a consequence of the equivalence of the treaty with the law, because the treaty and the law are equivalent in that form in their degrees, so that the law that follows the treaty is only an amendment or a termination of it. The treaty is considered as such if its implementation is not linked to the enactment of a law that transfers its provisions to the domestic domain, and makes them binding to respect. If its implementation is pending the promulgation of a subsequent law, then the previous law remains in force until the promulgation of the next law (1) .

The Egyptian Supreme Constitutional Court confirmed these meanings in its judgment in Case No. 31 of the 3rd "Constitutional" judicial year at the session of 7/5/1983, stating: "Whereas the plaintiff complains about the first paragraph of Article 1 of Law No. 81 of 1976 that it prohibited non-Egyptians from acquiring ownership of built real estate or vacant land, whatever the reason for the acquisition of property, with the exception of inheritance, without excluding from this prohibition foreigners whose countries have concluded agreements with Egypt by which they guarantee its citizens rights equal to those enjoyed by Egyptians within the country, including the agreement on the encouragement and mutual protection of investments between the two governments of the The Arab Republic of Egypt and the Greek Republic violated the provision of Article (151) of the Constitution, which requires compliance with international agreements and treaties.

And since the first paragraph of Article 1 of Law No. 81 of 1976 regulating the ownership of non-Egyptians over built real estate and vacant land stipulates that "without prejudice to the provisions of Law No. 43 of 1974 on the Arab Investment System and Foreign Money and Free Zones, non-Egyptians are prohibited, whether they are natural or legal persons, to acquire ownership of built real estate and vacant land in the Arab Republic of Egypt, regardless of the reason for acquiring the property, with the exception of inheritance. The explanatory memorandum to this law stated that this prohibition "does not extend to cases of foreign ownership regulated by international treaties and agreements in force in Egypt under the established conditions which are It has the force of law in accordance with Article (151) of the Constitution, since these treaties and agreements are considered special laws which are not abrogated by the General Law, as is the case with the current project.

And since the scope of the Supreme Constitutional Court's jurisdiction to rule on the constitutionality of laws and regulations is that the basis of the appeal is the violation by law of a constitutional provision, it does not extend to cases of conflict or conflict between regulations and laws, or between the original legislation and subsidiary legislation of the same rank.

- Since this was the case, and the first paragraph of Article (151) of the Constitution stipulated that "the President of the Republic concludes treaties and communicates them to the People's Assembly, accompanied by the appropriate declaration, and they have the force of law after their conclusion, ratification and publication in accordance with the established conditions." The Encouragement and Protection Agreement was Mutual Investments between the Governments of the Arab Republic of Egypt and the Greek Republic, signed in Cairo on 1 April 1975 and issued by Republican Decree No. 350 of 1976, on which the plaintiff relies in her action, does not exceed the force of law and has no constitutional status. What the plaintiff raises is that the first paragraph of Article 1 of Law No. 81 of 1976 mentioned, a violation of the provisions of that agreement - whatever the point of view on this violation - is nothing more than an obituary of a violation of the law of an international agreement which has the force of law, and does not constitute a violation of the provisions of the Constitution which this court is responsible for safeguarding and protecting, which requires dismissal .

The second topic
International treaties and acts of sovereignty

The relationship between international treaties and acts of sovereignty or political actions is fraught with ambiguity, as many associate them. For them, treaties are always acts of sovereignty that have nothing to do with the judiciary, whether substantive judicial or constitutional. judicial.

But it is not so simple, because many international treaties have nothing to do with the work of sovereignty.

- The principle of international treaties is that they respect the formal and substantive requirements of the constitution.

- There are provisions in international treaties which, by their nature, are not subject to judicial review of constitutionality, and several issues fall within their jurisdiction, perhaps the most important of which are:

1- If there is a violation of the provisions of the treaty, it has been issued by a Contracting State.

2- Examine whether the conclusion of the treaty is linked to situations that no longer exist in view of the fundamental change in the circumstances surrounding the country.

3- To assess whether a procedure has been issued by one of the Contracting States which gives the national authority the right to respond to it by corresponding action, such as refraining from applying the treaty, suspending it or acting against it (1) .

4- Constitutional judges have nothing to do with the decision to reserve the treaty or the decision to withdraw it.

5- Constitutional judges have nothing to do with the conditions agreed by the two Contracting States for the provisional application of an international treaty, whether the provisions of the treaty in whole or in part.

6- Constitutional review has nothing to do with treaty provisions that guarantee non-states the rights granted to them.

7- It has nothing to do with amending an existing treaty.

8- Separating parts of the treaty from each other has nothing to do with the control side.

9- Withdrawing from the treaty has nothing to do with the constitutional judge.

10- The denunciation of the Treaty - in all cases - and whether it has been pronounced within the framework of a consensus between the legislative power and the President of the Republic or unilaterally by one of them, this denunciation always remains a political act which, by its nature, departs from judicial control (1) .

11- Negotiations on international treaties, regardless of the actors, have nothing to do with the constitutional judge.

12- Accession to an existing international treaty with which the constitutional judge has nothing to do.

Any treaty, whatever its name, is not an act of sovereignty:

The judiciary of the Supreme Constitutional Court has argued that it is not correct to say that all international agreements and treaties are political acts that are excluded from the scope of review of the constitutionality of laws.

Many international treaties were presented to her, so she observed some of them and denied them the description of political actions, while others confirmed that they were acts of sovereignty.

We present an example of some of the Court's judgments in the context of an international agreement, in which it has seen nothing to prevent its forgetfulness, because its subject matter has nothing to do with acts of sovereignty, and the lesson is always the veracity and nature of the work in accordance with the legal characterization that the Court accords to it.

Including its decision in Case No. 10 of the "Constitutional" judicial session of the year 14 of 19/06/1993, where it stated that the first and third defendants argued that the court did not have jurisdiction to hear the pending case on the basis that the agreement establishing the said bank and the decision of the President of the Republic approving it are considered one of the acts of sovereignty that, by its nature, is far from being subject to judicial review, on the grounds that the establishment of this bank was aimed at building the Arab economy on solid foundations to meet the requirements of Arab economic and social development, and that the decision of the President of the Republic to approve this agreement was taken after the approval of the People's Assembly for its inclusion in the agreements which are specified exclusively in the second paragraph of Article (151) of the Constitution.

Considering that, although the theory of "political actions" — as a restriction on the competence of the constitutional judiciary — finds most of its applications in the field of international relations and agreements more than in the domestic sphere, taking into account the articulation of this field with political considerations, the sovereignty of the State and its supreme interests, It is not correct to say that all international agreements - whatever their purpose - are considered "political acts". Nor is it correct to say that the international agreements which have been defined by the second paragraph of Article (151) of the Constitution and which required their presentation to the People's Assembly and its approval, all - and automatically - become "political actions". which do not fall within the competence of constitutional justice, for the two preceding assertions are contrary to the basis on which the considerations of exclusion of these acts from judicial review are based on their

constitutionality, which are considerations due to the nature of the acts themselves and not to the method or procedures for concluding and ratifying them.

Considering that it follows from the agreement establishing the Arab International Bank and its statutes, which is considered - according to its first article - as an integral part thereof, that the Governments of Egypt, Libya and the Sultanate of Oman agreed to establish this bank, and one of the Kuwaiti citizens joined them - once the agreement was concluded. The agreement opened the door to membership - according to its second article - to other Arab governments, as well as Arab banks, organizations, institutions and enterprises, as well as to Arab individuals, and that this bank carries out commercial activities that banks usually do, such as accepting deposits, offering loans, publishing and approving financial and commercial documents, and finance foreign trade operations And an organization to contribute to investment programs and projects, and that the Bank carries out its activities in the field of trade in accordance with the international banking rules and foundations in force, and that the Bank has legal personality and, in order to achieve its objectives, has the right to enter into agreements with member and non-member countries, as well as with other international institutions. It has a right of ownership and contract and is managed by a board of directors composed of representatives of the shareholders chosen for a renewable period of three years. And that the term of the bank is fifty years, and that the statute of the bank specified the conditions of its dissolution and the mode of liquidation of its funds.

And since the conclusion of the above is that the aforementioned agreement results from the creation of a bank that carries out the work carried out by _____ commercial banks, it cannot be considered __ 'political actions' including the supervision of the Constitutional Court. certain privileges for the Bank, its employees, or for the funds of shareholders or depositors within it. Nor does it change what was mentioned at the beginning of this agreement regarding the motives that led the signatory Arab governments to create this bank. Consequently, the argument that the court does not have jurisdiction to hear the present case is based on a non-binding basis.

The third topic
How to Review the Constitutionality of International Treaties in Egypt

The Egyptian constitution promulgated in 2014 regulated the authority responsible for reviewing the constitutionality of laws and legal rules that take on the rule of law and its force, including international treaties, although no explicit text was mentioned, indicating its nature, independence, formation, and the manner of directing the control and judgment issued by it, we therefore present the beginning of the texts of Articles De (191-195) of the Constitution, and the texts regulating the modalities of review in the law of the Supreme Constitutional Court promulgated by Law No. 48 of 1979, and then for a brief overview of how to review the constitutionality of the Treaty.

- Texts of the current constitution promulgated in 2014

Article (191): The Supreme Constitutional Court is an independent and autonomous judicial body. Its headquarters are located in the city of Cairo. If necessary, it may meet elsewhere in the country with the approval of the General Assembly of the Court. First, and the general assembly of the court is responsible for its affairs, and its opinion is taken on bills relating to the affairs of the court.

Article (192): The Supreme Constitutional Court alone exercises judicial review of the constitutionality of laws and regulations, interpretation of legislative texts, settlement of disputes relating to the affairs of its members and conflicts of jurisdiction between judicial authorities and bodies with judicial jurisdiction, and settlement of disputes. which are based on the implementation

of two final decisions contradictory, one of which has been rendered by one of the judicial authorities, or a body with judicial competence, and the other on the other hand, and disputes related to the implementation of its provisions, and the decisions it renders. The law specifies the other courts of the court and regulates the procedures to be followed before it.

Article (193): The Court shall be composed of a President and a sufficient number of Vice-Presidents. The body of Commissioners of the Court shall consist of a President, enough Presidents, Advisers and Deputy Advisers. The General Assembly chooses the President of the Court from among the three most senior Vice-Presidents of the Court, as well as the Vice-Presidents and members of its Commissioners, and a decision is taken by the President of the Republic to appoint them, all in the manner indicated by law.

Article (194): The President and Vice-Presidents of the Supreme Constitutional Court, as well as the President and the members of its Commissioners are independent and irremovable, and there is no authority over them in their work other than the law.

Article (195): Judgments and decisions of the Supreme Constitutional Court shall be published in the Official Gazette. They are binding on all authorities of the State and have absolute authority over them. The law regulates the effects of a decision of unconstitutionality of a legislative text.

Article (25) of the Law on the Supreme Constitutional Court stipulates that: The Supreme Constitutional Court The Court is solely responsible for the following:

First: Censorship of the judiciary on the constitutionality of laws and regulations.

second: Judgment of the conflict of jurisdiction by designating the competent authority from among the judicial authorities or bodies with judicial competence, and this if the legal action is brought on a matter before two of them and neither of them renounces its examination or abandons both.

Third: Settlement of the dispute which is based on the implementation of two contradictory final decisions, one of which emanates from any of the judicial authorities or an authority having judicial jurisdiction, and the other on the other hand this one.

Article (26) It being understood that: The Supreme Constitutional Court interprets the texts of laws emanating from the legislative power and decrees by laws emanating from the President of the Republic in accordance with the provisions of the Constitution. If it raises a challenge in the application and is of such importance that it standardizes its interpretation.

As was the text Article (27) It being specified that: The court may, in any case, declare unconstitutional any text of law or regulation presented to it in the exercise of its jurisdiction and relating to the dispute before it, after having followed the procedures prescribed for the preparation of constitutional proceedings.

And states Article (29) Provided that: The Court shall carry out the judicial review of the constitutionality of the following laws and regulations:

Has- If a court or body having jurisdiction considers, during the examination of a case, that a law or regulation necessary for the settlement of a dispute is unconstitutional. The trial was stopped, and the documents were returned free of charge to the Supreme Constitutional Court to rule on the constitutional issue.

B- If one of the litigants has invoked, during the examination of a case before a court or tribunal having judicial jurisdiction, the unconstitutionality of a provision of a law or regulation, and the court

or tribunal has considered that the defense is serious, he has postponed the examination of the case and fixed a time limit not exceeding three months for the person who raised the defense to file the application. The case is before the Supreme Constitutional Court, and if the case is not filed on time, it is considered Payment as if it were not.

Article (49) Its law stipulates that: The judgments of the Court in constitutional cases and its decisions on interpretation are binding on all State authorities and for all.

The judgments and decisions referred to in the preceding paragraph shall be published in the Official Journal, free of charge, within a maximum period of fifteen days from the date of issue.

The judgment of unconstitutionality of a text of law or regulation entails the inadmissibility of its application from the day after the publication of the judgment, unless the judgment specifies another date for this, provided that the judgment of unconstitutionality of a tax text has in all cases only a direct effect, without prejudice to the benefit of the applicant of the judgment rendered on the unconstitutionality of this text ( ) .

If the decision of unconstitutionality relates to a penal provision, judgments handed down with a view to a conviction based on that provision shall be deemed null and void. The head of the body of commissioners notifies the public prosecutor of the decision as soon as it is pronounced. Act accordingly.

The interest of these texts, which we have mentioned, is several things, which we briefly present:

First: There is no explicit provision in the Constitution or in the law of the Supreme Constitutional Court authorizing the Court to review the constitutionality of international treaties. Unlike some countries whose constitution expressly stipulates the competence to review the constitutionality of the international treaty, the most striking example of which is the France under the 1958 constitution, where article (54) of the latter stipulates the competence of the French Constitutional Council to review the constitutionality of international treaties.

Second: The competence of the High Constitutional Court to review the constitutionality of treaties derives from the assumption that they are like a "law", after ratification and publication in the prescribed form.

Third: Before ratification is complete, treaties do not acquire the rule of law and are not subject to constitutional review.

Fourth: The meaning of the treaty that is subject to censorship is the same meaning that we mentioned in the definition of international treaties, which makes it extend to all forms of agreements regardless of the name given to it as long as it has been ratified and published in the Official Journal.

Methods of review under the Supreme Constitutional Court:

What emerges from the text of articles (27 and 29) of the Law on the Supreme Constitutional Court is that the method of review varies into three types, which means that there are three methods, one of which allows the court to exercise its review over the constitutionality of laws, and these methods are:

1- An objection of unconstitutionality by one of the litigants before the competent court if a substantive case is examined .

2- Referral to the competent court itself, because it can find that a text necessary for the judgment on the merits is vitiated by a constitutional defect, so that it can return the documents free of charge to the Supreme Constitutional Court to rule on its constitutionality.

3- The right to challenge the decision of the Supreme Constitutional Court.

Talking about these methods is beyond the scope of our research, but what we would like to emphasize is that these methods are the same as those that are followed when dealing with the constitutionality of international treaties, given that they have become, after ratification and publication, a law like all other laws.

Constitutional reviews of international treaties according to the rulings of the Supreme Constitutional Court:

The jurisprudence of the Supreme Constitutional Court is consistent with several concepts concerning the decision on the constitutionality of the treaty, perhaps the most important of which are:

First: The right to sue is guaranteed to everyone, whether national or foreign. It is a right that is not limited to access to a court, whatever its formation or guarantees, but to a court that is the natural judge of the dispute before it.

secondly: That the rights acquired by non-citizens in the State - and in the light of its systems - may be protected by all means available to citizens by the Constitution, the most important of which is access to an independent and impartial tribunal established by law, and that the substantive and procedural rules in force before it are sufficient to ensure a fair trial at all stages of the settlement of the Constitution. litigation.

Third: It is not permissible to fragment the provisions of the Treaty in a way that separates some of its provisions from others and undermines their integrity, except under two conditions:

First: That the treaty contains no text indicating that the Contracting States intended to apply the treaty in all its provisions as an undivided whole.

The second: Whether the application of the remaining parts of the treaty - after separating parts of it, if there is evidence of the lawfulness of such separation - is not unjust.

Fourth: The decision on the constitutionality of the treaty cannot absolutely exclude all the political factors surrounding it, because these factors affect the direct and indirect relations between States among themselves, and the Supreme Constitutional Court must take this into account, so that it does not turn its ears away or turn a blind eye.

Fifth: Egypt's accession to an existing international treaty requires the rule of its ratification, because ratification of the treaty is a procedure that benefits the will of the State to comply with it. It is often associated with the exchange of the deposit of instruments of ratification in the authority designated by the treaty, to restrict this deposit to the two countries that have exchanged it for each other.

Thus, ratification of the treaty, accession to it. Indeed, accession to the treaty is a procedure whereby the State agrees to be a party to a treaty already signed by other countries, even if the treaty has not yet entered the implementation phase, which implies: Egypt's accession to an existing treaty, and the completion of that treaty and its conditions for implementation, restrict it to it provided that it is published in the Official Gazette, since the treaty that Egypt ratifies is the same as the treaty to which it accedes by transferring its provisions to domestic law as soon as it is published in the Official Gazette.

Although the Egyptian constitution does not refer to accession to the treaty as a means of complying with its provisions in the international arena; However, such accession shall have the effect of ratifying in full, without addition or deletion, to the effect that: the accession of Egypt to an international treaty and the publication of its provisions in the Official Gazette; It shall incorporate it into domestic laws and make part of them for the use of the courts in any dispute relating to the application of this Treaty.

Sixth: Human rights transcend national borders, and this characteristic gives them a global character. If they are contained in a treaty, laxity in ratifying or publishing them is considered a negative position on the part of the executive authority, and a refusal to act that it should have taken in accordance with the constitution and the law, in a way that prevents individuals' access to the rights they receive from the treaty in order to realize the rights stipulated therein.

Seventh: Even if individuals cannot compel the executive authority to ratify an international treaty, or accede to an existing treaty, or oblige it to publish the treaty in the Official Gazette after ratifying or acceding to it; However, every treaty concluded by Egypt may require - even after its ratification or accession, and subsequent publication in the Official Gazette - legislative intervention - and this is achieved in every treaty that is not enforceable by itself.

The treaty is considered as such if it refers to the law to regulate the rights stipulated therein, if the intervention of the legislator is then considered necessary to give these rights their effectiveness. Not all legal texts are limited to those approved by the legislator, but they also contain forms of refraining from regulating rights in a way that guarantees their effectiveness, so that the legislator's abandonment of regulating the rights guaranteed by the Treaty to citizens is only an omission on its part contrary to the Constitution (1) .

The fourth theme
Application of international treaties in the Egyptian legal system

Article (151) of the Egyptian Constitution published in 2014 did not stipulate any conditions for the international treaty to be implemented after its conclusion, approval by the House of Representatives, ratification by the President of the Republic and publication in the Official Gazette. One of the laws of the state, it can annul it, and it can be annulled by another law subsequent to it, as we have already mentioned before.

There is no barrier in the Egyptian constitutional and legal system between the entry into force of the treaty at the international level and its accession in the domestic system of the country and annexed thereto.

Indeed, the promulgation of this law is required only in countries which separate the validity of the treaty in the international sphere and its application in the national domain by law, or make this application at the promulgation of this law. These countries do not include Egypt.

Indeed, regimes that depend on the application of international treaties in their domestic system of enacting a law regulating this, their behavior carries many risks. Indeed, international treaties are the ideal means by which countries regulate their mutual relations. Their implementation in good faith is mandatory. This cannot be achieved in the national sphere without implementing the treaty within the framework of national laws as soon as it is ratified and published in the Official Gazette. This is what we consider to be the best solution for the relationship between international law and national law. It cannot be said that there are two areas of application of the treaty, one of which is at the level of relations between States among themselves, and the other at the level of relations between the

Contracting State and its citizens. Indeed, this separation is unimaginable since individuals are originally concerned by the rights which the Treaty guaranteed them and granted them the benefit of.

It is, on the one hand, and on the other hand, the treaties which govern the rights and freedoms of individuals do not treat them as citizens belonging to the Contracting States, but rather by reason of their human being, and they must be treated And the Contracting State has no right to prevent or grant it according to its will, nor to invoke the rights of sovereignty which it possesses until it disposes of a treaty which it has accepted, or to violate the rights guaranteed by the treaty to individuals by one of the contracting States as a ground for its renunciation of the treaty. Indeed, human rights and freedoms cannot be sacrificed simply because another country does not give them the attention they deserve, or does not guarantee them appropriately, or works to nullify them, or exhausts their achievement by various means, the most important of which are the complex procedural rules surrounding them, All the more so since traditional conceptions of sovereignty Today, regional conflict is limited by the remarkable interweaving of the interests of states that do not confront each other and cooperate by negotiating them to resolve their differences.

- Two important things should be noted:

The first: the enforceability of the treaty in domestic law guarantees the unity of its application in accordance with the object of the treaty in the context of its terms and having regard to its intended purpose.

second: The international character of human rights presupposes their international protection, and this protection will not bear fruit without the intervention of States to ensure the implementation of these rights by all the domestic means at their disposal, because unapplied rights have no value, but the value of rights lies in their nature, in their role and in the goals you strive to achieve.

This prompted Egypt's constitution published in 2014 to choose a special text to affirm Egypt's commitment to the human rights agreements, covenants and covenants that Egypt ratifies. Countries by conventions and vows and charters international human rights this believe on it Egypt, and become it has force the law after post-the According to for the statutes evaluated. "

Conditions for the application of the treaty in the Egyptian domestic domain:

In the field of constitutional review of the international treaty, it is necessary for the treaty to be invoked and considered as one of the laws of the State that several conditions be met:

1- It must have been concluded by the authority competent to conclude it legally, and in accordance with the Constitution, the President of the Republic.

2- It is then presented to the House of Representatives and approved by the legally required majority.

3- Ratify it after approval by the President of the Republic.

4- To be published in the Official Gazette, like all other state laws, with all their details.

This is so that the judge is aware of it and undertakes to interpret it according to his judgment and within the limits of his understanding, without being limited in this by the opinion of the Ministry of Foreign Affairs as to its scope, although it is permissible to consult his opinion.

If all these conditions are fulfilled in the Treaty, they are automatically incorporated into national laws and are considered to be part of it.

In some cases, the State may not ratify a treaty it has concluded, or may be inactive in that ratification. The time limit may be long or short, so that the treaty does not restrict it even in international scope. Ratification of a treaty is the procedure by which its provisions enter the implementation phase. Its interests that it weighs fairly in the light of the effect of the treaty on it, so if its issue is settled at the time of ratification, and ratification has actually taken place, then the treaty automatically moves to the internal sphere in countries whose constitutions stipulate that the mere fact of ratifying the treaty and publishing it in the Official Gazette incorporates it into national laws and forms an integral part of them. Foremost among these constitutions is the Egyptian constitution.

The preceding declaration applies to all international treaties that are ratified and published, without going into the jurisprudential details of the types of treaties, which have no place here.

Finally, let us recall that there are treaties that the State does not conclude from the outset, but adheres to them: in this case, accession takes the rule of ratification, which is a procedure by which the State agrees to be a party. to a treaty actually signed by other countries, even if that treaty has not entered into force.

In Egypt, this leads to: accession to an existing treaty and the completion of this treaty under the conditions of its application and compliance as if it had concluded it from the beginning, but provided that it is published in the Official Gazette, and in this case it will have the force of law and will be implemented both internally and externally.

"The state of the International standard in the Djiboutian Constitution"

By Mr. Abdi Hersi Ismail,
President of the Constitutional Council of Djibouti

I - INTRODUCTION

The Constitution, supreme norm of a sovereign State, is considered as the fundamental law, that which is at the top of the hierarchy of norms, source of law and power in the internal legal order.

The Constitution, established by the constituent, proclaims the fundamental rights of individuals and determines all the rules of organization, attribution and exercise within the States. In other words, the Constitution is the reference standard for the legal organization of a State.

Faced with this reality, the phenomenon of globalization and the increasingly numerous and complex interactions between States lead us to reflect on the place of the international standard in the Fundamental Law of self-determining peoples.

In their relations, States interact through the definition of rules normalizing their rights and obligations. The international standard is thus any legal standard which includes an element of organic foreignness insofar as its source emanates from the competence of a group of States.

Classical international law includes all the rules having binding force between States. It aims for them to coexist peacefully and have reliable and predictable interactions with each other.

International law covers very diverse areas, such as:

– the prohibition of the use of force: States must resolve their disputes by peaceful means (art. 2, ch. 4, of the UN Charter);

human rights: everyone can invoke fundamental rights (right to life, physical integrity, personal freedom, freedom of opinion and belief, etc.). The Djiboutian Constitution considers as an integral part of the constitutional provisions the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights.

– protection of the individual in the event of armed conflict: international humanitarian law lays down the rules to be applied in the event of war, mainly to protect civilians, the wounded and prisoners of war.

– the fight against terrorism and other serious crimes :

– the environment : measures to protect the climate and natural resources are all the more effective if they are universal

The Constitution of the Republic of Djibouti, dated September 15, 1992, takes into account the commitments of the State vis-à-vis other States with the integration of international standards into the internal legal order (I) and it has operated its adaptation to the international standard by the constitutionalizing of international obligations (II)

A) the consecration of the conception of a uniform law

The Djiboutian Constitution, in its article 70, provides that “the treaties or agreements duly ratified have, from their publication, an authority superior to that of the laws. ". International standards are incorporated into the domestic legal order and are directly applicable to all subjects of law as soon as they are published. The Republic of Djibouti is one of the countries that have a monist system insofar as a treaty integrates the internal legal order as soon as it has been ratified and published.

Unlike the countries which are in a so-called dualist system, in which integration takes place in two stages. First, the international standard must be signed, approved or ratified and published. In a second step, the adoption of a law which takes up its substance is necessary for the international standard to enter into the internal legal order.

The Djiboutian Constitution enshrines the conception of a uniform law in which the international norm automatically becomes an integral part of national law on the basis of the following three elements:

1- The validity of international law :

The acquisition of the force of law is immediate following ratification and publication. Treaties or international agreements negotiated and signed by the President of the Republic must be transmitted to the legislator for approval and ratification. It is up to the President of the Republic to promulgate the law. Following this ratification, the treaty is published and enters into force in the internal legal order.

2- The applicability of the international standard :

The Treaty or international agreement duly ratified and published is directly applicable by the Authorities and the judicial courts of the country. This particularly concerns the norms creating rights and obligations for natural or legal persons and on which actions before the judicial and administrative authorities can be based.

3- Recognition of the supra legality of the international standard :

In case of conflict of standards, the international standard, sanctioned by ratification and publication, becomes superior to the law. This rank accorded to international law in domestic law is essential to its full effectiveness. The State is therefore bound by the international norm on which binding force is conferred. In the event of non-compliance with this standard, the State finds itself in violation of international law and incurs its international responsibility.

In summary, our Constitution provides that the treaties and international conventions negotiated and approved by the President of the Republic and ratified by the National Assembly, acquire an authority superior to the law as soon as they are published.

B) the relative restriction of the immediate effectiveness of international norms

The principle of reciprocal application of the treaty or international agreement by the other party, enshrined in Article 70 of the Constitution , seems to set a limit to the immediate effectiveness of the international standard in domestic law.

This question of reciprocity in the execution of the international norm is especially relevant insofar as the Constitution recognizes the legal effect of the international treaty in the internal legal order without the need for transposition. This is reciprocity in the execution of the treaty which has become valid as a result of ratification and publication.

By virtue of this constitutional provision, the State of Djibouti is authorized to abstain from applying an international commitment in the event that the other party has not respected the obligations arising therefrom.

This condition of reciprocity seems to place a restriction on the binding force of international treaties and that of order in the hierarchy of norms in domestic law.

However, if the lack of reciprocity deprives the treaty of its binding force, is there not an attack on the principle enshrined in the Vienna Convention on the Law of Treaties and according to which the non-execution of a treaty does not systematically imply its suspension.

The Vienna Convention of 23 May 1969 on the Law of Treaties includes the general rules applicable to the conclusion, application, interpretation and denunciation of international treaties.

The adage pacta sunt servanda is at the heart of treaty law. Article 26 of the Vienna Convention states that: “Any treaty in force binds the parties and must be performed by them in good faith”.

And section 43 of the Convention specifies that any State, having given its consent to be bound by a treaty, remains subject to its duty to fulfill the obligations set out in the treaty and that the suspension, nullity or denunciation in no way affect its international responsibility.

By virtue of this rule, in the event of refusal to implement an international standard regularly negotiated, ratified and published, on the basis of the principle of reciprocity, the State finds itself in a situation of violation of international law.

In order to prevent the subsequent non-performance of the treaty, the States parties have the possibility of depositing reservations in advance provided that the text of the treaty expressly allows it or that these reservations are not incompatible with its object and purpose (art. 19 to 23 of the Vienna Convention). They can no longer do so once they have ratified the treaty.

Furthermore, the Vienna Convention defines, in its article 53, a peremptory norm of international law as a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which may be modified only by a subsequent norm of general international law having the same character.

It is therefore a provision so fundamental for the international community that no violation can be admitted. Recognized examples include the prohibition of torture, the prohibition of genocide, the prohibition of the use of force as regulated by the UN Charter, the equality of States and certain fundamental rules international humanitarian law .

The relevance of the condition of application by the other party is to be questioned with regard to multilateral treaties.

Especially since the Djiboutian Constitution, in its preamble, enshrines the constitutional value of the Declaration of Human Rights and the African Charter of Human Rights, integral parts of the Constitution.

In this respect, it seems to us that the suspension of the execution of human rights conventions or those having the nature of peremptory norm of international law under cover of reciprocity of application is a difficult condition to implement and in if necessary puts the State invoking this reservation in a situation of breach of its international responsibilities.

We can argue that the application of reciprocity is limited to bilateral treaties or agreements only. Hence the relative restriction on the effectiveness of an international norm in domestic law.

A) the revision of the Constitution in case of conflict with the international norm or the recognition of the primacy of the international norm

Paragraph 3 of article 70 of the Constitution stipulates that "the ratification or approval of an international commitment containing a clause contrary to the relevant provisions of the Constitution can only take place after the revision of the latter".

In the internal legal order, the Constitution is the supreme norm of the State and it follows from article 70 that the international norm which must be integrated into the internal law must be in conformity with the Constitution. It must be the subject of a law of ratification.

However, before the ratification procedure, if an international commitment is contrary to the Constitution, either it is not ratified or prior to the ratification, the Constitution must be revised.

Following this revision of the supreme norm, the question arises of the primacy of the international norm over the Constitution.

Nowadays, when interactions between States are based on fundamental principles and rights relating to human rights, humanitarian rights or built on the basis of community interests, the fundamental law of a sovereign State is- limited by this revision procedure?

In other words, do the provisions of the international standard prevail over the provisions of a constitutional nature.

The primacy of the international norm over domestic law, including the supreme norm, essentially emerges from international arbitral and judicial case law. The affirmation of the principle of the superiority of international law over domestic law leads to the recognition of the primacy of the international norm over that of the constitutional one insofar as the constitutional norm is part of the domestic law.

Consequently, this assertion leads to the invalidation of the norm of internal law contrary to that of international law.

However, the Constitutional Council maintains that the principle of the primacy of the Constitution over the international norm is not called into question by the procedure for the revision of the Constitution as provided for in paragraph 3 of article 70 above. aforementioned.

The Constitution is the norm that ensures the validity of the international norm in the internal legal order and it cannot suffer from nullity because of the contrariety with the international norm. The

international norm contrary to the Constitution is not applicable in domestic law and is not subject to the ratification procedure.

The international consequence of this conflict between the international standard and the constitutional standard is the engagement of the international responsibility of the State and not the declaration of an invalidity of the constitutional standard.

The sovereign State is the only one to appreciate the advisability of modifying the constitutional norm in order to allow the integration of the international norm into the internal legal order. The revision of the relevant provisions of the Constitution is not a consecration of the primacy of international law over domestic law .

B) Adaptation of the Constitution to changes in the international context

The revision of the Constitution decided by the will of the sovereign State to integrate its international commitment into the legal order is part of a dynamic of evolution and adaptation of the supreme norm in the face in particular of economic, social, security, humanitarian aspects of international society.

The international norm that meets the requirements of state relations, the objectives of international governance or economic development agreed to by the States can lead to the modification of the Constitution, not because it is considered superior to the constitutional norm, but because it contributes to the consolidation of the stability of the Constitution.

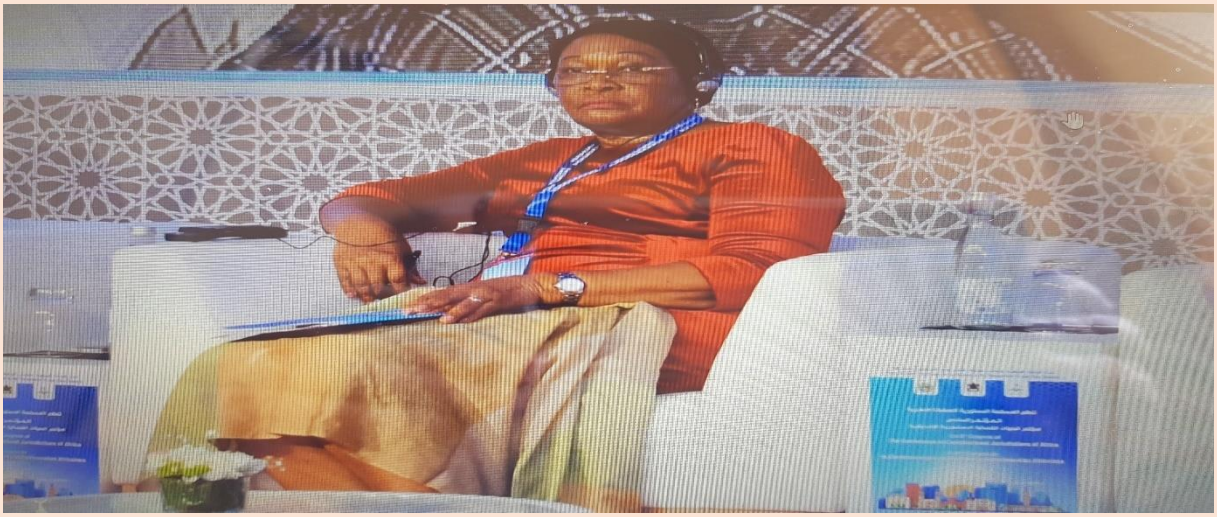
The supreme norm is not rigid but evolves according to the context of the international society and the common challenges between the international community.

When an international commitment contains a clause contrary to the Constitution, the Constitutional Council, on the basis of article 79 of the Constitution, proceeds to the control of the conformity of the international standard to the supreme standard before the authorization of ratification.

The Constitutional Council, seized by the President of the Republic, or the President of the National Assembly or ten (10) deputies before the promulgation of the law approving the ratification can decide on the conformity of the treaty with the Constitution. And in the case of the presence of a provision judged unconstitutional, the law carrying ratification cannot be promulgated without a preliminary revision of the Constitution.

Amendments to the relevant provisions of the Constitution on the basis of paragraph 3 of article 70 testify to the desire of the constituent to ensure the adaptation of the Constitution to changes in the international environment, and do not enshrine the superiority of the international standard.

“Specificities and limitations of the control of the constitutionality of international standards in Gabon”



By: Ms Loise ANGUE
Judge at the Constitutional Court of Gabon

If we confine ourselves to the volume of litigation, the review of the constitutionality of international treaties and agreements is certainly not, to date, the one that mainly monopolizes our jurisdiction.

This contentious branch is still quantitatively reduced, compared to the control of the law, or the electoral litigation that occupies such an important place for us, African constitutional courts in general and Gabonese in particular.

But, let us be clear, this control of international treaties and agreements is undeniably asserted as a very particular contentious branch, because it sees the confrontation of the fundamental internal norm, our Constitution, with an international rule, expression of the meeting of two or more state wills.

This specificity alone justifies our attention to it.

In addition, it is clear that the sources of international law are gaining ground. Globalization and the multiplication of international relations of all kinds automatically generate a normative production that intervenes in the most diverse fields and competes with our national laws.

The Treaties are now the privileged instruments of these cooperative relations. They intervene in the most varied fields: politics, economy, trade, defense, justice or security, culture, education, ecology, technical health etc.

There is no part of state intervention that escapes the intrusion of these international sources.

And the phenomenon will only increase.

It has not escaped anyone in this Hall that all our States are gradually integrating a significant number of international organizations of all kinds.

The latter, increasingly abandoning the traditional structure of cooperation organizations, take the form of supranational integration organizations, which, for the sake of efficiency, have the power, under certain conditions, and within their field of competence, to lay down rules which will impose themselves directly on the internal order of the Member States, without the latter being able to oppose it.

The assimilation of this secondary law, of these new external norms within the Member States, is not without difficulty. Undoubtedly, the process has begun and seems irreversible, so it is a question of doing everything possible to ensure that this integration takes place as well as possible.

The model of the European Union is spreading, and regional organizations of the same nature are only multiplying.

These include:

- the Arab Maghreb Union (AMU);
- the Common Market for Eastern and Southern Africa (COMESA);
- the Community of Sahelo-Saharan States (CEN-SAD);
- the East African Community (EAC);
- the Economic Community of Central African States (ECCAS);
- the Economic Community of West African States (ECOWAS);
- the Southern African Development Community (SADC).

Each follows its development model, is built in stages, but, let us be sure, these organizations will only grow in strength, that go towards more and more integration, and in this movement, their normative production in the long term will largely replace our national laws.

We believe the phenomenon is inevitable, because it is a condition of our development. What state today is strong enough for its voice alone to be heard in the international arena? Which alone is a sufficiently important market to attract companies and investment? Which one alone can bear sufficient military expenses to ensure its security? Which one has sufficient funds to inject them into innovation and new technologies?

The law can only follow this movement, or better, accompany it, and put in place the legal conditions for its realization.

We must therefore expect this litigation bloc to grow in power, which will undoubtedly occupy our courts in the long term in the years to come.

The debates of these days will certainly prepare us for this, and we can only welcome the choice of this issue.

With regard specifically to the Gabonese Republic, the review of the constitutionality of international treaties and agreements is governed by articles 84, 87, 106, 107 and 108 of the Constitution.

Article 84, paragraph 1, indent 1: "The Constitutional Court must rule on international treaties and agreements before their entry into force, as to their conformity with the Constitution, after adoption by Parliament of the law of authorization. ".

Article 87: "The international commitments, provided for in Articles 106 to 108 below, must be referred before their ratification to the Constitutional Court, either by the President of the Republic,

or by the Prime Minister, or by the President of the National Assembly, or one-tenth (1/10th) of the Deputies, or by the President of the Senate or one-tenth (1/10th) of the Senators. The Constitutional Court verifies, within one (1) month, whether these commitments contain a clause contrary to the Constitution. However, at the request of the Government, if there is urgency, this period is reduced to eight (8) days.

If so, these commitments cannot be ratified. ».

Article 106: "The President of the Republic negotiates treaties and international agreements and ratifies them after the vote of an authorization law by Parliament and the verification of their constitutionality by the Constitutional Court.

The President of the Republic and the Presidents of the Chambers of Parliament shall be informed of any negotiations leading to the conclusion of an international agreement not subject to ratification. ».

Article 107: "Peace treaties, commercial treaties, treaties relating to international organization, treaties which commit the finances of the State, those which amend provisions of a legislative nature, those relating to the status of persons may be approved and ratified only by virtue of a law.

No amendments are admissible on this occasion. Treaties take effect only after they have been duly ratified and published.

No cession, exchange or addition of territory is valid without prior consultation with the Gabonese people by means of a referendum. ».

Article 108: "The Gabonese Republic shall sovereignly conclude cooperation or association agreements with other States. It agrees to set up with them international bodies for joint management, coordination and free cooperation. ».

These provisions will serve as a basis for our discussion, bearing in mind that it is not possible in the time allotted to us to analyse all the specific procedures provided for in each of the States, nor to engage in a comparative analysis.

We will therefore focus only on certain salient features, certain specificities of this control, which seem to us to be common to each of our jurisdictions.

At the heart of control, as we know, is the rule "pacta sunt servenda" in international law, in particular article 26 of the 1969 Vienna Convention, according to which: "Every treaty in force is binding on the parties and must be performed by them in good faith".

It is on this basis that States parties to a treaty cannot invoke obstacles posed by their internal legal order to avoid the obligations arising from the treaty.

This is perfectly expressed by article 46.1 of the Vienna Convention, which states: "The fact that the consent of a State to be bound by a treaty has been expressed in violation of a provision of its internal law may not be invoked by that State as invalidating its consent."

On this point, the question of the treaty/ordinary law relationship is generally settled. The primacy of the treaty has prevailed in most States, either because it has been affirmed by the Constitution or, as in Gabon, by a decision of the Constitutional Court.

Thus, the Constitutional Court of the Gabonese Republic has established the primacy of treaties over the law, through the important OPINION No. 027/CC OF 13 AUGUST 2013 on the Place of international commitments in the hierarchy of norms in the Gabonese Republic by which the High Court considered: "that it follows from the aforementioned provisions of Articles 84, 87 and 113, paragraph 1, of the Constitution that the process of integrating an international commitment into the body of domestic legislation follows a particular procedure; that this consists, firstly, in the adoption of a law authorizing ratification by Parliament, secondly, in the verification of the conformity of the international commitment with the Constitution by the Constitutional Court, thirdly, in the ratification of the international commitment by the President of the Republic and, finally, in its publication; that it is inferred from all the foregoing that the international commitments provided for in Articles 113, paragraph 1, and 114 of the Constitution, since they have been the subject of a law authorizing ratification voted by Parliament, that they have been declared in conformity with the Constitution by the Constitutional Court, that they have been ratified by the President of the Republic and published, take precedence over domestic legislative norms. ».

The fundamental question, the one that brings us together today in Rabat, remains, of course, that of the constitution/ treaty relationship.

Although I in this House want to believe that the vast majority of us, as guardians of the constitution, place it at the top of the hierarchy of norms, we know that this hierarchy is not always accepted. For internationalist doctrine, and with it international jurisdictions, this hierarchy is reversed.

Let us recall that the Court of Justice of the European Communities in the Costa judgment of 15 July 1964 had ruled that: "the law arising from the Treaty could not, therefore, by reason of its original specific nature, be judicially opposed to any internal text whatsoever without losing its Community character and without calling into question the legal basis of the Community itself" and that thus "the transfer effected by the States, of their internal legal order in favor of the Community legal order, the rights and obligations corresponding to the provisions of the Treaty, thus entails a definitive limitation of their sovereign rights against which a subsequent unilateral act incompatible with the concept of Community cannot prevail. ".

This question is already a first specificity of the control of the Treaties. Because, unlike ordinary law for which submission to the constitution is beyond doubt, the relationship between constitutions and international treaties remains more ambiguous, even if the primacy of the constitution is accepted.

The manner in which the review of the constitutionality of the law is carried out cannot have the same intensity as that required for the Treaty.

Within the framework of the law, the action of the legislator is normally part of a form of continuity with the Constitution because it is for him to supplement, specify or organize the principles affirmed by the Constitution.

The perspective is quite different for the Treaty, which can assert itself more as a competing norm with the Constitution, especially when it is linked to integration organizations.

Our control is thus much more difficult to operate.

Especially since we must bear in mind that the very nature of the Treaty forces us to think differently about our control.

Let us recall what may seem obvious but which is not without consequences on our control and its limits.

Unlike the law, the treaty:

- is not, by definition, a norm of domestic law but a source of external law;

- can only be attributed to a subject of international law, endowed with the requisite capacity, such as States or international intergovernmental organizations, which are endowed with this capacity to conclude treaties;

- is not, like the law or regulation, the product of an unequivocal will which is binding on its addressees. The treaty, the international convention is the result of an agreement of wills, it is born of consensualism as the contract.

This contractual nature obliges the constitutional judge to identify the common intention of the parties in order to deduce the meaning of certain stipulations of the treaty. This can be a very delicate operation.

However, with regard to the law, we immediately have a much deeper mastery of it insofar as it is part of a program, it is informed by parliamentary work, debates, amendments, not to mention that it is a standard that we handle on a daily basis. That is not the case with treaties.

It is also important to recall that a treaty is an act intended to produce legal effects governed by international law, the dispute of which may be settled in accordance with international custom, the Vienna Convention on Treaties and this, before an international court.

Another difficulty on this issue is the lack of formalism in international law. It is not easy to distinguish between the texts drawn up by convention, those which are genuine international treaties, and those which remain devoid of legal effects.

It is therefore a particular intellectual operation that imposes itself on us.

Admittedly, we can refer to international sources, in particular on this point to the International Court of Justice, which, in the Aegean Continental Shelf case, laid down certain criteria of distinction with regard to certain categories of texts of uncertain legal scope, such as a joint communiqué.

It thus stated that the question of whether or not a text "constitutes an agreement depends essentially on the nature of the act or transaction to which it refers" and that, in order to know its nature, it was necessary to "take into account first of all the terms used and the circumstances in which the communiqué was drawn up".

These indications do not necessarily enlighten us, but they put our finger on another difficulty prior to any control: does the text submitted to us fall precisely into the category of those that we have been given the power to control? This is yet another operation, and sometimes very delicate, given the lack of formalism in international law where designations can be misleading.

We must therefore interpret it on a case-by-case basis in order to determine whether or not the parties' intention was to bind themselves in law, by careful examination of the content of the act and the terms used.

These characteristics, which significantly distinguish it from national law, inevitably mean that our review of the constitutionality of the treaties will not be able to operate in the same way as that applied to the law.

All these elements again limit our ability to control, and make it undoubtedly more difficult.

Beyond these "technical" considerations, which undoubtedly contribute to making this type of control specific, another point makes the review of the constitutionality of treaties significantly different from that of laws.

This is its strong "political" connotation.

Diplomatic relations are certainly those through which the policy of a State is most manifested. The treaties are the realization of this. Our control, even if it remains control in law, is exercised in an eminently political area.

The effects of our decisions can strengthen relations with other States or, on the contrary, destroy them. Our decisions impact not only our States, but also those parties to the treaties.

Nor can we rule out the hypothesis of political conflict implicit in a referral to the constitutional court, concerning an international commitment, between legislative and executive authorities or between the executive authorities themselves.

This political environment is undeniable.

It is transcribed in our Constitution concerning the authorities of referral. Unlike the law, ordinances or regulations that can also be referred to the Constitutional Court "either by the Presidents of the Court of Cassation, the Council of State and the Court of Auditors, or by any citizen or any legal person harmed by the law, the ordinance or the disputed regulatory act", alone, the President of the Republic, the Prime Minister, the President of the National Assembly, or one-tenth (1/10th) of the Deputies, and the President of the Senate or one-tenth (1/10th) of the Senators may refer the matter to the Court in order to verify the conformity of the treaty with the Constitution.

This restriction of referral to the political authorities alone is neither trivial nor neutral. It clearly reflects this desire to limit the referral to political authorities.

The control of this type of act is totally in their hands since it is also excluded by way of the exception of unconstitutionality which, under Article 86 of our Constitution is only open "against a law or an ordinance that would infringe his fundamental rights. ".

Admittedly, this solution may be explained by the desire to respect the "pacta sunt servanda" rule, but it is also a clear manifestation of the desire that the State's international policy should not be called into question a posteriori by the mere intervention of an applicant.

This view can only be reinforced if we focus this time on the consequences of the declaration of unconstitutionality.

According to our constitution, with regard to treaties, if these commitments contain a clause contrary to the Constitution, they cannot be ratified.

With regard to acts of domestic law, a provision declared unconstitutional may not be promulgated, published or applied.

Admittedly, these two provisions converge to affirm the primacy of the constitution, but the consequences of the declaration of unconstitutionality differ significantly between the two types of norms.

There are many open solutions to the unconstitutionality of the law.

First of all, let us recall that:

- In the event of partial unconstitutionality, the law may be promulgated without unconstitutional provisions, as long as they are considered severable from the entire text.

- the judge may use the now common technique of "compliance subject to reservation". This consists, as we know, in declaring a provision in conformity with the Constitution provided that it is interpreted or applied in the manner indicated by the constitutional court. This technique validates a provision that, without this reservation, could or should be censored.

- the legislator can take over the text and adopt a text purged of these unconstitutional defects, which in many cases can be done without much difficulty.

- finally, if the political authorities wish the text to be applied as it stands, because they consider it essential for the conduct of the political life of the Nation, they can initiate a constitutional revision to bring it into compliance.

The choices are much more limited in the face of the unconstitutionality of the treaty.

Amending the treaty to bring it into line with the constitution is largely illusory, since it involves renegotiating the provisions with the various states parties to the treaty.

The technique of reservations is equally inappropriate. How to impose on the parties the interpretation given by the internal constitutional court of one of the States parties to the treaties in order to admit ratification?

Tus, either the State abandons the draft international convention or initiates a revision of the Constitution.

These choices are crucial for the political power in place. Either it renounces its international policy or it calls into question its fundamental norm, which is also not without consequences.

The implications are far-reaching, and unquestionably they also weigh on constitutional jurisdiction because its solution depends on choices of primary importance that can significantly influence the life of the Nation.

The decision of the constitutional court may appear to be at the heart of a political strategy, which may lead to or failure of substantial international policy choices.

How can we avoid any political connotation to these decisions, as it is particularly difficult in this type of control to clearly separate law from politics?

This is especially true when a treaty is related to an international integration organization, its creation or its evolution.

For it is in this type of treaty that what must be considered as the essential question in terms of review of the constitutionality of treaties systematically arises: is there or is there no infringement of the sovereignty of the State? If so, is this infringement permissible?

Admittedly, other questions may be examined before our courts when reviewing the constitutionality of the treaty, but the one that must receive our full attention is whether the international convention is likely to affect our sovereignty. Because here we are touching on the very essence of the state.

Indeed, the question of infringement of sovereignty can be seen as a possible limit to the consent of the State.

Thus, the Office of the Court, on the basis of Article 87, leads it not only to defend the Constitution against international treaties which would be materially contrary to it, but also to be the one which will assume the role of guarantor of national sovereignty.

Determining the essential conditions for the exercise of national sovereignty is a delicate exercise and can therefore only be approached on a case-by-case basis.

It is in fact a question of reconciling the necessary respect for national sovereignty with the requirements resulting from the treaty, a conciliation that is extremely difficult to achieve in practice, especially when the purpose of the treaty is the establishment or development of an international integration organization.

Let us remember, however, that treaties are the legal transcription of the conduct of international relations, which is classically a manifestation of the sovereignty of the State.

The constitutional court in this exercise must define the concept of "national sovereignty", then guarantee it on a legal level by determining what is essential and what is not, and then decide whether or not the international agreement can be integrated into the domestic order.

It will have to exercise a real discretion as to the concept of sovereignty and then as to its essential elements.

For the question of the definition of the legal concept of "national sovereignty" is not without difficulty.

There are, in fact, two facets to this notion of sovereignty, on the one hand, democratic sovereignty, which determines the holder of ultimate power, and, on the other hand, the sovereignty of the State, which here corresponds to the content of the sovereignty of public power.

It is this content that must first be identified.

It can be agreed that the monetary field, together with defense, foreign policy, justice and a few others, can generally be seen as touching on the essence, at the heart of national sovereignty.

The next question is whether the nature and extent of the infringements of national sovereignty by the provisions of the Treaty are compatible with the Constitution.

Because, unless we completely block any ratification of a treaty and thus reduce our international relations to nothing, we can only censor blatant infringements of sovereignty, those that reach a certain degree of gravity.

If we take as an example the judicial function and the hypothesis of a treaty that would create an international court, it will be necessary in particular to analyze its field of application, the powers of the court concerned, its competences, its composition, the qualifications required of its members or

its relations with national courts and to ask whether on these various points the treaty does not affect the essential conditions for the exercise of sovereignty national jurisdictional matters.

It should also be noted that it will be necessary to verify whether this creation does not infringe the fundamental principles of procedure guaranteed by our Constitution, such as the principles of independence, impartiality and equality which are required in our judicial system.

It is inconceivable that our citizens should be subject to the jurisdiction of an international court that does not respect these principles.

Another essential point concerning compliance with the conditions for the exercise of sovereignty is to set aside clauses imposing irrevocability or irreversibility, namely the impossibility of going back.

We must remain masters of the Treaties. The competent authorities must be able to modify them, and possibly go back on transfers of sovereignty, we must keep "competence of competence".

All these operations that must be carried out in the process of reviewing the constitutionality of the treaties, the constraints imposed on us, undoubtedly make it one of the most delicate competences to exercise, especially since we have to face major challenges because, on our decisions, will depend on the very nature of the State that will govern the lives of our fellow citizens for years to come.

“International treaties and national legislation in Libya”

By: Ahmed Bashir bin Musa
Councilor Supreme Court of Libya

Introduction///

The rules of international law occupy an important place within the group of legal rules of human society, and they may occupy the first rank of this group because of the seriousness of the issues that concern them in relation to the different internal human groups (i.e. national law) that govern the activity of each State on its territory, and foreign law that governs the relations of the State with other States and governs its actions in the external or international environment. It is therefore driven by the need for exchange and cooperation to enter into relations with other countries, relations between the organs of a State and its members.

International treaties are regarded as private treaties, which are concluded between two States or a limited number of States in a case of their own, and they obviously do not bind non-contracting parties and their effect does not extend primarily to non-contractors. -signatory States because they are not parties to it, or general States, which are concluded between an unlimited number of States in matters of interest to all States, and whose purpose is to register certain permanent rules to regulate a general international community. relationship, and in this respect they are close to legislation Contracts between actors, but general treaties differ from legislation in that the latter is issued by a higher authority and binds all nationals of the country that issued it, whereas even general treaties bind only the State that concluded them. Adoption of a general international agreement called the Vienna Convention on the Law of Treaties, which was signed on 23 May 1969, after the final draft was approved by the General Assembly of the United Nations at its twenty-second This agreement was considered one of the most important agreements that could be concluded, as it guarantees the organization of contractual relations between States according to specific fixed rules, and thus serves as a charter for treaties.

And since it is one of the effects of the State expressing satisfaction with the treaty — whether by signing it, exchanging its constituent documents, ratifying it, accepting, approving it, acceding to it, or by any other agreed means — it has a fundamental effect deriving from the application of a general rule that obliges the contractor to be bound. In contracting it, each country must respect the

covenants it has entered into and implement the obligations to which it is bound, and it therefore has no right to refrain from implementing a treaty with which it was not bound by any pretext.

However, in view of what appears to be a conflict between the treaty ratified by the State and its national legislation, and which results either in impeding the implementation of the provisions of the treaty despite the State's commitment to it at the international level, or in obstructing the texts of national legislation, This makes the definition of relations between them a very important issue, because if the State - with its sovereignty over its lands - is the one that determines the relationship between the treaties it concludes and its domestic laws, because this constitutes a manifestation of this sovereignty, then international jurisprudence in its attempt to discuss this question has divided its opinion in two directions according to the doctrine of dualism and the doctrine of unity of law, while proponents of the former believe that international treaties are independent and completely separate from domestic laws, and that neither of them is superior to the other, and that they are of equal rank, and the consequences of this are represented in the following:

(1) The impossibility for international courts to apply domestic law, just as it is impossible for national courts to apply international treaties because none of them has the status of law when it is intended to be applied in a field.

(2) The non-applicability of international treaties in the internal system of States unless the provisions of the treaty are converted into internal rules by the enactment of internal legislation which includes the rules included in the treaty in terms of provisions, and the legislature of the State may modify or annul the provisions contained in the treaty as internal rules, whether they are applicable at the international level or not, and the State is internationally responsible because it has violated its international obligations.

(3) Do not imagine the occurrence of a conflict between the rules of international law included in the international treaty between the rules of domestic law, since each of them has its scope and independence from the other.

The proponents of the second of the two schools of thought, although they see the unity of law, but they - and in the process of defining the priority between the international treaty and domestic law - have gone in two different directions. and how to implement them, and the domestic constitution is the basis for adherence to legal rules of both types, whether contained in international treaties or domestic law, and for this reason, domestic law takes precedence in case of conflict. affiliated with international law in general because it was enacted by authorization and derivation. International law is that which has competence to define the personal and regional competence of States, coordinate the sovereignty of States and prevent conflicts between them. Consequently, the national laws enacted by the State are based on this mandate conferred on it, which is originally an original competence of international law.

If that is the case, the determination by the national legislature of the legal value of the treaty is of great importance because of its direct impact by favouring one over the other in the event of a conflict between the treaty and the national law, especially if the law was published later on the treaty.

And since the Libyan State, within the framework of the international system, has been associated with several treaties, agreements and protocols concluded between it and other countries in the regional and international sphere in several fields, and taking into account its obligation to implement these treaties represented by its legislative, executive and judicial powers, because it bears responsibility for the implementation of each one towards it, which has necessitated to discuss the

mechanism that is imposed on all these parties, with the need to work to respect the implementation of these treaties, which will only go through domestic legislation regulating this mechanism, which will be the subject of a modest discussion that I will introduce in the folds of this document, Touching - albeit with some brevity - highlighting the mechanism for concluding treaties in accordance with our national legislation in the first paragraph, indicating the authority competent to conclude them, and those competent to ratify them, and then specifying the date of their adoption in force in a second paragraph, and in a third paragraph on their status in that legislation, and then finally the conclusion as a conclusion.

First - the mechanism for concluding international treaties ///

Since the international treaty goes through several stages before the State is bound by its provisions, international law has left it to national legislation to determine the authority competent to conclude international treaties, and it has also been left to the national legislator to determine the authority that has competence to ratify them. The executive is the one that is always vested with the competence to negotiate the treaties to be concluded, just as ratification is an act of the characteristics of the authority itself (which has necessitated to address the definition of the position of the Libyan legal system in the field of international treaties is done by defining the authority competent to conclude them, and those competent to ratify them.

(a) The authority competent to conclude treaties.

Examining the historical sequence of the modern Libyan state in this area, it emerges as follows:

During the period of the monarchy, the king was the only one competent to conclude international treaties, according to the constitution of October 7, 1951, where article (69) of the latter stipulated that "the king declares war, concludes peace and concludes treaties..."

Then, during the period of the republican regime, from the year 1969 AD. , the Revolutionary Command Council - at that time - became the competent one to conclude international treaties in accordance with Article (23) of the Constitutional Declaration, in which it was stipulated, "The Revolutionary Council is that which declares war and concludes treaties ... except what can see a mandate. "The Council of Ministers is in its contract. Thus, the Cabinet of Ministers is competent to conclude international treaties on the basis of this mandate, and then this competence has been devolved to the General People's Committee by successive laws, which are those numbered 13/1990 AD, then 3/1994 AD, then 1/1996 AD, then 1/2001. And finally, No. 1 of 2007 as the general law that governs the competences of public authorities inside Libya, as stipulated in paragraph (11) of its article (12) concerning the competences of the General People's Committee to "examine and approve international treaties, agreements and loans, and take the necessary presentation of these to the popular assemblies." indispensable for approval.

Accordingly, the General People's Committee — and you — specialize in this regard in reviewing international treaties and agreements, approving them and submitting them to the ratifying authority.

However, after the change that occurred since February 2011 AD, although there is no specific text allowing a party to conclude international treaties, the constitutional declaration published on 3/8/2011 stated in its article (17) that The Transitional Council is the highest authority of the State And it undertakes the work of supreme sovereignty and defines the general policy of the State, And he is the only legitimate representative of the Libyan people. And in its article (35) it is stated that all provisions established in existing legislation will continue to be applied, as long as they are not in

conflict with the provisions of this declaration until an amendment or repeal is published. or "General People's Congress" is considered a reference to the National Transitional Council or the General National Congress, and any reference to what has been called "General People's Committee" or "People's Committees" is a reference to the Bureau. , members of the executive board, or members of the government, each within the limits of its competence, and any reference to (the Jamahiriya...) is considered a reference to (Libya). It can be said with him that the task of concluding treaties falls within the competence of the executive office, and now the cabinet after the Skhirat agreement in 2015 AD.

(b) The authority competent to ratify treaties.

It is not sufficient for States to be bound by a treaty merely by the signature of their representative while fulfilling the conditions for its conclusion (such as eligibility, consent, legality of its object and codification as stipulated in Article 2 of the Vienna Convention). This procedure proves its commitment to the other signatories of the treaty with what it says, because without it, the State does not essentially respect the treaty signed by its representative. On the contrary, the treaty itself is lost if it is between two States only, or if it is between several States, and a certain number of ratifications have not been completed for its entry into force.

Ratification - even if it was in the past - was an act of the characteristics of the executive power that was usually assumed by the head of state, and it was independent in deciding the question of ratification. has become one of its demands that the Head of State first refer to the representative body to obtain its approval of the signed treaty, and not to the interpreter, i.e. this body is the one that undertakes the ratification of this treaty, but only expresses its approval of what is decided therein, thus allowing the Head of State to exercise his competence in matters of ratification.

Extrapolating the legislative texts to show what has happened within the modern Libyan state in this regard, we conclude the following:

Under the monarchy, the constitution granted this competence to the king on condition that it was approved by the National Assembly, since article (69) of the latter stipulates that "the king declares war, concludes peace, concludes treaties and ratifies them after the approval of the National Assembly." Consequently, the ratification of treaties belongs to the King, provided that the National Assembly approves the treaty.

Then, during the period of the republican regime, from the year 1969 A.D., the Revolutionary Command Council became the competent authority that has the power to ratify treaties, as well as the Council of Ministers with powers, under the mandate of the Revolutionary Command. Council in accordance with Article (23) of the Constitutional Declaration in which it is stated: " The Council The revolution is the one that declares war and concludes treaties... except as it considers authorizes the Council of Ministers to conclude and ratify. Then, in accordance with Article (13) of Law No. 1 of 2007, the competence to ratify international treaties in Libya has been devolved in accordance with a law issued by the General People's Congress, and it is published by the tool in which all laws are published (the Code of Legislations, which is a reformer updated to name the Official Gazette known to all countries),

Work has been done to include the preamble of the ratification law with the following text: "It ratifies the international treaties, agreements and protocols concluded between the Jamahiriya..." and other countries within the framework of regional and international organizations according to the attached list. The attached list includes the States parties to the agreement, the name of the agreement, and

the place and date of signature. Sometimes the texts of the treaty are included in their entirety after ratification, as it is ratified, and then its texts are published as they become available.

And after the change that occurred since February 2011 AD, the Constitutional Declaration published on 08/03/2011 stipulated in its article (17) that "The Interim National Transitional Council is the highest authority of the State, and it undertakes the work of supreme sovereignty ... and ratification of international treaties. Then, in Constitutional Amendment No. (4) of 2012 concerning the amendment of Constitutional Amendment No. (1) of 2012, which stated in its first article: "... legislation is issued by the General National Congress... on the following questions... and ratification of international treaties. under the auspices of the United Nations Envoy to Libya.

Secondly - the date of entry into force of treaties in accordance with Libyan legislation ///

Knowing when the international treaty is enforceable in one's own country leads to very important results, perhaps the most important of which is the validity of the provisions it contains vis-à-vis all, including the rights and obligations it contains, and therefore is permissible to accede to it in the courts, and there is no dispute as to when the international treaty is valid, enforceable at the international level, as it is determined from the date of its ratification as a general principle, and the Libyan legislator did not specify previously to us the time of its validity at home, since there is no specific text for this issue, but it has now settled this issue under Law No. 8 of 2011 on the organization of The Official Gazette newspaper published on 6 /12/2011 A.D. states in its first article, "According to the provisions of this law, an official gazette will be created for Libya, and its publication will be in Arabic. It will also have a website in which an electronic copy will be published." And in its second article, "The following are published in the Official Journal: .. / 4 The texts of international and regional conventions and treaties ratified by the legislature. In its sixth article, the numbers of the Official Gazette issued in accordance with the provisions of this Law are considered as proof of what is said therein without the need for any other proof. Article tenths of this Law shall apply from the date of its publication until it is published in the Official Gazette.

From the above, it is clear that ratification of the treaty as a condition for its application is the prerogative of the legislative authority that promulgates the laws in Libya, and that with the promulgation of the law under which the ratification took place, the treaty will be effective in Libya, which can mean that the Libyan legal system adopts the system of direct application of international treaties and that publication in the Journal The official purpose is only to publicize the treaty.

Thirdly - the status of international treaties under Libyan legislation ///

There is no general and explicit text in Libyan legislation defining the legal force of international treaty texts in the country. She remained silent on the subject. However, many Libyan laws contained an explicit reference to the primacy of international treaties over domestic texts in the field of their application in the event of a conflict between them. Its status is superior to ordinary law, and we give examples as follows:

(1) In the field of civil law, article (23) - contained in the section of general provisions and under the heading of private laws and international treaties - stipulates that "the provisions of the preceding articles shall apply only in the absence of any provision to the contrary in a special law or in an international treaty in force in Libya .

(2) In the field of the law of civil and commercial procedure, article (411) - contained in its sixth chapter on the order for the enforcement of foreign judgments, orders and obligations under treaties - stipulates that "the execution of the above-mentioned rules shall not prevent prejudice to the

provisions of treaties concluded or to be concluded between Libya and other countries in this regard".

(3) In the area of the Code of Criminal Procedure, article (493) - contained in chapter nine, on the extradition and extradition of criminals - stipulates that "Libyan law shall regulate the rules for the extradition and extradition of criminals, unless they are regulated by international agreements and customs."

(4) The Prevention of Oil Pollution from Seawater Act No. 8 of 1973 contains provisions which include the application of the texts of the London Convention of 1954 which punished acts considered unlawful under that Convention, in that section 1 of that Act provided "In carrying out the provisions of this Act, the treaty means: the international treaty to prevent pollution of seawater by hydrocarbons published in London in 1954 AD, amended on April 13, 1962 AD... " and its second article stated: "Any ship bearing the nationality of the Libyan Arab Republic and is subject to the provisions prohibiting the spillage of oil or oily mixtures stipulated in the Treaty, and whose captain violates the provision of Article Three of the said Treaty, shall be punished by..." Therefore, it contained only the sentencing provision. As for the material element of the crime, it should be referred directly to the text of article 3 of the Convention .

5) In the field of health, Article (30) of the Health Law No. 106 of 1973 AD stipulates that "the procedure of vaccination, immunization or testing shall be recorded in the registers and cards that are issued to organize and specify their data, by a decision of the Minister responsible for health, taking into account the provisions of the health regulations in force at the international level. » . Consequently, the texts of international treaties according to this law are considered part of the Health Act after its ratification, since international treaties in the field of health are automatically transferred to the Health Act and invoked as one of its sources.

(6) In the field of combating the smuggling of goods outside customs offices, article (3) of Law No. 97 of 1976 AD stipulated, "without prejudice to the provisions of international treaties and agreements to which the Jamahiriya is a party".

(7) With regard to the regulation of the entry, stay and exit of foreigners in Libya, Law No. 6 of 1987 included a text on the priority of international treaties in the application of its provisions, article (24/b) stipulating that "The provisions of the Law shall apply to the following categories: International agreements to which the Jamahiriya is a party and within the limits of such agreements.

(8) In the field of social security, article 3 of Law No. 1 of 1991 provides for the determination of certain provisions relating to social security, "without prejudice to the provisions of international conventions ... » .

(9) In the area of foreign investment promotion, article (24) of Law No. 5 of 1997 on the encouragement of foreign investment stipulates that "any dispute arising between the foreign investor and the State, either through the action of the investor or as a result of measures taken against him by the State, shall be referred to the competent courts of the Jamahiriya." Unless there is a bilateral agreement between the Jamahiriya and the State to which the investor belongs, or multilateral agreements to which the Jamahiriya and the State to which the investor belongs. the investor belongs are parties that include provisions relating to conciliation or arbitration, or a special agreement between the investor and the State stipulating the condition of arbitration. If the Libyan judiciary is competent to examine the dispute between the foreign investor and the Libyan State, unless there is a treaty that requires the dispute to be submitted to arbitration or terminated

amicably, then in this case, the Libyan judiciary is obliged to apply the treaty, so it is not competent to hear such disputes.

(10) In the Civil Aviation Act No. 6 of 2005, Article (4) stipulated: "The provisions of the treaty and all other treaties and agreements in force to which the Jamahiriya is a party shall apply in the Jamahiriya". Article 1 of the treaty specifies that what is meant by treaty is the Civil Aviation Treaty signed in Chicago and concluded on 7/12/1944 and its amendments, to which Libya acceded on 23/2/1952, as well as other agreements to which Libya is a party, whether prior to or subsequent to this law.

From the above, it appears that the Libyan legislature has tended to support the principle of the primacy of international treaties over national laws, including a special text whenever the matter governed by domestic law is of global interest.

Conclusion

Considering that the Libyan State, within the framework of the international system, has been associated with several treaties, agreements and protocols concluded between it and other countries in the regional and international sphere in several fields, and taking into account its obligation to implement these treaties, and despite the multiplicity of stages of its political systems with their different names, it is clear from what has been reviewed in this article that the Libyan State - in the field of its legislative relations with international treaties - has accorded it a prominent place. position derived from constants which find its basis from the legalization which led to the adoption of the general international agreement under the name of the "Vienna Convention on the Law of Treaties" and from what has been practiced in international systems with regard to the separation of State powers, and these constants can be deduced from the following: In the field of treaty-making, the Libyan legal system enshrined this competence on the executive authority, whatever it was called, and in the area of ratification of the treaty as a condition for its application, it is the competence of the legislative authority that promulgates laws in Libya, and that with the promulgation of the law under which ratification took place, the treaty will enter into force in Libya, which can be said with him that the Libyan legal system adopts the system of direct application of international treaties and publication in the Official Gazette is only intended to publicize the treaty. As for the legislative status of treaties, although there is no general and explicit text in Libyan legislation that defines the legal force of the texts of international treaties in its country, and its commitment to silence on the subject, many Libyan legislations (cited above) include an explicit reference to the primacy of international treaties over the text in the field of its application, including a special text whenever the matter governed by domestic law is one of the issues of global concern.

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“Rabat press release”

Read by: Mr Moussa LARABA
Permanent Secretary General of the CJCA

The Conference of African Constitutional Jurisdictions (CJCA) held its 6th Congress from 22 to 24 November 2022 in Rabat (Kingdom of Morocco), at the kind invitation of its Constitutional Court.

The Assembly brought together forty (40) African constitutional courts and councils and supreme courts members of the CJCA, the Constitutional Courts of Russia and Turkey in their capacity as observer members of the CJCA, the High Constitutional Court of Palestine, the African Court on Human and Peoples' Rights, the World Conference on Constitutional Justice, the Commission for Democracy through Law of the Council of Europe, as well as the regional groups involved in the field of constitutional justice, namely: the Union of Arab Constitutional Courts, the Association of French-speaking Constitutional Courts and the American National Centre of State Courts, with a total of 140 participants.

The theme of the Congress was: " ***African Constitutional Jurisdictions and International Law.***"

At its6th General Assembly, the Congress:

-adopted the moral and financial report;
-decided on new applications for membership;
-adopted the program of activities and the provisional budget 2022-2024;

-proceeded to the election of an Executive Bureau; composed of the Constitutional Court of the Kingdom of **Morocco,** as President and the following constitutional and supreme Courts as members of the Bureau:

1st Vice-President: The Supreme Court of **Zimbabwe** (Host of the 7th Congress);
Vice-President: The Constitutional Court of **DR Congo;** (Central Africa)
Vice-President: The Constitutional Council of **Djibouti** (East Africa)
Vice-President: The Supreme Constitutional Court of **Egypt** (North Africa);
Vice-President: The Constitutional Court of **Gabon** (Central Africa)
Vice-President: The Supreme Court of **Guinea** (West Africa)
Vice-President: The Supreme Court of **Libya** (North Africa);
Vice-President: The Constitutional Council of **Mauritania** ((North Africa);
Vice-President: The Constitutional Council of **Mozambique** (Indian Ocean)
Vice-President: The Constitutional Court **of South Africa** (Southern Africa)
Ex-officio member: The Constitutional Court of **Angola** (outgoing President).
Ex-officio member: The Constitutional Council of **Algeria** (Country of the seat).
The mandate of the Bureau is two-year renewal at the next Congress of the CJCA, scheduled for 2024.

The Congress has accepted the candidacy of the Supreme Court of **Zimbabwe** to host the 7th Congress scheduled for 2024.

The participants take this opportunity to express their sincere thanks and deep gratitude to the Honorable Judge, **Mrs. Laurinda Cardoso**, President of the Constitutional Court of Angola, for her distinguished presidency of the Conference, and for what she has done for the development and flourishing of the organization.

On this occasion, **Mrs. Cardoso**, outgoing President, presented the banner of the CJCA, to **Mr. Saïd IHRAI,** as a passage of the Presidency of Angola to the Kingdom of Morocco for the next two years.

The participants in the 6th Congress of the Conference of African Constitutional Jurisdictions (CJCA) as well as all the representatives of the host jurisdictions and organizations, gathered in Rabat, present their heartfelt thanks to **His Majesty King Mohammed VI may Allah assist Him,** for having granted his High Patronage to this continental event as well as their congratulations to the Hon. **Mr. Saïd IHRAI,** President of the Constitutional Court of the **Kingdom of Morocco**, to the Judges, the Secretary General and the staff of the Court for the excellent organization of this event, to the Moroccan authorities and people, for the quality of their welcome and their hospitality which greatly contributed to the success of the work of this 6th Congress.

They express their feelings of deep gratitude to them.

They take this opportunity to express their best wishes for success to the President of the Constitutional Court of the Kingdom of Morocco in the mission just entrusted to him at the head of the Conference for the next two years, in the service of constitutional justice and constitutionalism in Africa.

Done in Rabat, Wednesday, November 23rd, 2022.

“Closing Word”

Of the Sixth Congress of the Conference of African Constitutional Jurisdictions
November 23, 2022

By Mr. Said IHRAI
President of the Constitutional Court of the Kingdom of Morocco
President of the Conference of African Constitutional Jurisdictions

- Ladies and Gentlemen, Presidents and members of brotherly African Constitutional Jurisdictions,
- Ladies and gentlemen, heads and members of participating constitutional judicial bodies and organizations from around the world,
- Ladies and gentlemen,

As we approach the closing of the Sixth Conference of African Constitutional Jurisdictions, which was held under the high patronage of His Majesty King Mohammed VI, may God assist him, I am happy that its work has been characterized by the richness of the interventions, the depth of the discussions and the diversity of the national experiences presented concerning the activity of the African Constitutional Jurisdictions and international law, and that they have been characterized in their statutory aspect by the importance of their results with regard to the future direction of our continental organization, the Conference of African Constitutional Jurisdictions, and I take this opportunity to:

 Salute the work of the former Angolan presidency and the constructive and fruitful role played by Mrs. Lorinda Cardoso, President of the Angolan Constitutional Court, in the management of the different stages of the Conference, as well as her persistent secretariat, to whom I address my sincere thanks in this regard.

 To pay tribute to the exceptional efforts made by the presidents of the participating constitutional judicial bodies, who took the trouble to travel, shared their national experiences with great scientific comfort, through their interventions and discussions, and participated in a spirit positive and

constructive to the statutory work of the Conference, motivated solely by the concern to serve constitutional justice on our continent.

 Special thanks to the members of the Constitutional Court of the Kingdom of Morocco, one by one, its Secretary General, its executives and its agents, for the efforts they have deployed over the months, in all sincerity and dedication, for the strenuous efforts and tireless work to ensure the success of this important continental event held on the territory of the Kingdom of Morocco.

 To thank all the authorities and administrative bodies who have made every effort, with professionalism and dedication, to ensure the success of this continental event, to which they have accustomed us in all circumstances and in all conditions.

- Ladies and gentlemen,

I promise you that we will meet soon, at future systematic and scientific events, within the framework of our continental forum, the Conference of African Constitutional Jurisdictions, and within the framework of other global, bilateral and multilateral dynamics, in the service of the constitutional justice on our continent and to make its voice heard in various parts of the world.

Thank you all.

Participants list

6th Congress of CJCA /
Rabat, Morocco from 22 to 24 November 2022 /

	JURUSDICTIONS /JURUDICTIONS	NAME / NOMS	QUALITY / QUALITE
	CJCA Team	**Mr Moussa LARABA** Mr Abdelmadjid TABBECH	**Secrétaire Général** Trésorier
01	Constitutional Tribunal of Angola Tribunal constitutionnel d'Angola	**Ms Laurinda Cardoso** Guilhermina Prata (Ms.) Júlia Ferreira (Ms.) Victória Izata (Ms.) Carlos Teixeira (Mr.) Cláudio Mota (Mr.) Alberto Cruz (Mr.) - Abílio Montenegro (Mr.) Joaquim Muginga Sergio Conceição (Mr.) Malvira Dengue (Ms.) -	**President** Vice-President Justice Justice Justice Exchange and Internacional Relations Director Adviser Protocol Chief Protocol Officer Press Officer Escort
02	Constitutional Court of Benin Cour constitutionnelle du Bénin	**Mr Messan Sylvain NOUWATIN** Mr André KATARY	**Vice-Président** Conseiller
03	Supreme Court of Botswana Cour suprême de Botswana	**Mr Itumeleng Segopolo**	**Judge**
04	Constitutional Council of Burkina Faso Conseil constitutionnel du Burkina Faso	**Mme DAKOURE / SERE Haridiata** Mme BAYILI BAMOUNI Véronique Mr. KAFANDO Victor	Membre Membre Membre
05	Constitutional Court of Burundi Cour constitutionnelle du Burundi	**Mr BAGORIKUNDA Valentin**	**President**

06	**Constitutional Council of Cameroun** **Conseil Constitutionnel du Cameroun**	**M. Clément ANTANGA** M. Joseph MALEGO	**President** Secretary General
07	**Constitutional Tribunal of Cabo Verde** **Tribunal constitutionnel du Cap Vert**	**Mr. João Pinto Semedo** Mr. João Alberto Almeida Borges	**President** Secretary General
08	**Supreme Court of Chad** **Cour suprême du Tchad**	**Mr. Samir Adam Annour** Mr. NDINTAMNAN PANINGAR	**President** Conseiller
09	**Constitutional Court of Central Africa** **Cour constitutionnelle de Centrafrique**	**Mr Jean Pierre WABOE**	**President par intérim**
10	**Supreme Court of Union of Comoros** **Cour suprême de l'Union des Comores**	**Mr Cheikh Salim S. Athoumane** Mr Idrisse Abdou	**Président** Conseiller
11	**Constitutional Court of D. R. Congo** **Cour constitutionnelle de la R.D. Congo**	**Mr KAMULETA BADIBANGA Dieudonné** Mr BOKONA WIIPA BONDJALI FRANÇOIS Mr MANDZA ANDIA Dieudonné Mr BOKANGA MABONDO Jean Marie Mr BONDO KATUMBA PAUL Mr YAMBA SHAMBA Maurice Mr KAMULETE YATHEED Nathanaël	**Président** Juge Juge Dir cabinet du Président Chef de cabinet Conseiller du Président Chargé de Mission
12	**Constitutional Council of Djibouti** **Conseil constitutionnel de Djibouti**	**Mr Abdi Ismael HERSI** Mme Fatouma Ahmed Moussa	**Président** Membre
13	**Supreme Constitutional Court of Egypt** **Cour constitutionnelle suprême d'Égypte**	**M. Boulos Fahmy ESKANDER**	**President**
14	**Supreme Court of Eswatini** (Swaziland) **Cour suprême d'Eswatini** (Swaziland)	**Mr. Bhekie Maphalala** Ms INNOCENTIA MDI TSABEDZE Mr Bongane Fana Vilane Mr NKOSINATHI Patrick DLAMINI Mr Ndumiso Magagula	**Chief Justice** Police officer Police officer Police officer Police officer
15	**Constitutional Council of Inquiry of Ethiopia** **Conseil constitutionnel d'enquête d'Éthiopie**	**Ms. Meaza Ashenafi MENGISTU** Mr. DESSALEGN Weyessa Denta	**Chief Justice** Secretary general
16	**Constitutional Court of Gabon** **Cour constitutionnelle du Gabon**	**Dr Marie Madeleine MBORANTSUO** Mr Emmanuel NZE BEKALE, Mme Angue Edou Louise Mr Christian BIGNOUMBA FERNANDES, Mr Jaques Lebama Mr OUGUINGAYI Norbert	**President** Juge Juge Juge Juge Aide de camp
17	**Supreme Court of Gambia** **Cour suprême de Gambie**	**Mr Hassan B. Jallow** Mr. Omar Jammeh	**Chief Justice** Protocol

18	**Supreme Court of Ghana** **Cour suprême du Ghana**	**Mr. Paul Baffoe-Bonnie,**	**Justice**
19	**Supreme Court of Guinea** **Cour suprême de Guinée**	**Mr FODÉ BANGOURA** Mr Mohamed Cherif SOW Mme Mbalou KEITA,	**Premier président** President de Chambre Const. Conseillère
21	**Supreme Court of Kenya** **Cour suprême du Kenya**	**Ms Philomina Mbete Mwilu, MGH** Mr. Masha Namissi Baraza Mr. Abdullahi Gollo Abduba	**Deputy Chief Justice** Legal Counsel Security
22	**Supreme Court of Libya** **Cour suprême de Libye**	**Mr. Alhafi Mohamed Elgamudi** Mr. Ahmed Bechir Ben Moussa	**Ex. President** Conseiller
23	**High Constitutional Court of Madagascar** **Haute Cour Constitutionnelle de Madagascar**	**Mr M. William NOELSON,** Mme Vololoniriana ANDRIAMAROJAONA, Mr Samuel RALISON,	**Haut Conseiller, Doyen.** **Juge** Greffier en Chef
24	**Supreme Court of Malawi** **Cour suprême du Malawi**	**Mr. Frank Kapanda** Mr Kenneth Ishak	**Justice** Administrator
25	**Constitutional Court of Mali** **Cour constitutionnelle du Mali**	**Mr Toure Amadou Ousmane** Mr Maiga Mohamed Abdourahmane	**Président** Conseiller
26	**Constitutional Court of Kingdom of Morocco** **Cour Constitutionnelle du Royaume du Maroc**	**Mr Said IHRAI** Mr Nadir Moumeni Mr El Hassan Boukantar, Mr Abdelahad Dekkak, Mr Ahmed Salmi El Idrissi Mr Mohamed Ben Abdessadak, Mr Moulay Abdelaziz Hafidi Alaoui Mme Latifa El Khal Mr Ali Andalousi	**Président** Juge Juge Juge Juge Juge Juge Juge Sécretaire général
27	**Constitutional Council of Mauritania** **Conseil constitutionnel de Mauritanie**	**M. Bathia Diallo Mamadou** M. Ely Robe Sidi Baba	**President** Directeur de Cabinet
28	**Supreme Court of Mauritius** **Cour suprême de Maurice**	**Ms. Bibi REHANA GULBUL**	**Chief justice**
29	**Constitutional Council of Mozambique** **Conseil constitutionnel du Mozambique**	**Ms. Lúcia da Luz Ribeiro** Mr. Albino Nhacass Mr. Paulo José Machava Ms. Elysa Vieira Mr. Joao Chicote.	**President** Judge Secretary general Legal Adviser Legal Adviser
30	**Constitutional Court of Niger** **Cour constitutionnelle du Niger**	**M. Ibrahim Mustapha** M. Imerane Maiga Amadou	**Vice-Président** Juge

		M. Moussa ISSAKA	Secrétaire général
31	**Constitutional Tribunal of São Tomé and Príncipe** **Tribunal constitutionnel de São Tomé et Príncipe**	**Mr Pascoal Lima dos Santos Daio** Mr. Gilson dos Reis Lima.	**President** Secrétaire Général
32	**Constitutional Council of Senegal** **Conseil constitutionnel du Sénégal**	**Mr TALL Saidou Nourou**	**Vice-Président**
34	**Supreme Court of Somalia** **Cour suprême de Somalie**	**Mr. Baashe Yusuf Ahmed** Mr Abdiwahab Hassan Ismail	**Chief justice** Assistant
36	**Supreme Court of South Sudan** **Cour suprême du Soudan du Sud**	**Mr. Jhon Gatweche Lul** Mr Gama Thomas Samuel	**Deputy Chief Justice** Judge
37	**High Court of Appeal Tanzania** **Haute Cour d'appel de Tanzanie**	**Mr Ferdinand Leons Katipwa Wambali**	**Justice**
38	**Constitutional Court of Togo** **Cour constitutionnelle du Togo**	**Mr Sogoyou Pawele** Mr Nahm-Tchougli Mibamp Dakon yemba	**Juge** Juge
40	**Court of Cassation of Tunisia** **Cour de Cassation de Tunisie**	**Mr KCHAOU Moncef**	**Président**
39	**Constitutional Court of Zambia** **Cour constitutionnelle de Zambie**	**Ms. Margaret Mulela Munalula** Ms. Misozi Mtonga Banda - Ms. Kalumba S. Chisambisha – Ms. Munalula Muyunda -	**Deputy President** Research Advocate Public Relations Officer Aid de Camp
41	**Supreme and Constitutional Court of Zimbabwe** **Cour suprême et constitutionnelle du Zimbabwe**	**Mr. Luke Malaba** Mr Sithembinkosi Msipa Mr Obester Malezo.	**Chief Justice** Deputy Secretary Protocol officer
	OBSERVER MEMBER / MEMBRE OBSERVATEUR	**NAME / NOMS**	**QUALITY / QUALITE**
42	**Constitutional Court of Türkiye** **Cour constitutionnelle de Türkiye**	**Prof. Dr. Zühtü ARSLAN** Mr. Yusuf Şevki HAKYEMEZ Mr. Abdullah TEKBAŞ - Mr. Barış KILIÇTEK	**President** Judge Rapporteur-Judge Security Officer
43	**Cour constitutionnelle de Russie** **Cour constitutionnelle de Russie**	**Mr Andrey BUSHEV,** Mr Pavel ULTURGASHEV	**Judge** Leading Councellor,
	GUEST OF HONOR / INVITE D'HONNEUR	**NAME / NOMS**	**QUALITY / QUALITE**
44	**High Constitutional Court of Palestine** **Haute Cour Constitutionnelle de Palestine**	**Mr Mohamed El Haj Kacem**	**President**
	SPECIAL GUEST / INVITE SPÉCIAL	**NAME / NOMS**	**QUALITY / QUALITE**
02	**CJCA**	**Mr Robert DOSSOU**	**Président d'Honneur**
03	**Europe Council - Venice Commission/** **Conseil de l'Europe – Commission de Venise**	**Mr Gianni Buquicchio,** **Mme Carmen Morte-Gomez**	**Président émérite,** **Représentant spécial** Chef de Bureau Rabat

04	**National Center for State Courts – NCSCUSA/Centre national des tribunaux d'État – NCSC-États-Unis**	**Mr Jeffrey A. Apperson**	**Vice-President**
	ORGANIZATIONS / ORGANISATIONS	**NAME / NOMS**	**QUALITY / QUALITE**
01	**African Court of Human and Peoples' Rights / Cour Africaine des Droits de l'Homme et des Peuples**	**Ms. Imani Daudi Aboud** Ms. Anipha Abass Mwingira,	**President** special assistant
02	**World Conference of Constitutional Justice / Conférence Mondiale sur la Justice Constitutionnelle**	**Mr Schnutz DURR** Mme Johanna Bolderink.	**Secretary General** **Assistant**
03	**Union of Arab Constitutional Courts and Councils / Union des Cours et Conseils Constitutionnelles Arabes**	**M. Abdelaziz Salman**	**Vice-President / Deputy Secretary general**
04	**Francophone Constitutional Courts Association / Association des Cours Constitutionnelles Francophone**	**Mr TALL Saidou Nourou**	**Vice-President**

Photos participants


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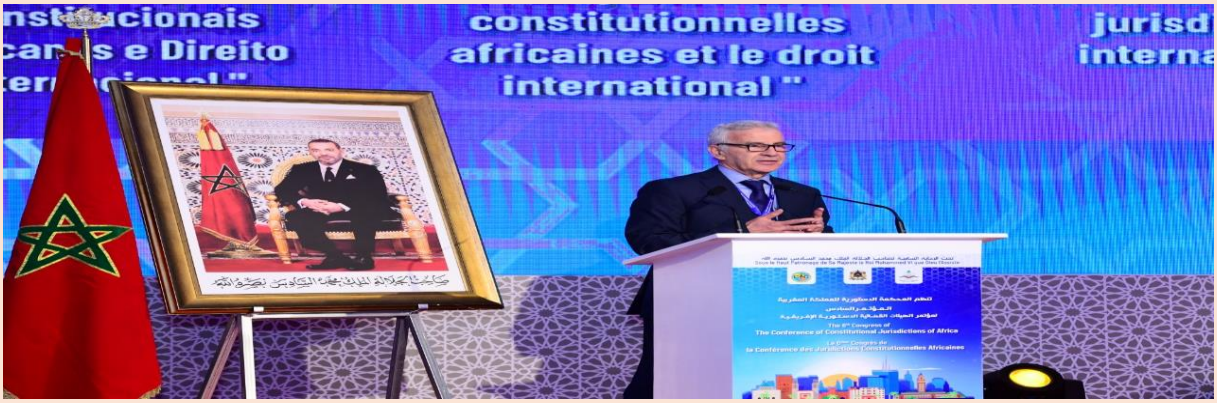
international "


Mozambique


Centrafrique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CAMEROON


Sao Tomé


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Tchad


Comores
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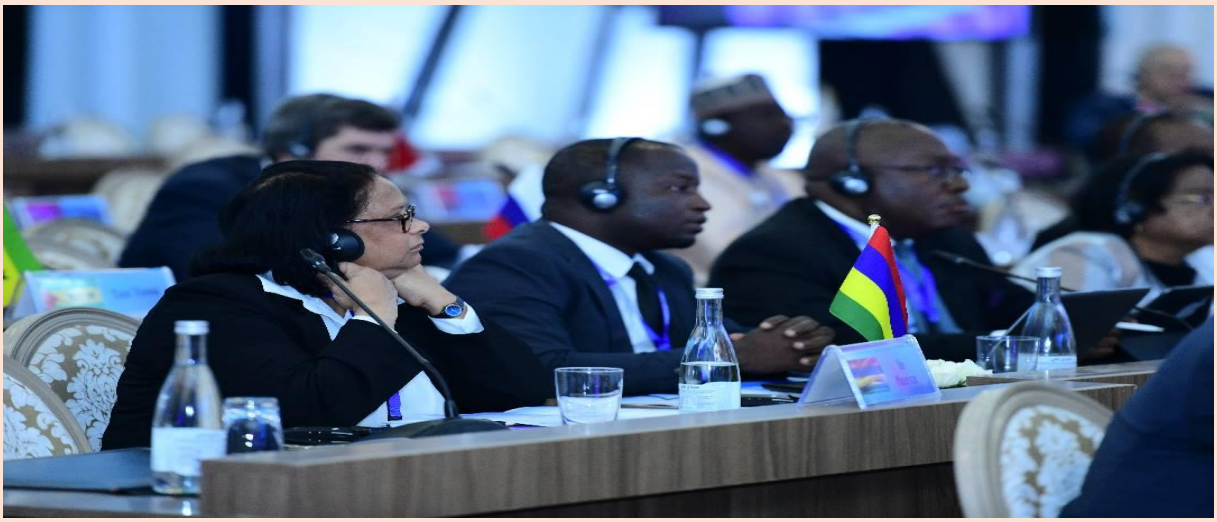


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Ghana
Gambie


Tchad


Somalie


Sous le thème :
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Rabat - الرباط


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