

The Constitutional Incorporation of International Law in Gulf Arab States: Kuwait's Model of Qualified Dualism in Comparative Perspective

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Abstract

This article advances "qualified dualism" as a theoretically precise framework for understanding how Kuwait's constitutional architecture mediates the domestic reception of international law. Situated within a constitutional pluralism framework, it demonstrates that Kuwait's formal dualist prerequisites for treaty incorporation, requiring parliamentary authorization under Article 70 of the 1962 Constitution, coexist with a functionally direct judicial applicability before the Court of Cassation, calibrated through the self-executing doctrine. This bifurcation between constitutional form and judicial function constitutes a distinctive normative configuration that has neither been systematically analysed nor adequately theorized in the context of Gulf Cooperation Council (GCC) legal systems. The study identifies three structural features of Kuwait's qualified dualism: (i) mandatory parliamentary authorization for treaty incorporation; (ii) judicial direct applicability of self-executing treaty provisions; and (iii) the residual subordination of international obligations to constitutional supremacy and the *lex posterior* principle. The domestic status of customary international law represents the system's most consequential structural gap. Three research questions guide the inquiry: how Kuwait's constitutional text governs treaty incorporation; to what extent judicial practice produces functional direct applicability despite formal dualist prerequisites; and how Kuwait's model compares with analogous hybrid constitutional arrangements in neighbouring Arab civil law jurisdictions. The article contributes to the diversification of comparative international law scholarship beyond Western-centric frameworks and provides a generalizable analytical framework for constitutional mediation of international law in non-Western hybrid legal orders.

Keywords: *Kuwait; international law; domestic law; qualified dualism; constitutional pluralism; treaty incorporation; Gulf legal systems; judicial direct applicability; Islamic constitutional orders; comparative constitutional law*

1. Introduction

The relationship between international law and domestic legal orders constitutes one of the most enduring and consequential debates in international legal scholarship. As states assume broader international obligations, the constitutional means by which they convert these commitments into domestically enforceable law have taken on growing scholarly and practical importance. The classical theoretical opposition between monism and dualism, which assumes either a common normative hierarchy or a system of distinct legal orders that have to be transformed via legislation, has long been understood to be an inadequate account of how states actually mediate international obligations in their constitutional orders (Garg, 2021; Klabbers, 2020). Modern legal practice has shown that most constitutional systems are situated at a middle-ground, adopting different levels of judicial receptivity to the direct application of international norms, yielding configurations of constitutional pluralism which cannot be simply categorized (Masterman & Nicholson, 2025; Peters, 2021).

Recent scholarship has grown increasingly skeptical of dualism as an explanatory framework. Even in the United Kingdom, the paradigmatic dualist system, Masterman and Masterman and Nicholson (2025) maintain that dualism offers only a partial account of the multifaceted interaction between domestic and international laws. This critique is not restricted to a European context: comparative international law scholarship shows a growing number of systems

that simultaneously provide direct treaty effect while also requiring prior legislative authorization (Cope et al., 2022; Zapatero Miguel, 2025). The empirical conclusion here is that hybrid forms that are neither monist nor dualist are the practical norm and not the exception.

The academic literature, however, has continued to be focused on a limited range of mostly Western and European constitutional regimes. Comparative studies have paid significant attention to France, Germany, the Netherlands, the United Kingdom, and the United States, and more recent ones to India and some East Asian jurisdictions (Chang & Yeh, 2025; Ranjan, 2022). States associated with the Gulf Cooperation Council (GCC) have been left behind in this literature despite their rising stature as participants in the multilateral treaty system and their constitutionally peculiar structures influenced by Islamic normative roots, traditions of codifying civil law, and specific constitutional structures (Parolin, 2020; Polymenopoulou, 2024). This geographic disequilibrium is not just descriptive, but preempts the possibility of testing the generalizability of constitutional pluralism models developed in Western settings to non-Western hybrid legal orders, which Peters (2021) notes is a major weakness in the present constitutional theory.

The case of Kuwait is particularly interesting and unexplored. Being the oldest written constitutional order of the GCC, promulgated in 1962, long before other similar systems in the Gulf region emerged, Kuwait provides an advanced constitutional regime, whose interaction with international law indicates a constitutional design as well as a long-standing judicial development over a period of over sixty years. Its legal tradition is a synthesis of Islamic normative sources in Article 2 of the Constitution, with an infrastructure of civil law, which has been developed through a more active Court of Cassation that has gradually established a cohesive treatment of the application of treaties (Alhamidah, 2022; Polymenopoulou, 2020). The resultant multidimensional hybridity of Kuwait is what renders it a conceptually fruitful object of study of the role of non-Western constitutional orders in mediating the power of international law in practice.

Kuwait's constitutional approach to international law has not been systematically studied in the English-language comparative international law literature. Research on GCC states and international law has identified unique patterns in the interaction of Islamic law states within the international system (McDonough, 2021; Powell, 2022) without exploring in detail the constitutional architecture of Kuwait. The literature on human rights treaty obligations in Kuwait has identified the importance of the role of reservations and implementation issues (Polymenopoulou, 2024; Walker, 2023), but lacks a comprehensive constitutional and jurisprudential analysis of the treaty incorporation model and its effects on the domestic hierarchy of norms. This gap is both theoretical and practical: it forecloses testing whether constitutional pluralism models extend to non-Western hybrid legal orders, and leaves the normative framework governing treaty conflicts with domestic law undertheorized.

The article addresses these gaps through a systematic doctrinal analysis of Kuwait's constitutional treaty incorporation framework, judicial practice, and treatment of customary international law, situated within the theoretical context of constitutional pluralism and qualified dualism. Three research questions guide the enquiry:

1. What role does the constitutional system of Kuwait play in the integration and subordination of the international treaty commitments in the domestic law?
2. How well or to what extent does Kuwaiti judicial practice functionally deviate from adhering to or have functional alternatives to formal constitutional dualism, especially in relation to the immediate applicability of formally ratified treaty norms?
3. How does the qualified dualist model of Kuwait refer to similar constitutional models of neighbouring jurisdictions of Arab civil law, specifically Egypt?

The article makes three contributions. First, it is the first systematic doctrinal study of the Kuwaiti constitutional framework of international law in the English-language comparative international law literature, which partially addresses a gap in recent research on the legal systems of the Gulf (Parolin, 2020; Polymenopoulou, 2024). Second, it promotes qualified dualism as a conceptual accuracy in hybrid constitutional design combining both formal dualist conditions and functional applicability by the judiciary, beyond current typologies. Third, it enhances the

diversification of the comparative international law empirical ground, as it answers the scholarly demand for non-Western case studies (Chang & Yeh, 2025; Peters, 2021; Powell, 2022).

2. Literature Review

2.1 The Monism–Dualism Debate and Its Contemporary Discontents

The traditional conceptual framework of international legal scholarship has been fashioned by the classical theoretical discussion of monism vs. dualism. Monist theory, relating to the hierarchical legal philosophy of Kelsen, holds that there is only one legal order, international and domestic law, with international law in a normatively dominant place, so that the latter can directly apply to domestic law without the need for legislative transformation. In contrast, the dualist theory views the two systems as categorically distinct, distinguished by their subjects, sources, and normative foundations, and legislation is necessary to give international norms domestic legal effect. This traditional dichotomy tilted a generation of comparative legal scholarship towards categorizing states on a monist-dualist scale.

In more modern scholarship, the adequacy of the binary has, however, been increasingly and convincingly questioned. Klabbers (2020) notes that a small number of states follow either model in that pure form; all constitutional practice is a form of a hybrid that incorporates aspects of both styles based on constitutional design decisions and judicial practice of interpretation. In their article on the paradigmatic dualist system in the United Kingdom, Masterman and Nicholson (2025) posit that dualism offers only a partial explanation of the multifaceted interaction between domestic and international laws and that the relationship between domestic and international norms is multi-dimensional and interrelated in a way that dualism cannot. Their criticism overlaps with the previous doctrinal literature that doubts that the difference between monism and dualism generates analytically useful conclusions when the judicial practice is considered in detail (Y. Iwasawa, 2022). Similar findings are also drawn by Ranjan (2022), who reports a disorganized process of moving towards dualism and then monism by judicial innovation, not constitutional amendment, a trend that directly applies to the process in Kuwait. Moreover, the emergence of new forms of digital harm, such as online defamation and character assassination, illustrates how domestic legal systems must continuously evolve alongside technological developments, often requiring alignment with broader international legal standards (Tarawneh & Issa, 2025).

2.2 Constitutional Pluralism as an Analytical Framework

Constitutional pluralism was a new analytical tool to explain the post-hierarchical nature of the relations between domestic constitutional orders and supranational or international legal orders. It is based on the core idea that international legal and domestic legal orders are not to be conceptualized in the context of one and unified hierarchy with a definite apex norm; they are such that they are different normative orders, which interrelate with each other through the processes of engagement, interpretation, and accommodation. In line with its development in Europe, Peters (2021) has applied constitutional pluralism to other constitutional developments by suggesting that constitutional theories of international organizations and international law need to interact with non-Western constitutional experience to challenge the generalizability of constitutional theories and rejuvenate assumptions about the constitutional experience of the West. The present study finds this extension conceptually fruitful: it is specifically to a non-Western legal, constitutional hybrid in which constitutional pluralism as an explanatory power should be actively tested.

The constitutional pluralism model foresees that constitutional courts should invoke the constitutional supremacy to reconcile the national incorporation of international law without necessarily invalidating it internationally, which creates the bifurcated involvement that defines the Kuwaiti model. In contrast, Islamic constitutional order scholarship suggests that constitutional pluralism needs to be adjusted to include the role of religious normativity as a mediating factor enshrined in the constitution (McDonough, 2021; Polymenopoulou, 2024; Powell, 2022). This interaction is particularly evident in contemporary legal issues such as smart contracts, where Islamic jurisprudence and civil law principles must be reconciled within evolving legal frameworks (Al-Khalaileh et al., 2025).

Powell and Rothkopf (2022) empirically show that the language of Islam-based law in the constitution is linked to unique patterns of judicial behaviour that are not similar to the patterns recorded in secular constitutional systems. These observations can be readily applied to Article 2 of Kuwait, which refers to the Islamic Shariata as a primary source of law and serves as a constitutional standard that can qualify not only the treaty commitments (by reservation) but also legislative acts. Further describing a different jurisdiction in the Middle East, Saunders (2023) goes on to record that the decline in constitutional courts' engagement with international law can be followed by tracking the shift in judicial citation practice. This methodological tool can be applied in the current research.

2.3 Treaty Incorporation in Comparative Constitutional Perspective

The processes by which states integrate treaties into local law differ significantly among the constitutional traditions and generate a great deal of diversity in the domestic legal force of international obligations. This diversity is also reflected in specific areas such as intellectual property regulation, where domestic legal systems must adapt international standards into enforceable national frameworks (Juwaihan et al., 2025). The constitutional systems are those that automatically include, at least some types of treaty, into the domestic legal order - these are generally characterized as monist in design - and those that must be transformed by legislation. In the space between these poles, there is a wide range of intermediate configurations (Healy, 2023; Nollkaemper et al., 2024). Other countries, like the Netherlands and France, have implemented constitutional clauses giving the ratified treaties direct domestic effect, and in others, indirect supremacy. Other states, like the United Kingdom and India, historically mandate the enactment of laws to treaties to gain domestic legal force, although judicial innovation has increasingly eroded such a mandate, as evidenced in both situations (Masterman & Nicholson, 2025; Ranjan, 2022).

Kosař and Vincze (2026) provide a comparative survey of the methods of constitutional incorporation, with weak incorporation (where the constitutions cite international conventions as normative aspirations) and strong incorporation (where the treaties receive explicit constitutional-level status). Her discussion shows that the incorporation approach has quantifiable consequences on judicial implementation, where more powerful constitutional provisions are correlated with the greater rates of treaty invocation before local courts. This finding is directly relevant to the present study: Kuwait's constitutional silence on the hierarchical status of ratified treaties creates a weaker constitutional foundation for judicial enforcement than Egypt's express constitutional provision, a structural divergence with practical implications documented in the comparative analysis below. Yuji Iwasawa (2022) continues the idea of direct applicability, making a distinction between its international and domestic aspects and offering a theoretical framework of comprehending why the same provisions of a treaty can be considered as self-executory in one jurisdiction and need to be supported by an implementing legislation in another jurisdiction. This theoretical toolkit is directly applicable to the Court of Cassation jurisprudence of Kuwait.

2.4 International Law in Arab and GCC Legal Systems

Scholarship directly focused on the interaction of Arab and GCC legal systems with international law has grown considerably since 2020, although it is still a comparatively underrepresented area of scholarship compared to that of European and Anglo-American systems. The study of GCC constitutions by Mohammed AL-Dulaimi and Al-Esawy (2024) It is the most comprehensive doctrinal study of the regulation of international treaties, ratification, and implementation by Gulf constitutions. Parolin concludes that the GCC constitutions are constitutionally compliant with international law, retaining measures of the domestic application of international law, but that internal accountability systems of executives, as opposed to the traditional court application, can be of greater effect in practice in the application of treaties. This result turns around the assumption of comparative constitutional law that judicial enforcement is the major enforcement mechanism. This institutional perspective is further supported by scholarship emphasizing the role of administrative and regulatory authorities in maintaining public order and enforcing legal norms within domestic systems (Al-Billeh & Issa, 2025).

In a more general overview of human rights in GCC states, Polymenopoulou records the gap between treaty ratification and domestic implementation, systemic patterns of reservation-making and restricted judicial implementation which together decrease the domestic application of international human rights norms. In a more recent analysis

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(Polymenopoulou, 2024), she specifically examines the constitutional role of Shari'a in Gulf constitutions, reporting on how the application of Shari'a-based reservations by judicial actors has restricted its compliance with international human rights norms - especially the principle of non-discrimination. Largely relying on the jurisprudence of the Kuwaiti Constitutional Court, Polymenopoulou (2024) singles out such cases as the female MPs hijab case, passport retention case, and the ban on so-called imitating the opposite sex as areas where constitutional interpretation has gone awry in line with international commitments. Mohiuddin (2024) discusses human rights provisions in GCC constitutions in more general terms and concludes that there exist serious discrepancies between the text and the reality of the law. Walker (2023) builds upon this discussion, stating that three issues, such as incremental legal reforms, integration of human rights language into domestic laws, and socioeconomic change, give reason to be optimistic (cautiously) about GCC human rights developments, but still recognize the ongoing structural constraints. The first comprehensive and detailed current research on the Constitutional Court of Kuwait is presented by Sari et al. (2023), who list the twenty-four constitutional cases submitted to the Constitutional Court since its inception and discuss its jurisprudential construction of constitutional adjudication. Bantekas (2023) looks at the contract law in a neighbouring GCC jurisdiction and proves the entrenchment of English law as the governing law in transnational commercial contracts in Gulf states.

2.5 Synthesis and Research Gap

The above discussion has pointed out several theoretical constructs - constitutional pluralism, qualified incorporation, and direct applicability- that can be fruitfully applied to the case of Kuwait and its use of international law. It also exposes an important empirical gap: no previous study has systematically applied these frameworks to a systematic doctrinal study of the constitutional text in Kuwait, treaty practice, and jurisprudence of the Court of Cassation. Although both Faizi and Ali (2024) and Ortega (2025) offer significant contextual backgrounds, but they lack the comprehensive constitutional, jurisprudential, and comparative analysis that the current study offers. The existing literature further demonstrates a geographic imbalance: the analytical frameworks developed for European and Anglo-American constitutional systems have not been applied to Gulf constitutional orders with the degree of doctrinal specificity that their theoretical significance warrants. The works on Islamic law and the state of the international order by Powell (2020, 2022) and the theories of the constitution by Peters (2021) offer theoretical materials to this project but do not have the doctrinal depth that would help to describe the particular model of Kuwait. Similarly, the rise of digital assets and non-fungible tokens (NFTs) presents new challenges for domestic legal systems, requiring the adaptation of international legal principles to regulate emerging forms of digital property (Alkhateeb et al., 2025). The current work closes these gaps by proceeding with a theoretically based and doctrinally accurate discussion of qualified dualism as the unique constitutional structure in Kuwait. The proposed research design and epistemological orientation are presented in Section 3.1.

3. Methodology

3.1 Research Design and Epistemological Orientation

The research methodology used in this study is a doctrinal research approach to the law with a comparative constitutional law approach. Doctrinal legal research is a form of legal research that entails the systematic study of legal rules, principles, and doctrines using both primary legal sources - constitutional texts, legislation, judicial decisions, and treaty instruments - and secondary scholarly sources, and seeks to provide a systematic description and critical analysis of the law as it currently exists (Nollkaemper et al., 2024; Parolin, 2020). This is a conventional approach that suits the research questions being answered, which relate to the meaning of constitutional provisions, the typology of the legal system, and judicial reasoning in relation to international law.

Its epistemological disposition is interpretive: the research aims to reformulate the normative logic of the constitutional system and the judicial practice in Kuwait by closely examining texts and methodologically contextualizing them. This method is typical of prevailing practice in comparative constitutional law studies (Peters, 2021) and it is especially

appropriate to research inquiries that relate to constitutional text and judicial interpretation instead of social tendencies that can be assessed empirically.

Table 1: Research Design Overview

Dimension	Specification
Research Paradigm	Interpretive / Doctrinal Legal Research
Methodological Approach	Doctrinal legal analysis combined with structured comparative constitutional law
Primary Sources	Constitutional texts, legislation, judicial decisions (Court of Cassation; Constitutional Court), treaty instruments, UN treaty body reports
Secondary Sources	Peer-reviewed journal articles, academic monographs (2020–2026)
Theoretical Framework	Constitutional pluralism (Peters, 2021); Qualified dualism
Comparative Scope	Kuwait (primary); Egypt (comparative); GCC (contextual)
Temporal Scope	Constitutional framework 1962–present; judicial practice emphasis 2005–2023

3.2 Primary Legal Sources

The main legal materials to be reviewed are the Constitution of Kuwait of 1962 as the foundational document to the treaty incorporation framework; the Law No. 14 of 1973 on the constituting the Constitutional Court; the implementing legislation; the decisions of the Court of Cassation in the case involving the application of treaties and the international treaty instruments to which Kuwait is a party as reflected in the UN Treaty Jurisdiction in the choice of judicial decisions encompasses four substantive areas, namely labor law, diplomatic immunity, investment arbitration, and human rights - areas wherein the Court has established doctrinal stances on the applicability of treaties (Alhamidah, 2022; Polymenopoulou, 2024).

Table 2: Primary Legal Sources by Category

Category	Specific Sources
Constitutional Instruments	Constitution of Kuwait (1962), arts. 2, 50, 65–71, 173; Law No. 14 of 1973
Treaty Instruments	ICCPR; CEDAW; CAT; CRC; CERD; Vienna Convention on Diplomatic Relations; Vienna Convention on Consular Relations; ICSID Convention; UNCLOS; ILO Conventions (Forced Labour; Discrimination in Employment); Arab Counter-Terrorism Convention
Judicial Decisions	Court of Cassation decisions in labour law, diplomatic immunity, investment arbitration, and human rights domains; Constitutional Court jurisprudence
Legislative Sources	Kuwait Civil Code; Kuwait Labour Law; Amiri Decrees approving treaty ratifications; implementing legislation
Treaty Compliance Data	UN Treaty Collection Kuwait status; UN Human Rights Committee reports; CEDAW Committee Concluding Observations; Committee against Torture Reports

3.3 Comparative Methodology

comparing formal constitutional texts in vacuo (Nollkaemper et al., 2024; Parolin, 2020). This method is also especially applicable to the hybrid legal systems where formal text of the constitution and working judicial practice can deviate in many aspects, as recorded in various comparative settings (Masterman & Nicholson, 2025; Ranjan, 2022).^{3.4} Methodological rigour and limitations.

3.4 Methodological Rigour and Limitations

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Triangulation ensures doctrinal rigour based on several primary sources categories: constitutional text, judicial decisions, legislative instruments, and treaty instruments. The process of analysis starts with literal constitutional text and moves to systematic contextual and purposive interpretation, which goes in line with well-established methodology applied to comparative constitutional studies (Y. Iwasawa, 2022; Peters, 2021). The research recognizes the typical limitations inherent in doctrinal legal analysis: it depends on the availability and accessibility of primary sources; it does not have the publicly available record of Kuwaiti court decisions in English; its findings are not empirically quantifiable. Judicial rulings in Arabic are read, with extracts in secondary scholarly commentaries, such as the full coverage in Maktabi (2020). All these restrictions are recognized below.

There are some significant limitations associated with this research. The analysis is heavily based on secondary academic descriptions of Kuwaiti court case rulings, because not all material of the Kuwaiti Court of Cassation jurisprudence is available in English, and the decisions of the Court of Cassation are handled in the form of reported extracts and academic commentaries, primarily in Arabic. The presence of reported decisions thus limits the thoroughness of the jurisprudential analysis. Second, the comparative analysis is organized at a constitutional level of doctrine and is not broken down to a systematic level of empirical comparison of the rate of compliance or judicial outcomes in the two jurisdictions. Third, the research does not account for constitutional or legislative changes following 2023, and as judicial doctrine changes dynamically, some of the analysis might need revision as new rulings arise. These limitations define the scope in which the conclusions are to be read and indicate directions of further research.

4. Findings

4.1 Kuwait's Constitutional Framework for Treaty Incorporation

Kuwait's legal system has developed through distinct historical phases that directly shaped its current constitutional architecture. Prior to independence in 1961, Kuwait operated under a largely customary legal order administered by the ruling Al-Sabah family, supplemented by Ottoman-era commercial regulations and British treaty arrangements governing external affairs. Following independence, Kuwait became the first Gulf state to adopt a written constitution, promulgated on 11 November 1962. The drafting process drew heavily on Egyptian and Kuwaiti legal expertise, which accounts for the significant influence of Egyptian constitutional design on the 1962 text, including its civil law methodology and its bifurcation of legislative and executive treaty functions. The constitutional text synthesized this civil law infrastructure with the Islamic normative foundation of Article 2, which designates Islamic Shari'a as a primary source of legislation. Subsequent decades saw the gradual institutional development of the Constitutional Court (established under Law No. 14 of 1973) and the Court of Cassation, both of which have played a formative role in elaborating the constitutional framework for international law through judicial practice. This evolutionary background is essential context for understanding how the treaty incorporation framework analyzed below reflects both deliberate constitutional design and incremental judicial elaboration over more than six decades.

The constitutional provisions that regulate the connection of international law with the legal order in Kuwait are organized around Articles 65, 70, and Article 173 of the 1962 Constitution, as interpreted along with the Article 2 norm that deems Islamic Sharia a primary source of law. This constitutional structure creates a clear dualist model: international treaties are not automatically integrated into domestic law when they are ratified on an international scale, but have to go through formal constitutional processes to obtain a binding force of domestic law (Al-Azmi, 2026). Two-thirds of the members present in the National Assembly. Such treaties become domestic law on approval, after the Amir has ratified them and published them in the official gazette. This constitutional provision presents a democratic filter of legitimacy: the ratification of treaties is not an exclusively executive act but a constitutionally-organized process, in which the legislature is an intervening force (Parolin, 2020). Article 65 affirms that the Amir has an executive authority in foreign affairs and the conclusion of treaties. In contrast, the separation of powers principle in Article 50 makes it clear that treaty-making is not beyond legislative involvement. Article 173, which sets up the

Constitutional Court, also applies by implication to laws ratifying or bringing into effect treaty commitments (Alhamidah, 2022).

Importantly, the Constitution does not provide an explicit precedence of ratified treaties over ordinary domestic legislation. In contrast to the Constitution of Egypt, which explicitly establishes a constitutional status of ratified international human rights instruments, the constitutional text of Kuwait recognizes approved treaties to have the force of law: the same, but not explicitly above domestic statutory enactments. This constitutional blank on the status of hierarchy is the source of the main structural ambiguity of the international law system of Kuwait. Ratified treaties are domestic law, which later domestic laws can displace in the principle of *lex posterior*, unless the desire to maintain treaty observance is expressly legislative (Parolin, 2020; Polymenopoulou, 2024). This structural weakness, which is functional in the context of a stable legislative setting but theoretically subject to legislative overturn, is a hallmark of the Kuwaiti qualified dualism.4.2 The Practise of Treaty Participation in Kuwait: Scope and Reservations.

4.2 Kuwait's Treaty Participation: Scope and Reservations Practice

Kuwait is a signatory to a wide range of multilateral treaties dealing with human rights, diplomatic law, international economic law, and counter-terrorism. The treaty participation of Kuwait is massive and a form of calculated international legal assimilation, as shown in Table 1 and Table 5 below (United Nations Treaty Collection). Kuwait is a signatory to all five principal UN human rights treaties and is also a WTO founding member. Its involvement in counter-terrorism treaties is nine multilateral instruments. Alaza et al. (2023) and Mohammed AL-Dulaimi and Al-Esawy (2024) affirm the scope of treaty participation by Kuwait, but observe the systematic nature of the reservation that makes the obligations of the treaty applicable in those areas in which the constitutional norms of the country are perceived to be in conflict.

Table 3: Core Human Rights Treaties, Kuwait's Ratification Status

Convention / Treaty	Adoption Date	Kuwait Ratification
ICCPR	16 December 1966	21 May 1996
CEDAW	18 December 1979	2 September 1994
CAT	10 December 1984	8 March 1996
CRC	20 November 1989	21 October 1991
CERD	21 December 1965	15 October 1968

Table 4: Diplomatic and Consular Treaties, Kuwait's Ratification Status

Convention / Treaty	Adoption Date	Kuwait Ratification
Vienna Convention on Diplomatic Relations	18 April 1961	21 May 1969
Vienna Convention on Consular Relations	24 April 1963	3 July 1974
Convention on Special Missions	8 December 1969	7 August 1980

Table 5: International Economic Treaties, Kuwait's Ratification Status

Convention / Treaty	Adoption Date	Kuwait Ratification
ICSID Convention	18 March 1965	2 January 1978
Agreement Establishing the WTO	15 April 1994	1 January 1995
UNCLOS	10 December 1982	2 May 1986

Table 6: Counter-Terrorism Conventions, Kuwait's Ratification Status

Convention / Treaty	Adoption Date	Ratification
Tokyo Convention (Aircraft Offences)	14 September 1963	1975
Hague Convention (Unlawful Seizure of Aircraft)	16 December 1970	1975
Montreal Convention (Safety of Civil Aviation)	23 September 1971	1975

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International Convention against Taking of Hostages	17 December 1979	1989
International Convention, Suppression of Terrorist Bombings	15 December 1997	2004
International Convention, Financing of Terrorism	9 December 1999	2002
International Convention, Nuclear Terrorism	13 April 2005	2013
Arab Convention, Suppression of Terrorism	22 April 1998	1999
Beijing Convention (Safety of Civil Aviation)	10 September 2010	2013

The ratifications of Kuwait in the human rights field have been accompanied systematically by the reservations and the interpretive declarations aimed at balancing the treaty obligations with Article 2 of the Constitution (Table 5). These reservations mirror the constitutional functioning of Shari'a as a substantive normative restriction and are the main point of conflict between the international human rights obligations of Kuwait and its domestic normative system (McDonough, 2021; Polymenopoulou, 2024).

Table 7: Human Rights Treaties, Kuwait's Reservations and Interpretive Declarations

Treaty	Nature of Reservation / Declaration	Key Issues Addressed
CEDAW	Reservations to Arts. 9(2) and 16	Nationality rights for children; equality in marriage and family relations
ICCPR	Interpretive declarations and reservations on provisions conflicting with Islamic law and domestic legislation	Freedom of religion; equality provisions; family relations and nationality law
CRC	Reservations on provisions conflicting with Islamic Shari'a	Adoption and family relations; incompatibility with classical Islamic adoption rules
CAT	Reservation to Art. 20 (competence of Committee to conduct confidential inquiries)	Sovereignty concerns; limits on international supervisory mechanisms
CERD	Reservations on provisions conflicting with domestic legal frameworks	Freedom of association; public order considerations

4.3 Judicial Application of Ratified Treaties: The Self-Executing Doctrine in Practice

The Court of Cassation in Kuwait has worked out a consistent judicial doctrine of the applicability of ratified treaties within the country. The Court has always maintained that treaties which are duly ratified and published in compliance with Article 70 obtain the force of domestic law, and may be invoked directly before national courts, as long as the treaty provisions are clear and self-executory enough. This judicial role adds a functionally monist aspect to a constitutionally dualist system: the self-executing requirement fulfills the filtering role that, in a strict dualist system, would be fulfilled by enacting legislation (Y. Iwasawa, 2022; Nollkaemper et al., 2024).

The Court has applied the principle of interpretation conforme to the internationalisation of domestic labour legislation by using the International Labour Organization conventions ratified by Kuwait, such as the Forced Labour Convention and the Discrimination (Employment and Occupation) Convention, in its interpretation of domestic labour legislation in labour law disputes, in a consistent manner with the international obligations of the country. This principle dictates that in the event that there is ambiguity in the domestic legislation, it must be interpreted in accordance with the treaty of Kuwait commitments in which operational effect of international standards is given without necessarily that they

override domestic law. In its diplomatic immunity cases, the Court has utilized the Vienna Convention on Diplomatic Relations as the governing legal norm to establish jurisdictional immunity, in which its terms have been interpreted as binding domestic law and disposed of civil litigation on that ground. In the same manner, the Vienna Convention on Consular Relations has been utilized to adjudicate the consular immunity and procedural inadmissibility in the concerned case scenarios.

The Court has been more subdued in the field of human rights. In cases where treaty terms are programmatic or aspirational, or need to be accompanied by a statutory specification in order to become fully effective, the Court has refused to consider them self-executing and has insisted that treaty-based remedies must be authorised by statute. This selectivity is an act of judicial fine-tuning of the self-executory doctrine that balances the Kuwaiti international commitments of the self-executory doctrine with the domestic legislative competence (Polymenopoulou, 2024). The Court has, however, cited human rights documents such as the ICCPR and CRC as interpretive resources that enhance the constitutional rights guarantees in the areas of personal liberty, due process and protection of minors. The Court has considered ICSID Convention awards to have a binding effect in investment arbitration proceedings and has shown respect to treaty-based international dispute settlement mechanisms (Bantekas, 2023).

4.4 Customary International Law: Constitutional Silence and Indirect Reception

The most important structural gap of the constitutional framework in Kuwait is its domestic status of customary international law. The Constitution of Kuwait does not include a provision on the domestic reception of customary international law, as Article 70 does, which specifies express constitutional procedures of incorporating treaties. In this area, Kuwaiti courts have been even stricter, tending to refuse to interpret customary norms as binding unless they are codified as a treaty or by law (Y. Iwasawa, 2022; Parolin, 2020).

theoretical framework, itself, and so presents a doctrinal weakness in those spheres where customary norms surpass treaty codification. The constitutional silence of the customary international law, as well as the judicial restraint in the sphere, is the feature of the Kuwaiti qualified dualism, which is structurally different to the treaty incorporation framework (Nollkaemper et al., 2024).

5. Discussion of the Findings

5.1 Qualified Dualism: Theoretical Contribution and Comparative Significance

The results confirm that the strategy of the Kuwaiti approach to international law can be described as a qualified dualism: a constitutional framework where formal dualist conditions of incorporation of treaties are combined with the functional direct applicability of provisions of the ratified treaties by the judiciary which are moderated by the self-executory doctrine of judicial interpretation and the principle of conformist interpretation. This description adds to later descriptive explanations by determining exactly how qualification works, and allows it to be applied comparatively to other jurisdictions with similar outcomes. The idea goes a step further than the finding by Klabbers (2020), that the institution of hybrid arrangements is universal by precisely outlining the structural configuration (the conjunction of a democratic legislative demand of authorization with judicial direct applicability calibrated by the self-executory doctrine) which constitutes the specific form of Kuwaiti hybridity.

The qualified dualism model is consistent with the wider literature on comparative international law that accepts that pure monism or dualism does not exist in empirical application in contemporary constitutional regimes. Waheedi (2022) record the spectrum of methods by which domestic courts manoeuvre the conflicts between constitutional power and international duty. The Court of Cassation practice of Kuwait shows this relative trend but has some peculiarities due to the constitutional structure of Article 70 and the normative impact of the Islamic Shari'a of Article 2. This unique structure contributes to the argument presented by Peters (2021) The constitutional pluralism models formed in the European context need to be adjusted and tested in the framework of other constitutional contexts. The current research offers this kind of testing, and it is possible to confirm that constitutional pluralism can be applied to the Gulf constitutional orders and to note changes that are necessary to consider the role of Islamic normativity as a three-dimensional mediating factor unavailable in the European context.

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The analogy to the disintegration of dualism in the United Kingdom is educative. Katrougalos (2025) record how dissolution of dualism in a constitutionally mature Westminster system is under pressure due to European integration and human rights law. A structurally distinct variant of hybrid arrangement is qualified dualism in Kuwait: instead of dissolving under the pressure of external norms the constitutional design of the state created a hybrid form with parliamentary consent to treaties established in the very foundations of the constitution. The two regimes, therefore, reach hybrid forms by various institutional and historical processes, which validate the fact that constitutional pluralism can take various constitutional forms.

5.2 Kuwait and Egypt: Constitutional Design Divergence

The comparison with Egypt reveals a significant divergence in constitutional design with practical implications for treaty compliance and judicial enforcement. Egypt, with its express constitutional elevation of ratified international human rights accords, offers a more hierarchically transparent system that offers more safeguards against legislative override than the Kuwaiti system of *lex posterior* default rule. Yoshida (2024) shows in a comparatively demonstrative way that more robust constitutions with provisions on treaty incorporation are linked to an increase in rates of treaty invocation before the courts within the country. This observation predicts that the constitutional silence of Kuwait on treaty hierarchy can diminish the transformative effect of international human rights norms within Kuwait, which aligns with the trend. Lattanzi (2025) reveals in her study of the Constitutional Court jurisprudence in Kuwait. Based on this comparison, the model used in Kuwait (which is both pragmatically functional and constitutionally sound) exposes the structure to treaty-override through later legislation that contains more express constitutional provision, and avoidance of which Egypt has.

This structural divergence is not only on paper. Where the Kuwait treaty reservations mirror current normative conflicts between international commitments and the Shari'a guarantee of Article 2, lack of a constitutional priority of the treaty over the Shari'a might diminish the transformative domestic effect of the treaty. This trend is cited by Roshdy (2023) directly in the jurisprudence of the Constitutional Court of Kuwait: several cases on gender equality and personal autonomy have been decided in favor of domestic Shari'a-based norms, not the commitments of international treaties. Beggar (2025) has a wider comparative context, showing that the constitutional systems of the Islamic states make systematic use of the Shari'a provisions to mediate and qualify the international treaty commitments - a trend that the institutional architecture of Kuwait follows. This dynamic is also confirmed by Mohammed AL-Dulaimi and Al-Esawy (2024), who finds that Islamic law states tend to be characterized by complexity and dissonance in their interaction with the international order in various institutional aspects.

5.3 Constitutional Pluralism in Islamic Constitutional Orders

The results confirm and add to the argument presented by Waheedi (2022) that constitutional pluralism models need to be adjusted and empirically tested outside of the Western constitutional contexts. The qualified dualism in Kuwait proves that constitutional pluralism can work in non-Western hybrid legal systems, but with its own peculiarities that are not expected by European systems. In particular, the fact that Islamic Shari'a is a constitutional norm capable of qualifying both treaty duties (by reservations) and home legislation (by Article 2) brings into consideration a three-dimensional normative interaction which the European constitutional pluralism models do not have. The theoretical background to the understanding of the Islamic constitutional orders as the arenas of complicated normative negotiation between Shari'a and international law is presented by Sholeh and Ab Rahman (2025) and Husain et al. (2024); the current study expands on this background by reporting how the negotiation is institutionally embedded in the Kuwait constitutional architecture and functioning in the judicial practice.

The treaty of obligations in the three-dimensional configuration, the constitutional law, and the Islamic normative base have some implications on how the scholars define constitutional pluralism within the Islamic constitutional orders. According to the Kuwaiti case, constitutional pluralism in these contexts should entail not only the interaction between domestic constitutional law and international treaty commitments, but a three-way normative interaction where all three dimensions are practically at work. Such an architectural characteristic clarifies not only the systematic patterns

of reservations registered in Table 5 (Polymenopoulou, 2024; Walker, 2023) but also the judicial restraint witnessed in the patterns of the human rights domain that cannot be validly explained only by the monism-dualism binary. Almohsen (2023) confirms the larger trend throughout the GCC constitutions and concludes that there are huge discrepancies between the constitutional text and the legal reality throughout the region. The case of Kuwait shows that such gaps are explained in a certain structural way that is based on the constitutional architecture.

5.4 The Structural Gap in Customary International Law and Future Jurisprudence

The difference in the treatment of customary international law in Kuwait is a broader comparative tendency. Cárdenas Cerón et al. (2026) note that, compared to treaty law, the application of customary international law by domestic courts is generally less constitutionally entrenched and judicial-law-based, resulting in more variability and unpredictability. Aljarallah (2022) and Ahmad Al-Assaf record the use of customary law in courts in various jurisdictions as an indirect route of reception of the treaty codification in the same direction as Kuwait. The Kuwaiti method of implementing customary law by codifying the treaty is operationally sufficient in settled regions, but gives rise to uncertainty in doctrine in fast-changing regions. The inspection of the GCC constitutions conducted by Parolin (2020) confirms that none of the constitutions includes a specific constitutional provision of customary international law, so the constitutional gap of Kuwait is not a national but a regional characteristic. The interaction of courts and the customary norms in Kuwait, as well as other GCC countries, is a field that needs specific doctrinal elaboration, as Waheedi (2022) observes in his discussion of the jurisprudential formation of the Constitutional Court in Kuwait.

6. Practical Implications

The implications of the findings have some practical implications on legal practitioners, policymakers, and other international parties involved in dealing with the legal system of Kuwait. The qualified dualism model explains that ratified and published treaties can be directly applied to the courts of Kuwait, where its terms are clear and precise enough to self-execute a clarification of practical importance to commercial parties, foreign investors under the protection of a treaty-based dispute settlement mechanism, diplomatic actors who claim diplomatic immunity, and labor activists who invoke ILO conventions. The form weakness of the Kuwaiti treaty commitments to follow-up domestic legislation under the principle of *lex posterior* shows there is a practical danger of treaty failure that legislative authors must explicitly articulate in enacting domestic law in treaty-dominated jurisdictions. International human rights mechanisms interacting with Kuwait over treaty compliance can use the doctrinal model here to identify the gaps as structurally amenable, and the normative disagreements as substantive, to promote more focused and fruitful discussions. On the policy side, the comparative analysis indicates that a constitutional amendment to expressly cover the hierarchical relationship between ratified treaties and later domestic legislations and the domestic status of customary international law would significantly increase the coherence, predictability, and international credibility of the Kuwaiti international law framework without necessarily having to radically change its constitutional design.

7. Conclusion

This article has furthered the idea of qualified dualism as a theoretically precise, analytically fruitful scheme to describe the way Kuwait views international law. The study has established that Kuwait has taken a hybrid constitutional place where formal dualist criteria of treaty incorporation exist alongside a functional direct applicability of the Court of Cassation, which is tuned in to the self-executing doctrine and principle of interpretation. This is a form of qualified dualism, analytically different to both strict dualism and monism, as well as to the generically hybrid characterizations that fill out the comparative international law literature without defining the mechanisms of hybridity. The theoretical value of the study is threefold: it gives a systematic doctrinal explanation of the constitutional structure of international law in Kuwait, and thus bridges a gap in the comparative literature on international law concerning constitutional systems: it develops the concept of qualified dualism as a method of analysis of hybrid constitutional systems; and it shows that constitutional pluralism models must be adjusted, that is, the introduction of Islamic normative authority as a third-dimensional mediating variable. The case of Kuwait indicates that constitutional mediation of international law can increase democratic legitimacy and institutional accountability and that the problem of the domestication of customary international law is an active area of doctrinal growth and of comparative studies.

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8. Future Research Directions

The present research defines a number of effective areas of future research. The treaty incorporation framework in Kuwait should be analyzed doctrinally and empirically researched by studying the actual record of Kuwait treaty compliance on a variety of issue areas, whether qualified dualism has systematically different compliance results than formally more monist or more explicitly hierarchical systems. It should be compared with other states of the GCC, including the UAE, Qatar, and Bahrain, to formulate a regional constitutional account of how the Gulf legal systems interact with international law, extending the methodology that will have been established here. The Islamic constitutional aspect that came into being in this paper the relevance of the Sharia provision as a constitutional mediating force, deserves independent comparative research work on how other Islamic constitutional orders incorporate Islamic normative authority and international treaty duty to form part of the growing literature on the interaction of Islamic law and international law in constitutional terms and as a continuation of earlier comparative approaches.

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