

CONSTITUTIONAL REVIEW OF INTERNATIONAL TREATIES BETWEEN CONSTITUTIONAL SUPREMACY AND *PACTA SUNT SERVANDA*: CONSTITUTIONAL RESPONSES IN CROATIA, SLOVENIA AND NORTH MACEDONIA

Abstract

This article examines the constitutional review of international treaties in Croatia, Slovenia, and North Macedonia through the lens of the tension between constitutional supremacy and the principle of *pacta sunt servanda*. While constitutional review of treaties has received considerable scholarly attention, existing literature has focused primarily on individual national models or broader theoretical debates concerning the relationship between constitutional and international law. Less attention has been devoted to explaining why constitutional systems sharing common institutional origins have developed different approaches to treaty review. The article argues that the constitutional systems that emerged following the dissolution of Yugoslavia provide a particularly valuable framework for addressing this question. Although all three states inherited constitutional courts originating within a common institutional tradition, they subsequently developed distinct constitutional responses to the problem of reconciling constitutional authority with international obligations. The analysis combines historical and comparative methods. It examines the historical development of constitutional review of international treaties, outlines the principal theoretical approaches to resolving conflicts between constitutional norms and treaty obligations, and places the discussion within the broader context of Yugoslav constitutional development. The article demonstrates that Slovenia has developed a model of preventive constitutional review designed to address constitutional objections before ratification, whereas Croatia and North Macedonia largely exclude substantive review of ratified treaties, albeit on different constitutional grounds. While Croatian jurisprudence relies primarily on judicial restraint motivated by concerns regarding international obligations, the Macedonian Constitutional Court approaches the issue principally as a question of constitutional competence. The comparison suggests that common institutional origins do not necessarily yield uniform constitutional outcomes, and that similar constitutional institutions may produce markedly different responses to the same constitutional dilemma.

Keywords: constitutional review of treaties; international treaties; constitutional supremacy; *pacta sunt servanda*; constitutional courts; post-socialist constitutionalism.

I. INTRODUCTION

International treaties occupy an increasingly important position within contemporary constitutional orders. As states assume an increasing number of international obligations through multilateral and bilateral agreements, constitutional systems are increasingly confronted with the question of how to address potential conflicts between international commitments and constitutional norms. The issue is particularly sensitive because it lies at the

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intersection of two fundamental principles of modern public law: the supremacy of the constitution within the domestic legal order and the principle of *pacta sunt servanda*, which requires states to perform their international obligations in good faith.

The relationship between these principles has long generated constitutional and theoretical debate. On the one hand, constitutional supremacy requires that all legal acts derive their validity from, and remain consistent with, the constitution. On the other hand, international law proceeds on the assumption that states cannot invoke domestic law to justify failing to perform their treaty obligations. Constitutional review of international treaties, therefore, raises a fundamental question: how can constitutional systems preserve constitutional supremacy without undermining the stability and reliability of international legal commitments?

Comparative constitutional practice has produced a variety of responses to this dilemma. Some constitutional systems permit preventive constitutional review of treaties before ratification, thereby seeking to avoid future conflicts between constitutional and international obligations. Others allow certain forms of subsequent review, while some constitutional courts have adopted more restrictive approaches and declined to exercise substantive review over ratified treaties. These differences demonstrate that constitutional review of international treaties remains one of the most contested questions of contemporary constitutional law.

Although the subject has attracted considerable scholarly attention, existing literature has largely focused on individual national models or on broader theoretical debates concerning the relationship between constitutional and international law. Comparatively less attention has been devoted to explaining why constitutional systems sharing similar institutional origins have developed markedly different approaches to the constitutional review of international treaties. This question is particularly relevant in the constitutional systems that emerged from the dissolution of Yugoslavia, where constitutional courts originated within a common institutional framework but subsequently evolved within distinct constitutional and political environments.

This article focuses on Croatia, Slovenia, and North Macedonia, not because they exhaust the Yugoslav constitutional experience, but because they illustrate the principal approaches to treaty review that emerged from a common institutional tradition. Slovenia developed an explicit system of preventive constitutional review of treaties, whereas Croatia and North Macedonia largely exclude ratified international treaties from substantive constitutional review, albeit on different constitutional grounds. Together, these constitutional systems provide a particularly useful framework for examining how states, by means of sharing a common institutional tradition, have sought to reconcile constitutional supremacy with the principle of *pacta sunt servanda*. Within this comparative framework, Slovenia serves as the principal post-Yugoslav example of preventive constitutional review, while Croatia and North Macedonia illustrate different constitutional rationales for excluding ratified treaties from substantive constitutional scrutiny.

The article argues that a common institutional starting point did not produce a uniform model of treaty review. Instead, the constitutional systems of Croatia, Slovenia, and North Macedonia developed distinct constitutional responses to the same underlying dilemma. While Slovenia relies on preventive constitutional review, Croatia has generally approached the issue through judicial restraint, motivated by concerns about international obligations, whereas North Macedonia has largely excluded treaty review by adopting a restrictive interpretation of constitutional jurisdiction. These differences demonstrate that institutional continuity alone cannot explain post-socialist constitutional development and that similar constitutional institutions may generate substantially different solutions to common constitutional problems.

The analysis proceeds in four stages. The first part examines the historical development of constitutional review of international treaties and the emergence of tensions between constitutional supremacy and international obligations. The second part outlines the principal theoretical approaches to resolving these tensions. The third part places the discussion within the broader context of Yugoslav constitutional development and the institutional origins of constitutional courts in the successor states. The final part analyses the constitutional practice of Slovenia, Croatia, and North Macedonia and evaluates the different approaches these states have adopted towards the constitutional review of international treaties.

II. HISTORICAL DEVELOPMENT OF CONSTITUTIONAL REVIEW OF INTERNATIONAL TREATIES

The constitutional review of international treaties is often perceived as a relatively recent phenomenon associated with the rise of constitutional courts in the twentieth century. Such an understanding, however, overlooks the deeper historical foundations of the institution. The constitutional review of treaties emerged at the intersection of two long-term developments: the evolution of constitutionalism and constitutional adjudication on the one hand, and the expansion of international treaty-making as an instrument of governance on the other. Contemporary debates concerning the relationship between constitutional supremacy and international obligations can therefore only be fully understood within a broader historical context.

The intellectual foundations of constitutional review lie in the broader tradition of higher-law constitutionalism and the belief that political authority must remain subject to superior legal norms. As Cappelletti observed, the concept of higher law predates modern constitutionalism and can be traced through classical, medieval, and natural law traditions.¹ Although pre-modern legal systems did not recognise constitutional review in its contemporary form, they contributed to the enduring belief that political power should remain constrained by legal principles occupying a superior position within the legal order.

The constitutional revolutions of the late eighteenth century transformed these theoretical foundations into institutional reality. Written constitutions emerged as supreme legal instruments that regulate the organisation of public authority and protect fundamental rights. Constitutionalism thereby established a hierarchical legal order in which ordinary legislation became subordinate to constitutional norms. As Hans Kelsen later explained, legislation itself must be understood as an application of law when viewed in relation to the constitution, since “the constitution largely determines the way in which statutes come into existence”.²

This hierarchical conception of law fundamentally altered the understanding of legal validity. The constitution no longer represented merely a political declaration but became the supreme legal framework governing the creation of all lower legal norms. Kelsen described this process as a continuous chain of legal concretisation in which legal authority flows from the constitution through legislation and administrative acts to individual judicial decisions and

¹ See Cappelletti, M. (1970) 'Judicial Review in Comparative Perspective', *California Law Review*, Vol. 58, No. 5, pp. 1018–1024, explaining the historical development of higher-law conceptions from classical antiquity and medieval thought to modern constitutionalism.

² Kelsen, H. (2015) 'The Nature and Development of Constitutional Adjudication', in Vinx, L. (ed.), *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law*, Cambridge University Press, Cambridge, pp. 22–24, explaining that legislation constitutes an application of higher-level constitutional norms within a hierarchical legal order.

their enforcement.³ Once constitutions acquired superior legal status, the question inevitably arose: who should ensure compliance with constitutional requirements, and how should violations of constitutional norms be remedied. The search for an institutional guardian of constitutional supremacy ultimately led to the emergence of constitutional review.

The first systematic answer was provided by the United States Supreme Court in *Marbury v. Madison* (1803), which established the principle that courts may refuse to apply legislation that is contrary to the Constitution.⁴ Under this decentralised model, constitutional review is exercised by ordinary courts within the context of concrete disputes.

Continental Europe developed along a different path. Throughout the nineteenth century, the doctrine of parliamentary sovereignty generally prevented courts from reviewing legislation enacted by representative institutions. Consequently, constitutional review emerged later and assumed a distinct institutional form.⁵

A decisive breakthrough occurred after the First World War through the work of Hans Kelsen. Conceiving the legal order as a hierarchical structure of norms, Kelsen maintained that the constitution occupies a supreme position within the legal system and that the validity of lower legal norms ultimately derives from their conformity with constitutional requirements. In his view, the guarantee of the constitution necessarily entailed guarantees of the constitutionality of legislation and other subordinate norms.⁶ Constitutional adjudication thus emerged as an institutional mechanism designed to secure the supremacy of the constitution within the legal order. This theoretical framework provided the foundation for establishing the Austrian Constitutional Court under the Constitution of 1920, generally regarded as the first modern constitutional court.

In his comparative analysis of the Austrian and American systems, Kelsen emphasised that constitutional review serves to prevent the application of unconstitutional norms. As Kelsen explained, “the constitutionality of legislation can be guaranteed by two different means: personal responsibility of the organ which has enacted the unconstitutional norm, and non-application of the unconstitutional norm”.⁷ He further noted that when a court refuses to apply an unconstitutional rule, it effectively invalidates that rule in the particular case before it.

The Austrian model fundamentally differed from the American approach by concentrating constitutional review in a specialised constitutional court. Rather than allowing all courts to engage in constitutional adjudication, the Kelsenian system entrusted this task to a single institution specifically designed to safeguard constitutional supremacy. The Austrian model subsequently became the dominant framework of constitutional adjudication throughout continental Europe and profoundly influenced post-war constitutional development.

While constitutional review was emerging within domestic legal systems, international law was undergoing a transformation of comparable significance. Traditionally, treaty-making belonged almost exclusively to the sovereign and was largely confined to matters of war,

³ Ibid., pp. 23-24.

⁴ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803); <https://supreme.justia.com/cases/federal/us/5/137/>

⁵ Cappelletti, M. (1970) 'Judicial Review in Comparative Perspective', *California Law Review*, Vol. 58, No. 5, pp. 1030–1036.

⁶ Kelsen, H. (1942) 'Judicial Review of Legislation: A Comparative Study of the Austrian and the American Constitution', *The Journal of Politics*, Vol. 4, No. 2, pp. 183–200, especially pp. 183–186. The argument was originally developed in Kelsen, H. (1928) 'La garantie juridictionnelle de la Constitution (La justice constitutionnelle)', *Revue du droit public et de la science politique en France et à l'étranger*, Vol. 45, pp. 197–257.

⁷ Kelsen, H. (1942) 'Judicial Review of Legislation: A Comparative Study of the Austrian and the American Constitution', *The Journal of Politics*, Vol. 4, No. 2, p. 184.

peace, diplomacy, territorial settlements, and commercial privileges. International treaties, therefore, occupied a relatively limited position within domestic constitutional orders.

This situation changed dramatically during the nineteenth century. As Edward Keene has demonstrated, the period witnessed a genuine “treaty-making revolution”, marked by an unprecedented expansion in treaty-making activity. According to his analysis, the number of international agreements increased almost sevenfold between 1800 and 1900, transforming treaty-making from an occasional diplomatic practice into a routine instrument of international governance.⁸

The expansion of treaty-making was accompanied by the emergence of a distinct international legal community that increasingly viewed international law as an instrument of cooperation, legal order, and civilizational progress. Koskenniemi identifies the late nineteenth century as a period marked by the emergence of a new internationalist legal culture centred around professional organisations, scholarly journals, and transnational networks of jurists who sought to reconcile national sovereignty with broader ideals of international organisation and legal restraint. International law was no longer perceived merely as a framework governing relations between sovereigns but increasingly as a means of promoting common legal standards and managing growing international interdependence.⁹

The constitutional significance of treaties increased accordingly. As international agreements increasingly affected individual rights and governmental powers, constitutional systems gradually introduced procedural safeguards designed to ensure democratic legitimacy and constitutional accountability. The nineteenth and early twentieth centuries also witnessed a gradual strengthening of parliamentary participation in treaty-making, reflecting the broader constitutional transformation from monarchical prerogative to democratic governance. As the conclusion of treaties became increasingly subject to constitutional procedures and legislative involvement, international agreements ceased to be regarded solely as instruments of foreign policy and became matters of constitutional significance. The growing penetration of international treaties into areas traditionally regulated by domestic constitutional law created new concerns regarding the compatibility of international commitments with constitutional norms. Comparative constitutional practice demonstrates that the expansion of international regulation and the rise of constitutional adjudication generated increasing pressure to develop mechanisms to review the constitutionality of treaties, either before or after their incorporation into the domestic legal order.¹⁰

The transformation of treaties into instruments of public regulation created the conditions for the later emergence of constitutional review of international agreements. Once treaties began to affect constitutional rights and domestic governance, questions concerning their compatibility with constitutional norms became unavoidable. The twentieth century witnessed the simultaneous consolidation of constitutional supremacy and the strengthening of international legal obligations. On the domestic level, constitutional courts increasingly emerged as guardians of constitutional hierarchy and constitutional rights. On the international plane, the principle *pacta sunt servanda* became firmly established as a cornerstone of treaty law.

The codification of treaty law in the Vienna Convention on the Law of Treaties (1969) significantly reinforced this development. Article 26 provides that every treaty in force is binding upon the parties and must be performed in good faith, while Article 27 stipulates that

⁸ Keene, E. (2012) 'The Treaty-Making Revolution of the Nineteenth Century', *The International History Review*, Vol. 34, No. 3, pp. 477–478.

⁹ Koskenniemi, M. (2001) *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, Cambridge University Press, Cambridge, pp. 1–5, 10–67.

¹⁰ Mendez, M. (2017) 'Constitutional Review of Treaties: Lessons for Comparative Constitutional Design and Practice', *International Journal of Constitutional Law*, Vol. 15, No. 1, pp. 84–97.

a state may not invoke its internal law as justification for failure to perform treaty obligations. Together, these provisions constitute one of the clearest expressions of the binding force of international agreements in contemporary international law. Article 46, however, recognises, albeit in narrowly defined circumstances, the relevance of domestic constitutional rules concerning competence to conclude treaties. By permitting a state to invoke a manifest violation of a rule of internal law of fundamental importance relating to treaty-making authority, the Convention implicitly acknowledges the constitutional dimension of treaty formation and the potential interaction between constitutional requirements and international obligations.¹¹

The combined effect of these developments exposed a structural tension between constitutional supremacy and the principle of *pacta sunt servanda*. While constitutional courts were entrusted with safeguarding the constitution as the supreme norm of the domestic legal order, states remained bound by the international commitments they had undertaken. The coexistence of these two normative imperatives generated increasing pressure to develop constitutional mechanisms to prevent or resolve conflicts between constitutional requirements and treaty obligations. This tension ultimately provided the historical and normative background for the emergence of constitutional review of international treaties.

This tension was further intensified by the expansion of international governance after the Second World War. International treaties increasingly regulate matters situated at the core of constitutional governance, including human rights protection, criminal justice, economic integration, environmental regulation, and supranational cooperation. Consequently, the relationship between constitutional supremacy and international obligations became one of the central questions of modern constitutional law. The emergence of constitutional review of international treaties can therefore be understood as the product of the convergence of two historical developments: the expansion of constitutional adjudication and the constitutionalization of international relations. Different constitutional systems responded to this challenge in different ways.

Some states, most notably France, developed mechanisms of preventive constitutional review enabling constitutional courts to assess treaty compatibility before ratification. Other constitutional systems accepted various forms of subsequent review after treaties had entered into force. Comparative constitutional practice has gradually produced a variety of institutional models, ranging from exclusively preventive review to systems that combine preventive and subsequent review, and to jurisdictions that substantially restrict constitutional scrutiny of international agreements.¹² Regardless of institutional design, the underlying objective remained the same: reconciling constitutional supremacy with the state's obligation to respect international commitments.

Following the Second World War, the diffusion of the Kelsenian model throughout Europe significantly strengthened the institutional capacity of constitutional courts to address conflicts between constitutional norms and international obligations. Constitutional courts increasingly became central actors in mediating the relationship between domestic constitutional orders and international legal commitments.

The constitutional review of international treaties should therefore not be regarded as a recent institutional innovation. Rather, it represents the culmination of a long historical process linking the development of constitutionalism, the emergence of constitutional adjudication, the expansion of treaty-making, and the growing constitutional significance of

¹¹ Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, arts 26, 27 and 46.

¹² Mendez, M. (2017) 'Constitutional Review of Treaties: Lessons for Comparative Constitutional Design and Practice', *International Journal of Constitutional Law*, Vol. 15, No. 1, pp. 95–96, identifying constitutional systems that provide for ex ante review, ex post review, combined systems of review, and systems that exclude constitutional review of treaties altogether.

international obligations. Contemporary debates concerning constitutional supremacy and *pacta sunt servanda* are thus best understood as the latest stage in an ongoing effort to reconcile domestic constitutional authority with participation in an increasingly interconnected international legal order. The institutional solutions adopted in response to this challenge have varied considerably across constitutional systems. While some states favour preventive constitutional review, others permit subsequent review or develop mixed forms of constitutional control. Understanding these different approaches requires a comparative examination of the constitutional models that emerged in Europe during the twentieth and twenty-first centuries.

III. CONSTITUTIONAL REVIEW OF INTERNATIONAL TREATIES: COMPETING CONSTITUTIONAL APPROACHES

The constitutional review of international treaties reflects a broader tension between two fundamental principles of contemporary legal orders: constitutional supremacy and the binding force of international obligations. The question of whether international treaties should be subject to constitutional review also reflects a deeper issue concerning the nature of constitutional adjudication itself.¹³ In the Kelsenian tradition, constitutional review is premised on the idea that all normative acts within the domestic legal hierarchy should remain subject to constitutional scrutiny. From this perspective, the exclusion of treaties from constitutional review appears difficult to reconcile with the principle of constitutional supremacy once treaties become part of the domestic legal order. At the same time, constitutional review of treaties raises concerns less pronounced than in the case of ordinary legislation, since an adverse constitutional judgment may affect obligations that remain binding under international law. The resulting tension explains why constitutional systems have developed different institutional mechanisms to address the relationship between constitutional supremacy and international commitments, rather than converging on a single constitutional solution.

Although constitutional systems have developed different institutional mechanisms to address this challenge, the underlying debate concerns the extent to which international treaties should be subject to constitutional scrutiny. Comparative constitutional practice reveals three principal approaches to this question: the primacy of constitutional supremacy, the primacy of international obligations, and various attempts to reconcile the two principles.¹⁴

The first approach proceeds from the principle of constitutional supremacy. If the constitution constitutes the highest norm of the domestic legal order, international treaties cannot be excluded from constitutional scrutiny merely because they originate in the sphere of international relations. Once incorporated into domestic law, treaties affect the rights of individuals, the exercise of public authority, and the operation of constitutional institutions. Consequently, constitutional review is regarded as a necessary safeguard of constitutional legitimacy and the rule of law.¹⁵ The constitutional logic underlying this model is particularly visible in systems that permit subsequent constitutional review of treaties after their entry into

¹³ Deener, D. R. (1964) 'Treaties, Constitutions and Judicial Review', *Virginia Journal of International Law*, Vol. 4, No. 1, pp. 7–16.

¹⁴ Mendez, M. (2017) 'Constitutional Review of Treaties: Lessons for Comparative Constitutional Design and Practice', *International Journal of Constitutional Law*, Vol. 15, No. 1, pp. 95–96.

¹⁵ Kelsen, H. (2015) 'The Nature and Development of Constitutional Adjudication', in Vinx, L. (ed.), *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law*, Cambridge University Press, Cambridge, pp. 22–24; Cappelletti, M. (1970) 'Judicial Review in Comparative Perspective', *California Law Review*, Vol. 58, No. 5, pp. 1031–1033.

force. Such systems rest on the assumption that constitutional supremacy requires the continued possibility of constitutional scrutiny when treaty obligations affect constitutional rights, constitutional identity, or the distribution of constitutional powers. The principal attraction of this position lies in its ability to protect constitutional values, fundamental rights, and constitutional identity. Its principal weakness, however, is the possibility that constitutional adjudication may conflict with obligations that remain binding under international law.¹⁶

A second approach places greater emphasis on the principle of *pacta sunt servanda* and the stability of international obligations. From this perspective, states must remain reliable participants in the international legal order, and constitutional review should not undermine commitments validly undertaken under international law. Constitutional scrutiny is therefore concentrated primarily before ratification or otherwise limited in scope. The French model of preventive constitutional review provides the most prominent example of this approach. Pursuant to Article 54 of the French Constitution, the Constitutional Council may assess the constitutionality of a treaty before ratification. Where incompatibility with the Constitution is identified, ratification may proceed only after constitutional amendment. In this manner, constitutional concerns are resolved before international obligations arise, thereby promoting legal certainty and avoiding conflicts between constitutional requirements and binding treaty commitments.¹⁷ The resulting model promotes legal certainty and reduces the risk of conflicts between domestic constitutional law and international obligations. It also reflects the principles codified in the Vienna Convention on the Law of Treaties, particularly the requirement that treaties be performed in good faith and that internal law may not generally be invoked to justify non-performance.

Many contemporary constitutional systems seek to avoid granting absolute priority to either constitutional supremacy or international obligations. Instead, they attempt to reconcile the two principles through institutional arrangements that permit constitutional scrutiny while preserving the state's capacity to comply with international law. Such approaches recognise that constitutional review of treaties involves more than a simple hierarchy of norms. Constitutional courts must operate at the intersection of domestic constitutional authority and international legal commitments, each of which derives its legitimacy from distinct normative sources. The objective is therefore not to eliminate tensions between constitutional and international law, but to manage them in a manner that preserves the legitimacy of both legal orders. The continuing expansion of international regulation has intensified the practical significance of these competing approaches. Constitutional systems must simultaneously safeguard constitutional legitimacy, maintain compliance with international obligations, and accommodate the growing interdependence of domestic and international legal orders. These competing approaches are not merely theoretical constructs. They have found concrete expression in constitutional systems across Europe, including those examined in this article. Although Croatia, Slovenia, and North Macedonia emerged from a common Yugoslav institutional and constitutional tradition, they have developed different approaches to the constitutional review of international treaties following the democratic transformations of the post-socialist period. Slovenia represents a model of preventive constitutional review

¹⁶ Mendez, M. (2017) 'Constitutional Review of Treaties: Lessons for Comparative Constitutional Design and Practice', *International Journal of Constitutional Law*, Vol. 15, No. 1, pp. 96–101; Peters, A. (2009) 'Supremacy Lost: International Law Meets Domestic Constitutional Law', *Vienna Online Journal on International Constitutional Law*, Vol. 3, pp. 184–188; Rupp, H. G. (1977) 'Judicial Review of International Agreements: Federal Republic of Germany', *American Journal of Comparative Law*, Vol. 25, No. 2, pp. 290–300.

¹⁷ Mendez, M. (2017) 'Constitutional Review of Treaties: Lessons for Comparative Constitutional Design and Practice', *International Journal of Constitutional Law*, Vol. 15, No. 1, pp. 88–95; Nastić, M. (2015) 'Constitutional Review of International Agreements: Comparative Law Perspective', *Facta Universitatis: Law and Politics*, Vol. 13, No. 1, pp. 64–65.

designed to avoid conflicts between constitutional requirements and international obligations before ratification, whereas Croatia and North Macedonia illustrate different constitutional reasons for limiting substantive review once treaty obligations have been assumed. Together, these constitutional systems demonstrate how a shared institutional legacy can generate divergent constitutional responses to the challenge of reconciling constitutional supremacy with the principle of *pacta sunt servanda*.¹⁸

IV. SOCIALIST YUGOSLAVIA AND THE INSTITUTIONAL ORIGINS OF CONSTITUTIONAL ADJUDICATION IN THE SUCCESSOR STATES

The constitutional approaches developed in Croatia, Slovenia and North Macedonia cannot be understood solely through contemporary constitutional texts. Their institutional foundations reflect a broader historical trajectory shaped by the spread of Kelsenian constitutional adjudication, the constitutional experiences of socialist states during the Cold War, and the democratic transformations that followed the collapse of communist regimes. Recent scholarship has emphasised that post-socialist constitutional systems cannot be understood solely through the lens of constitutional rupture, since institutional and conceptual elements of the socialist period often remained embedded in post-socialist constitutional development.¹⁹

Within this broader context of socialist constitutional legacies, Yugoslavia occupied a distinctive position. While specialised constitutional courts remained uncommon in socialist constitutional systems during much of the Cold War, the Constitution of 1963 established both a Federal Constitutional Court and constitutional courts within the constituent republics.²⁰ By adapting constitutional review to the constitutional framework of a federal, self-management system, Yugoslavia embedded constitutional courts within the institutional structure of the federation and its constituent republics.²¹ Although the constitutional systems that emerged after the dissolution of Yugoslavia developed under fundamentally different constitutional premises, they inherited institutions that had already become part of the republics' constitutional architecture.

The establishment of constitutional courts was closely connected to the evolving federal structure of the Yugoslav state. Constitutional adjudication was not conceived primarily as a mechanism for protecting individual rights, but rather as an instrument for safeguarding constitutionality and legality within a complex federal system characterised by a continuous redistribution of powers among the federation, the republics, and, later, the autonomous provinces. Constitutional courts were therefore entrusted with preserving the

¹⁸ A comparable approach can be observed in Serbia. Serbian scholarship has noted the absence of a fully developed constitutional doctrine concerning the review of ratified international treaties and has highlighted similar tensions between constitutional supremacy and the principle of *pacta sunt servanda*. Serbia is not examined separately in this article because its constitutional approach does not materially alter the typology developed here and broadly reflects the post-socialist constitutional dilemmas discussed for Croatia and North Macedonia. See Nastić, M. (2015) 'Constitutional Review of International Agreements: Comparative Law Perspective', *Facta Universitatis: Law and Politics*, Vol. 13, No. 1, pp. 66–69.

¹⁹ Belov, S.; Partlett, W.; Troitskaya, A. (2021) 'Socialist Constitutional Legacies', *Russian Law Journal*, Vol. 9, No. 2, pp. 8–13, arguing that post-socialist constitutional development cannot be understood solely as a process of rupture with socialism and emphasising the continuing influence of socialist constitutional concepts, institutions, and legal traditions in contemporary constitutional systems.

²⁰ Constitution of the Socialist Federal Republic of Yugoslavia, Official Gazette of the SFRY, No. 14/1963, adopted on 7 April 1963, arts. 241–251.

²¹ Mratović, V.; Filipović, N.; Sokol, S. (1981) *Ustavno pravo i političke institucije (SFRJ i komparativno)*, Pravni fakultet Sveučilišta u Zagrebu, Zagreb, pp. 156–166, 510–517.

constitutional balance of the federation, resolving jurisdictional disputes, and ensuring that legislation and other legal acts conform to constitutional norms.²²

The constitutional reforms of 1974 fundamentally redefined the relationship between the federation and its constituent republics and autonomous provinces, while simultaneously reforming the system of constitutional adjudication.²³ The resulting constitutional structure required increasingly sophisticated mechanisms for resolving normative conflicts within a highly decentralised federation. Consequently, constitutional courts became an integral component of the Yugoslav constitutional order, serving not merely as guardians of legality but also as institutions responsible for maintaining the stability of a constitutionally fragmented federal system. By the late socialist period, constitutional adjudication had become firmly embedded within the Yugoslav constitutional order. Although the final years of the federation exposed constitutional courts to increasing political pressures and institutional tensions associated with the Yugoslav constitutional crisis, constitutional adjudication nevertheless remained an established component of the constitutional framework inherited by the successor states.²⁴

Despite the relatively advanced development of constitutional adjudication, the constitutional review of international treaties did not emerge as a distinct subject of constitutional jurisprudence. Neither the federal Constitution nor the constitutional provisions defining the jurisdiction of the federal and republican constitutional courts expressly provided for the review of ratified international treaties.²⁵ Consequently, constitutional scholarship focused primarily on questions of federalism, constitutionality, legality, and the distribution of powers within the Yugoslav constitutional system, while the relationship between constitutional adjudication and international treaties remained largely unexplored.

The significance of the Yugoslav experience lies not in the specific problem of constitutional review of international treaties, but in the institutional origins of the constitutional courts that later emerged in the successor states. Although the constitutional transformations of the 1990s introduced fundamentally different constitutional premises, constitutional adjudication remained embedded within the constitutional architecture of the successor states. As the following sections demonstrate, a shared institutional starting point did not produce uniform approaches to the relationship between constitutional supremacy and international obligations.

V. SHARED INSTITUTIONAL ORIGINS, DIVERGENT CONSTITUTIONAL SOLUTIONS

The constitutional treatment of international treaties provides a particularly revealing illustration of these divergences. Despite their shared institutional origins, Croatia, Slovenia, and North Macedonia developed markedly different constitutional responses to the problem of reconciling constitutional supremacy with international obligations. Slovenia developed an explicit constitutional framework for the review of international treaties, distinguishing it

²² Ibid., pp. 98-102, 510-517.

²³ Kardelj, E. (1975) *Socijalističko samoupravljanje u našem ustavnom sistemu*, Svjetlost, Sarajevo, pp. 12-61; Todorović, M. (1974) 'Report on the Final Draft of the S.F.R.Y. Constitution', in Đurović, D. (ed.), *Constitution of the Socialist Federal Republic of Yugoslavia*, Jugoslovenska stvarnost, Beograd, pp. 11-46; Mratović, V.; Filipović, N.; Sokol, S. (1981) *Ustavno pravo i političke institucije (SFRJ i komparativno)*, Pravni fakultet Sveučilišta u Zagrebu, Zagreb, p. 51.

²⁴ Miletić, A. R. (2021) 'Arbitrarni konstitucionalizam: Ustavni sud Jugoslavije, 1988-1991', in Jugoslavija: Poglavlje 1980-1991, Helsinški odbor za ljudska prava u Srbiji, Beograd, pp. 229-231, 243-244.

²⁵ Constitution of the Socialist Federal Republic of Yugoslavia, Official Gazette of the SFRY, No. 14/1963, adopted on 7 April 1963, art. 241; Constitution of the Socialist Federal Republic of Yugoslavia, Official Gazette of the SFRY, No. 9/1974, adopted on 21 February 1974, art. 375.

from the Croatian and North Macedonian approaches examined in this study. Article 160 of the Constitution authorises the Constitutional Court, at the request of the President of the Republic, the Government, or one-third of the deputies of the National Assembly, to issue an opinion during the ratification process concerning the constitutionality of an international treaty, while the National Assembly is bound by that opinion.²⁶ Together with Article 8 of the Constitution, which recognises the direct applicability of ratified treaties within the domestic legal order, this provision establishes a specialised mechanism for addressing the relationship between constitutional law and international obligations.²⁷

The preventive character of the Slovenian model reflects an underlying concern that constitutional objections to a treaty should be addressed before the state becomes internationally bound. As Škrk observes, the purpose of constitutional review under Article 160(2) of the Constitution is to identify potential incompatibilities during the ratification process and thereby avoid situations in which the state would face conflicting obligations under constitutional and international law.²⁸ Preventive review thus serves to preserve both constitutional supremacy and legal certainty by ensuring that constitutional concerns are resolved before international obligations arise.

The Constitutional Court elaborated the foundations of this doctrine in Opinion Rm-1/97 concerning the Europe Agreement between Slovenia and the European Communities. The Court stressed that the ratification of an international treaty has both domestic and international dimensions: the act of ratification incorporates treaty obligations into the domestic legal order, while the treaty itself creates obligations governed by international law. Although unconstitutional domestic effects may later be removed through constitutional adjudication, such a decision does not affect the state's international obligations, which remain governed by international law. Consequently, constitutional incompatibilities should be resolved before ratification, since the competent state authorities may not approve international obligations that would require Slovenia to act contrary to its Constitution.²⁹ The Court thus articulated the central rationale of the Slovenian model: preventive review serves not only to safeguard constitutional supremacy, but also to prevent conflicts with the principle of *pacta sunt servanda*.

Subsequent jurisprudence refined this approach. In Opinion Rm-2/02, concerning the Krško Nuclear Power Plant Agreement, the Constitutional Court reaffirmed that the purpose of preventive review is to prevent the State from assuming international obligations incompatible with the Constitution. The Court further clarified that opinions issued under Article 160(2) are not merely advisory but have binding legal effect comparable to that of other constitutional decisions. Where constitutional incompatibilities are identified, they must therefore be resolved before ratification, either through constitutional amendment or other constitutionally permissible means. At the same time, the Court emphasised that preventive review is limited to questions of constitutionality and does not extend to the political wisdom, economic desirability, or broader policy merits of an international agreement, which remain matters for the National Assembly.³⁰

The resulting model combines explicit constitutional authorisation with a developed body of constitutional jurisprudence concerning the assumption of international obligations. Rather than treating constitutional supremacy and international commitments as competing

²⁶ Constitution of the Republic of Slovenia, Official Gazette of the Republic of Slovenia, No. 33/1991-I, adopted on 23 December 1991, art. 160(2).

²⁷ Constitution of the Republic of Slovenia, Art. 8.

²⁸ Škrk, M. (2006) 'Ustavnosodna presoja mednarodnih pogodb', *Revus*, Vol. 6, pp. 75–80.

²⁹ Constitutional Court of the Republic of Slovenia, Opinion Rm-1/97, 5 June 1997, paras. 11–20, 35–40.

³⁰ Constitutional Court of the Republic of Slovenia, Opinion Rm-2/02, 5 December 2002, paras. 18–21, 41, 46–47.

imperatives, the Slovenian model seeks to reconcile them by conducting preventive constitutional review before the state becomes bound by international commitments. In this respect, preventive review functions simultaneously as a safeguard of constitutional legitimacy and as a mechanism for preserving legal certainty in international relations.

Unlike Slovenia, Croatia did not establish a specialised constitutional mechanism for the review of international treaties. The Croatian Constitution recognises ratified and published international treaties as part of the domestic legal order and accords them legal force superior to ordinary legislation. Constitutional jurisprudence has consistently understood this arrangement as creating a hierarchical position for treaties between the Constitution and ordinary legislation. International treaties, therefore, prevail over statutes, while the Constitution remains the supreme norm of the Croatian legal order.³¹

The principal constitutional controversy concerns not the hierarchical status of treaties, but the institutional mechanisms through which constitutional supremacy is to be safeguarded. The Constitution contains no express provision authorising either preventive or subsequent constitutional review of international treaties. As a result, the question of whether the Constitutional Court may assess the substantive constitutionality of treaties has become one of the most contested issues in Croatian constitutional law.

The Constitutional Court first addressed this issue comprehensively in decision U-I-825/2001 concerning the so-called Vatican Treaties concluded between the Republic of Croatia and the Holy See. The applicants argued that several treaty provisions were incompatible with constitutional principles governing the relationship between the state and religious communities. Rather than examining the substantive constitutional objections, however, the Court focused on the scope of its own jurisdiction. It concluded that the Constitution does not confer upon the Constitutional Court the authority to review the constitutionality of ratified international treaties and that such competence cannot be derived from its general jurisdiction to review the constitutionality of statutes and other domestic legal acts.³²

This position subsequently became a stable element of Croatian constitutional jurisprudence. In later cases concerning the Holy See treaties, the Agreement on Social Security between Croatia and Bosnia and Herzegovina, and other international agreements, the Constitutional Court consistently maintained that it may review only the formal constitutionality of statutes confirming international treaties, but not the substantive content of the treaties themselves. The Court's reasoning rests on the constitutional status of ratified treaties within the Croatian legal order and on the absence of any explicit constitutional competence to review their substance. It has further emphasised that ratified treaties may be amended or terminated only in accordance with the procedures established by the treaty itself or by the general rules of international law.³³ As a result, the Croatian model seeks to preserve compliance with international obligations by excluding substantive constitutional review once a treaty has entered into force.

The Court's approach has nevertheless generated considerable criticism in legal scholarship. Bakmaz argues that the current jurisprudence creates a structural inconsistency within the Croatian legal order. Although ratified international treaties form part of the domestic legal order and occupy a position below the Constitution, they remain effectively

³¹ Constitution of the Republic of Croatia, Official Gazette Nos. 56/1990, 135/1997, 113/2000, 28/2001, 76/2010 and 5/2014, art. 141; Constitutional Court of the Republic of Croatia, U-I-745/1999, 8 November 2000, paras. 7–8.

³² Constitutional Court of the Republic of Croatia, U-I-825/2001, 14 January 2004.

³³ Constitutional Court of the Republic of Croatia, U-I-4043/2003, 7 July 2009; U-I-350/2004, 17 June 2009; U-I-1583/2000, 24 March 2010; U-I-2057/2009, 30 March 2011.

insulated from substantive constitutional review.³⁴ Similar concerns have been raised in more recent commentary, which points to the absence of an institutional mechanism to resolve potential conflicts between constitutional requirements and treaty obligations once a treaty has entered into force.³⁵ The difficulty is particularly evident from the perspective of constitutional supremacy. If all norms forming part of the domestic legal order must conform to the Constitution, it becomes difficult to justify why one category of norms should remain largely exempt from constitutional scrutiny.

At the same time, the arguments supporting judicial restraint cannot be dismissed lightly. International treaties differ fundamentally from ordinary legislation because they simultaneously operate within both domestic and international legal orders. As has been observed in Croatian legal scholarship, constitutional review of ratified treaties raises questions that extend beyond the domestic legal system, since treaty obligations also affect other subjects of international law and are governed by the principle of *pacta sunt servanda*. The problem is therefore not merely constitutional but also international in character. In this respect, Croatian constitutional jurisprudence reflects concerns similar to those that motivated the development of preventive review in Slovenia, namely the need to reconcile constitutional supremacy with the stability of international obligations.³⁶

Recent developments, however, suggest that the traditional doctrine may no longer be entirely settled. Although the Court has not formally departed from its established jurisprudence, separate opinions in U-I-4902/2023 and U-I-2596/2025 have advanced a substantially different understanding of the constitutional status of international treaties and the scope of constitutional review. Judges Abramović, Kušan, Selanec and Bezbradica Jelavić argued that Article 125 of the Constitution empowers the Constitutional Court to review the constitutionality of all statutes, including statutes confirming international treaties, and that no constitutional basis exists for limiting such review to formal questions alone. Since ratified treaties form part of the domestic legal order and occupy a position below the Constitution, excluding them from constitutional scrutiny creates a significant gap in the protection of constitutional supremacy. According to this view, international treaties would otherwise constitute a privileged category of norms capable of producing legal effects within the domestic legal order while remaining effectively immune from constitutional review.³⁷

Perhaps the most nuanced challenge to the established doctrine has been articulated by Judge Miroslav Šumanović. While accepting that the Constitutional Court cannot itself amend, suspend or terminate an international treaty, he rejects the conclusion that this necessarily excludes constitutional review. In his view, a finding of unconstitutionality would operate exclusively within the domestic legal order and would not affect the treaty's international validity. The Constitutional Court could therefore declare that a treaty had been accepted in a constitutionally defective manner, while leaving it to the competent political authorities to determine the appropriate response under international law, including amendment, suspension or termination of the treaty. Such an approach seeks to preserve constitutional supremacy

³⁴ Bakmaz, J. (2019) 'O nadzoru ustavnosti međunarodnih ugovora: treba li Ustavni sud promijeniti praksu?', *Zbornik radova Pravnog fakulteta u Splitu*, Vol. 56, No. 3, pp. 658–664.

³⁵ Gojak, M. (2023) 'Međunarodni ugovori: „ispod ili iznad Ustava?“', *IUS-Info*, 25 September 2023.

³⁶ Obadić, I. (2026) 'Razlozi zbog kojih Ustavni sud RH ne odlučuje o sukladnosti međunarodnih ugovora s Ustavom RH', *Pravo i porezi*, No. 4, pp. 85–86.

³⁷ Constitutional Court of the Republic of Croatia, U-I-4902/2023, 6 February 2024, Separate Opinion of Judges Andrej Abramović, Lovorka Kušan and Goran Selanec; see also Constitutional Court of the Republic of Croatia, U-I-2596/2025, Separate Opinion of Judges Abramović, Kušan, Selanec and Bezbradica Jelavić.

without requiring the Constitutional Court itself to interfere directly with the State's international obligations.³⁸

The emerging dissenting jurisprudence therefore exposes the central paradox of the Croatian model: international treaties form part of the domestic legal order and prevail over ordinary legislation, yet remain largely insulated from substantive constitutional review. Whether this position can ultimately be reconciled with the principle of constitutional supremacy remains one of the most contested questions in contemporary Croatian constitutional law.

The broader constitutional debate provides additional context for these developments. Contemporary Croatian constitutional scholarship increasingly emphasises that the Constitution cannot be understood merely as the highest norm within a hierarchical legal order. Rather, it embodies a substantive framework of constitutional values and principles, including democracy, the rule of law, legal certainty, proportionality, and the protection of fundamental rights.³⁹ From that perspective, the exclusion of international treaties from substantive constitutional review raises questions that extend beyond institutional competence and concern the constitutional order's capacity to ensure the coherence of all norms operating within the domestic legal system. If constitutional supremacy is understood not only in formal but also in substantive terms, the question arises whether any category of legal norms incorporated into the domestic legal order can remain permanently beyond constitutional scrutiny.

The Croatian constitutional order has followed a markedly different path from the Slovenian model of preventive treaty review, relying primarily on judicial self-restraint and political safeguards embedded in the treaty-making process rather than on a specialised mechanism of constitutional review. The resulting system formally affirms the supremacy of the Constitution, yet leaves unresolved the question of how constitutional supremacy should operate when potential conflicts arise between constitutional norms and international obligations. As the ongoing debate in scholarship and within the Constitutional Court itself demonstrates, the controversy concerns less the hierarchy of legal norms than the institutional limits of constitutional adjudication and the implications that substantive treaty review might have for the state's international obligations and for the principle of *pacta sunt servanda*.

The constitutional treatment of international treaties in North Macedonia shares important similarities with the Croatian approach. Although the constitutional and doctrinal arguments employed by the two constitutional courts differ, both systems ultimately exclude ratified international treaties from substantive constitutional review. The Constitution of North Macedonia does not establish a specialised mechanism for the constitutional review of international treaties. At the same time, the constitutional status of international agreements has long been recognised through Article 118 of the Constitution, which provides that international agreements ratified in accordance with the Constitution form part of the internal legal order and cannot be altered by law. Together with Articles 119 and 120, governing the conclusion of treaties and accession to associations or communities of states, these provisions constitute the constitutional framework within which the relationship between constitutional supremacy and international obligations has evolved.⁴⁰ The constitutional implications of Article 118 have been examined in Macedonian legal scholarship, which generally identifies

³⁸ Constitutional Court of the Republic of Croatia, U-I-4902/2023, 6 February 2024, Concurring Opinion of Judge Miroslav Šumanović; see also Constitutional Court of the Republic of Croatia, U-I-2596/2025, Concurring Opinion of Judge Miroslav Šumanović.

³⁹ Kostadinov, B. (2024) 'Ustav nije vrijednosno neutralan dokument', in Kostadinov, B. (ed.), *Poredbeno ustavno pravo – Druga knjiga: Ustavno sudovanje*, Pravni fakultet Sveučilišta u Zagrebu, Zagreb, pp. 25–34.

⁴⁰ Constitution of the Republic of North Macedonia, Official Gazette of the Republic of Macedonia No. 52/1991, as amended through Amendment XXXVI (2019), arts. 118–120.

ratified international treaties as a distinct category of legal norms occupying a position above ordinary legislation while remaining integrated into the domestic legal order. The literature has also emphasised the interpretative and practical difficulties arising from the Constitution's failure to define more precisely the hierarchical relationship between international treaties and the Constitution itself.⁴¹

The Constitutional Court first addressed the constitutional status of international treaties in a decision concerning laws ratifying agreements concluded between the Republic of Macedonia and international financial institutions. The Court declined to initiate constitutional review proceedings but did not address whether laws ratifying international agreements fall within its constitutional jurisdiction. The issue acquired considerably greater constitutional significance following the conclusion of the Interim Accord between the Republic of Macedonia and Greece. In Decision U.br. 341/95, concerning the Law Ratifying the Interim Accord, the Court declined to initiate constitutional review proceedings, thereby accepting the constitutionality of the ratification process.⁴²

The Court elaborated its position more explicitly in Resolution U.br. 230/1996, in which the applicants again challenged the constitutionality of the Interim Accord, alleging that the agreement conflicted with several constitutional provisions governing the sovereignty and constitutional position of the Republic.⁴³ Rather than examining the substantive constitutional objections, however, the Court focused on the scope of its constitutional jurisdiction. Relying on Articles 110 and 118 of the Constitution, it held that the Constitutional Court is competent to review the constitutionality of laws and other regulations, but not of international treaties. According to the Court, the constitutional compatibility of an international agreement must be assessed by the Assembly during the ratification process, whereas a ratified treaty subsequently becomes part of the domestic legal order and may not be altered by law.⁴⁴

This decision articulated the basic framework of the Court's approach to international treaties. Although later case law was not entirely consistent, the Constitutional Court generally maintained the view that ratified international treaties fall outside its constitutional jurisdiction. Unlike Croatian constitutional jurisprudence, which has frequently framed the issue in terms of the relationship between constitutional supremacy and the state's international obligations, the Macedonian Constitutional Court approached the matter primarily as a question of constitutional competence. The central issue was not whether treaty obligations could justify limits on constitutional review, but whether the Constitution entrusted the assessment of a treaty's constitutionality to the Constitutional Court or, instead, to the Assembly during ratification.

This understanding of constitutional jurisdiction did not remain entirely uncontested. A significant departure from the restrictive approach emerged in Decision U.br. 140/2001 concerning the Law Ratifying the Bilateral Agreement between the Republic of Macedonia

⁴¹ Sinani, B.; Memeti, S. (2014) 'International Legal Norms in Macedonia's Domestic Law', *Acta Universitatis Danubius Juridica*, Vol. 10, No. 3, pp. 39–46. The authors analyse the constitutional position of ratified international treaties within the Macedonian legal order, the operation of Article 118 of the Constitution, and the unresolved questions concerning the hierarchy of legal norms and the relationship between international treaties and the Constitution.

⁴² Karakamiševa-Jovanovska, T.; Saveski, D. (2022) 'Macedonian Constitutional Court and Ratified International Agreements – Can the Concluded International Agreement Be a Subject of Constitutional Review?', *Zbornik radova Pravnog fakulteta u Splitu*, Vol. 59, No. 2, pp. 321–322.

⁴³ Constitutional Court of the Republic of Macedonia, Resolution U.br. 230/1996, 20 November 1996.

⁴⁴ Constitutional Court of the Republic of Macedonia, Resolution U.br. 230/1996, 20 November 1996, holding that the Constitutional Court lacks jurisdiction to review the constitutionality of international treaties and that the constitutional compatibility of treaties is assessed by the Assembly during the ratification process pursuant to Articles 110 and 118 of the Constitution.

and the Hellenic Republic on the construction and operation of an oil pipeline. In that case, the Court accepted its competence to review the constitutionality of a law ratifying an international agreement and ultimately annulled the statute. The decision suggested that laws of ratification, like other statutes, may be subject to both formal and substantive constitutional review.⁴⁵

This approach, however, did not prevail. In subsequent cases, the Court gradually returned to the position that international treaties fall outside the scope of constitutional review. By the mid-2000s, the restrictive interpretation articulated in U.br. 230/1996 had again become dominant.⁴⁶ The Court reaffirmed this position in Resolution U.br. 77/2009, where it emphasised that international treaties, as instruments governed by international law, cannot themselves be annulled or invalidated by the Constitutional Court. The Court further indicated that its constitutional jurisdiction may extend only to domestic legal acts, but not to international agreements as such.⁴⁷

The constitutional controversy surrounding the Prespa Agreement brought these issues back to the centre of constitutional debate. Several initiatives challenged the referendum process, the ratification procedure, and the constitutionality of the agreement itself. In Resolution U.br. 88/2018, U.br. 90/2018 and U.br. In 91/2018, the Constitutional Court declined to intervene in the referendum process and upheld the Assembly's decision to call an advisory referendum on the Prespa Agreement and Euro-Atlantic integration.⁴⁸ In the subsequent proceedings concerning the Law Ratifying the Prespa Agreement, the Court refused to initiate constitutional review proceedings and reiterated that its jurisdiction extends to the law of ratification rather than to the international agreement itself. The Court further emphasised that the constitutional assessment of an international agreement is primarily undertaken by the political institutions participating in the ratification process.⁴⁹ Although the Prespa litigation generated extensive constitutional and political controversy, it ultimately reaffirmed the restrictive understanding of constitutional jurisdiction that had characterised much of the Court's earlier case law.⁵⁰

The comparative survey reveals that the constitutional treatment of international treaties has evolved differently within the three constitutional systems examined in this article. While each system seeks to address the relationship between constitutional norms and international obligations, they do so through distinct constitutional mechanisms and judicial doctrines. The differences are particularly visible in the role assigned to constitutional courts, the timing of constitutional review, and the manner in which potential conflicts between constitutional requirements and international commitments are addressed. These divergences provide a useful basis for assessing the broader constitutional implications of treaty review in post-Yugoslav constitutional systems.

⁴⁵ Constitutional Court of the Republic of Macedonia, Decision U.br. 140/2001-1, 4 December 2002.

⁴⁶ Krčinski, B. (2011) 'Neki problemi ustavnosudske kontrole u Makedoniji', *Hrvatska i komparativna javna uprava*, Vol. 11, No. 2, pp. 483–485.

⁴⁷ Constitutional Court of the Republic of Macedonia, Decision U.br. 77/2009, 21 April 2010. See also: arakamiševa-Jovanovska, T.; Saveski, D. (2022) 'Macedonian Constitutional Court and Ratified International Agreements – Can the Concluded International Agreement Be a Subject of Constitutional Review?', *Zbornik radova Pravnog fakulteta u Splitu*, Vol. 59, No. 2, pp. 323–326.

⁴⁸ Constitutional Court of the Republic of Macedonia, Resolution U.br. 88/2018, U.br. 90/2018 and U.br. 91/2018, 19 September 2018.

⁴⁹ Constitutional Court of the Republic of North Macedonia, Resolution U.br. 8/2019, U.br. 16/2019, U.br. 26/2019, U.br. 40/2019 and U.br. 47/2019, 21 September 2023.

⁵⁰ Karakamishcheva-Jovanovska, T.; Saveski, D. (2021) 'Macedonian Constitutional Court and the Prespa Agreement: Unbearable Ease of Inactivity', *Security Dialogues*, Vol. 12, pp. 35–48.

VI. CONCLUSION

The constitutional review of international treaties remains one of the most complex questions of contemporary constitutional law because it requires constitutional systems to reconcile two foundational commitments of the modern legal order: the supremacy of the constitution and the principle of *pacta sunt servanda*. The constitutional experiences of Croatia, Slovenia and North Macedonia demonstrate that this tension may be addressed through different institutional arrangements, each reflecting a particular understanding of the relationship between domestic constitutional authority and international legal obligations.

Although these states inherited constitutional courts that originated within a common institutional framework, the constitutional transformations that followed the dissolution of Yugoslavia produced different constitutional designs and, ultimately, different approaches to the constitutional review of international treaties. Slovenia constitutionalised preventive treaty review and entrusted its Constitutional Court with resolving potential conflicts between constitutional norms and international obligations before ratification. Croatia preserved the formal supremacy of the Constitution but developed a jurisprudence characterised by judicial restraint, reflecting concerns about the consequences of substantive treaty review for the state's international obligations. North Macedonia arrived at a broadly similar practical result, yet did so through a different constitutional rationale, grounding the exclusion of treaty review primarily in a restrictive interpretation of constitutional jurisdiction. The comparison suggests that the central question is not whether constitutional supremacy or *pacta sunt servanda* should prevail in the abstract. Rather, constitutional systems differ primarily in the institutional techniques they use to reconcile the two principles.

The findings also demonstrate that neither institutional continuity nor constitutional rupture alone can adequately explain post-socialist constitutional development. While all three states inherited constitutional courts as part of their constitutional architecture, they embedded those institutions within different constitutional frameworks and assigned them different constitutional functions. The resulting approaches to treaty review, therefore, reflect not merely differing judicial interpretations, but broader constitutional choices concerning the relationship between constitutional supremacy, international obligations, and the role of constitutional adjudication itself.

The analysis also demonstrates that constitutional review of treaties should not be understood solely as a question of jurisdiction or normative hierarchy. At a deeper level, it concerns competing conceptions of how constitutional systems should manage the relationship between domestic constitutional authority and participation in the international legal order. The Slovenian model seeks to prevent constitutional conflicts before international obligations arise. The Croatian approach emphasises the limits of judicial intervention once international obligations have been assumed. The Macedonian model reaches a similar practical outcome, but through a more formal understanding of constitutional competence. These approaches illustrate that constitutional courts may confront the same constitutional dilemma while relying on markedly different constitutional reasoning.

More broadly, the constitutional experiences of Croatia, Slovenia, and North Macedonia demonstrate that common institutional origins do not predetermine constitutional outcomes. The constitutional review of international treaties provides a particularly revealing example of how similar institutions, operating within different constitutional frameworks, may evolve in different directions while addressing the same fundamental challenge: reconciling constitutional supremacy with the demands of an increasingly interconnected international legal order. The constitutional review of international treaties, therefore, illustrates a broader lesson of comparative constitutional law: common institutional origins do

not predetermine constitutional outcomes, and similar constitutional courts may develop fundamentally different responses to the same constitutional dilemma.

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