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(VENICE COMMISSION)

DRAFT REPORT

ON THE DOMESTIC PROCEDURES OF RATIFICATION AND DENUNCIATION OF INTERNATIONAL TREATIES

on the basis of comments by

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I. ISSUES TO BE ADDRESSED

A. Introduction

1. The Parliamentary Assembly of the Council of Europe adopted Resolution 2376 (2021) on "The functioning of democratic institutions in Turkey" on 22 April 2021 during its second part-session in Strasbourg.

2. In paragraph 8 of the resolution, the Assembly noted that while the ratification and denunciation of treaties are a matter of national sovereignty, "the unprecedented withdrawal from a major Council of Europe convention has raised many questions and concerns about its democratic processes. In light of these developments, a reflection should be launched about standards that should govern the ratification and withdrawal from international treaties in democratic societies, beyond the minimal legal and constitutional conditions. The Assembly therefore asks the Venice Commission to prepare a comparative study and possible guidelines about the modalities that should govern the ratification and withdrawal from Council of Europe conventions".

3. Following the request of the Assembly, the Venice Commission decided to draft such a comparative report and guidelines. Ms Bilkova, Mr Carozza as well as Ms Anne Peters (former member, Germany) and Mr Jakob Mühlfelder (expert, Germany) were tasked with the preparation of the report.

4. *This report was drafted on the basis of comments by the rapporteurs. It was examined at the joint meeting of the Sub-commissions on International Law and on Democratic Institutions on… It was adopted by the Venice Commission at its XXX Plenary Session (Venice, XXX).*

B. Question of the report, method, summary of findings

5. This report examines the domestic procedures for the ratification and denunciation of international treaties in member states of the Council of Europe. It additionally mentions other member states of the Venice Commission that are not at the same time CoE-members, and selects other states on which information could be found. The report devotes particular attention to states with a presidential or semi-presidential system of government (see for figures below).

6. The relevant constitutional provisions are listed here in their English translation, as found on official governmental websites. Where no such official translation was found, the study relies on https://www.constituteproject.org/countries?lang=en. The information is also based on secondary literature (listed below). That literature mentions treaty ratification and (more rarely) denunciation (sometimes in form of country reports) but does not provide a deeper analysis.

1. Quantitative Findings

7. No member state of the Council of Europe leaves treaty-making to the executive branch alone. Put the other way round: All member states require at least passive parliamentary approval for the conclusion of international treaties. (In the UK, the House of Commons must not proactively approve but can place a veto).

8. Most of the CoE member states in addition require a parliamentary approval also for the denunciation of an international treaty.
In more detail: In the 47 member states of the Council of Europe, a slight majority (at least 29 states)[1] requires parliamentary approval for both the denunciation and conclusion of treaties.

[1] The UK might also fall in this group which would then comprise 30 states.

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(Among those states, 12 states have a (semi-)presidential system). In the remaining 18 states (or less), parliamentary approval is limited to the conclusion of treaties.[2]

9. Parliamentary involvement, meaning involvement by all bodies of a legislative nature, is not limited to parliamentary systems. We have qualified 28 states (60 percent approx.) of the 47 Council of Europe member states as parliamentary systems and 17 states (36 percent approx.) as presidential or semi-presidential systems. (Two states (4 percent approx.), Switzerland and Monaco, are hybrid systems which are listed under the section on parliamentary systems).[3] All 19 CoE-states organised as a presidential system ask for some form of involvement of parliaments in treaty-making. Among those, a majority requires such approval for both conclusion and denunciation: While 5 presidential systems require parliamentary approval only for the conclusion of a treaty, 14 presidential systems require such approval for conclusion and denunciation. This means that a presidential system of government is not, as a general matter, considered to obviate the need for an additional parliamentary basis of treaty denunciations, or, put differently, that treaty denunciations are no "natural" reserve of the President.

10. We can also observe a trend through time in the direction of more parliamentary engagement: The modern constitutions (adopted after 1990) more often require the approval of parliaments for a denunciation than the older constitutions. See for the CoE states *Annex B* and here:

Pre 1990: only 4 states (chronologically backwards): Spain (1978), Denmark (1953), Netherlands (1815), Sweden (1809).
Post 1990: 20 states (chronologically backwards): Switzerland (2019), Serbia (2013), Hungary (2005), Slovenia (2001), Finland (1999), Moldova (1999), Albania (1998), Poland (1997), Ukraine (1996), Armenia (1995), Azerbaijan (1995), Georgia (1995), Russia (1995), Latvia (1994), Andorra (1993), Estonia (1992), Lithuania (1992), Slovakia (1992), Bulgaria (1991), Romania (1991).

11. Our data on the Council of Europe member states correspond to trends in the EU and worldwide. For the EU member states, Hodson and Maher have diagnosed a "rise of Parliaments in EU Treaty Making".[4] The worldwide trend has been identified by Pierre-Hugues Verdier and Mila Versteeg. These authors' statistical analysis finds "that the proportion of countries in which the executive can withdraw from treaties unilaterally has declined significantly since the 1970s, from a high of 89 percent to the current level of 72 percent."[5] More generally, Verdier and Versteeg have identified a statistical trend in the direction of a broadening of requirements of parliamentary approval both for the conclusion of treaties and for withdrawal from treaties.[6]

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[2] The UK is here counted among the states *not* requiring parliamentary approval for denunciation of treaties, because the UK S.Ct.'s *Miller* ruling was based specifically on EU-related law.
[3] The classification of government systems is based on Matthew Søberg Shugart, "Comparative Executive–Legislative Relations", in: Sarah A. Binder, R. A. W. Rhodes & Bert A. Rockman (eds.), *The Oxford Handbook of Political Institutions* (Oxford/New York: OUP 2008), 344-365. This contribution does not mention Andorra, Azerbaijan, Iceland, Kosovo, Liechtenstein, Luxembourg, Malta, Morocco and San Marino. The classification of these states is based on our own research.
[4] Dermot Hodson & Imelda Maher, *The Transformation of EU Treaty Making - The Rise of Parliaments, Referendums and Courts since 1950* (Cambridge/New York: CUP 2018), Chapter IV: "The Rise of Parliaments in EU Treaty Making".
[5] Pierre-Hugues Verdier & Mila Versteeg, "Separation of Powers, Treaty-Making, and Treaty Withdrawal: A Global Survey", in: Curtis A. Bradley (ed.), *The Oxford Handbook of Comparative Foreign Relations Law* (New York: OUP 2019), 135-155, at p. 149 (with figure 4).
[6] Ibid., esp. at pp. 148-150.

2. Form and level of regulation

12. The provisions on the conclusion and denunciation of international treaties are normally contained in the state constitution itself. In some states, the relevant rules are found only in statutory law. This is the case, for example, in Malta (Act of 1983); the UK (Constitutional Reform and Governance Act 2010 - no written constitution); Sweden (Instrument of Government 1809; which is one of four "fundamental laws").

13. More often, statutory law and/or regulations or rules of procedure spell out and complement the constitutional provisions: For example, in Switzerland, the Parlamentsgesetz, the Regierungs- und Verwaltungsorganisationsgesetz (RVOG), and the Regierungs- und Verwaltungsorganisationsverordnung regulate all details.
Other Council of Europe states with statutory provisions are:

Armenia: Law on International Treaties of 2018;
Bosnia & Herzegovina, Law on the Conclusion and Execution of International Treaties 2000;
Bulgaria: Law on International Treaties of the Republic of Bulgaria of 200;
Croatia, International Treaties Ratification and Application Act 1996;
France, Decree on the Ratification and Publication of International Agreements 1953;
Hungary, Act L on procedures relating to international agreements 2005;
Latvia, Law on International Treaties of the Republic of Latvia 1993;
Lithuania, Law on Treaties of the Republic of Lithuania No.VIII-1248, 1999 (with the last amendments of 2015);
Moldova (Republic), Law on International Treaties of the Republic of Moldova 1999;
Montenegro, Law on the Conclusion and Execution of International Treaties 2008;
North Macedonia, Law on the Conclusion, Ratification and Implementation of International Agreements of 22 January 1998;
Poland, Law on International Treaties of 14 April 2000;
Romania, Act on the Conclusion and Ratification of Treaties 1991;
Russia, Federal Law on International Treaties of the Russian Federation 1995;
San Marino, Constitutional Law No. 185/2005 and Qualified Law No. 186/2005
Serbia, Law on the Conclusion and Execution of International Treaties 2013;
Slovenia, Foreign Affairs Act 2001;
Ukraine, Law No. 1906-IV on International Treaties of Ukraine of 29 June 2004.

3. Degrees of parliamentary involvement

14. In theory, three degrees of parliamentary involvement in the denunciation of treaties could be distinguished, on a scale of increasing intensity of involvement:[7]

15. Formal information of parliament before the denunciation is pronounced vis-à-vis the treaty partner.

16. Examples are: For the *denunciation* (as opposed to the conclusion): Chile (Art. 54 Constitution) and Malta.[8] In Ireland, such a requirement for Parliament to be informed applies for ratification as well as for denunciation.[9] With regard to the *conclusion* of less important treaties, there is an obligation to inform Parliament in Turkey, in Andorra; in Spain; in Georgia; in Poland; in Serbia.

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[7] See for a typology Paulina Starski, "Art. 59", in: Ingo von Münch, Philip Kunig (founders), *Grundgesetz-Kommentar* (München: C.H. Beck 7th ed. 2021), para. 58.
[8] Art. 4 of the Ratification of Treaties Act (Act V of 1983), Chapter 304 of the Laws of Malta.
[9] Art. 29(5) 1 of the constitution prescribes that "every international agreement to which the State becomes a party **shall be laid** before Dáil Éireann", which is interpreted in the sense of an obligation to inform parliament about a planned denunciation.

17. In states where parliament must only be informed about a denunciation, such information may be given after the fact. For example, Art. 4 of the Ratification of Treaties Act (Act V of 1983), Chapter 304 of the Laws of Malta prescribes such information “at the earliest opportunity and in no case later than the second sitting of the House after the expiration of one month from the date of the denunciation […]”.

18. A stronger form of involvement is a consultation or hearing of parliament with the consequence that the advice given by parliament must be taken into account. This is the case under Art. 54 of the constitution of Chile (a member state of the Venice Commission).

19. The strongest form of involvement is an actual veto power of parliament for the conclusion (and in a smaller group of states also the denunciation) of an international agreement. See in detail sections I.B-D and the lists in Annex A).

20. In all cases where parliamentary approval is required for denunciation, it should be assumed that such approval must be given beforehand. Anything else would defeat the purpose of requiring the consent of parliament. This is explicitly foreseen in Art. 96(2), 94(1) Spain (1978); Ch. 10, Art. 5, Art. 3(1) Sweden (1809).

21. The Venice Commission did not find any provision on possible sanctions for the disregard of the obligation to involve parliament.

4. Groups of treaties (concerning substance matter)

22. Parliamentary approval is mostly limited to “important” treaties[10] and does not pertain to all international treaties across the board. The following (overlapping) types of treaties are often singled out for parliamentary approval: Treaties modifying domestic law (see below), treaties on defence and on military matters,[11] accession to or transfer of powers to international organisations (often requiring qualified majorities in parliament or other additional procedural safeguards),[12] treaties related to territory and state borders,[13] treaties affecting the state budget and spending,[14] trade agreements,[15] treaties affecting citizens and human rights treaties,[16] as well as “political” treaties.[17] In Annex A, I.1 and I.2, we list constitutional provisions on human rights treaties and other types of treaties (“legislative” treaties, “political” treaties, etc.) we deem likely to comprise human rights treaties as well.

23. A very widespread rule is that the conclusion of those treaties whose substance matter concerns, or whose implementation modifies existing statutory law or requires the adoption of a statute (sometimes called treaties “of a legislative nature”) needs a parliamentary consent (mostly in form of a statute). This rule manifests the idea of a parallelism of form (and of legitimacy) in the domestic and external sphere. Where the regulation in the domestic sphere enjoys a strong democratic legitimacy in form of a parliamentary statute, the same level of form of legitimacy must be realised for the international legal norm as well.[18]

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[10] Norway’s constitution formulates this as a general clause: “treaties on matters of special importance” (Art. 26(2)).
[11] E.g. in Andorra, Georgia, Russia (and many other states).
[12] For example in Andorra (2/3 majority); Croatia (2/3 majority); Estonia; Georgia; Latvia; Monaco (and many other states).
[13] E.g. in Albania; Estonia; France; Portugal, and many other states.
[14] E.g. in Albania; Croatia, France; Andorra; Georgia, and many other states.
[15] E.g. in France and many other states.
[16] See list in Annex A, I.1.
[17] E.g. in Albania; Germany,
[18] The vast majority of states applies this principle. Examples are Albania, Andorra, Armenia, Austria, Azerbaijan, Croatia, Estonia, Georgia, Greece, Italy, Lithuania, Monaco, Norway, Poland, Portugal, Finland, Hungary, Latvia, Moldova, Slovenia Spain, Sweden, Switzerland.

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24. The inverse regulatory technique is sometimes used: The constitution sets the approval by parliament to international treaties as the rule, and then enumerates the exceptions (treaties of minor importance) that do not require such approval.[19]

25. Verdier and Versteeg give a list of the types of treaties with the percentage of states (worldwide) that require parliamentary involvement for their conclusion, by treaty type.[20]

26. In all states that demand an involvement of parliaments also for the denunciation of international treaties, the requirement is limited exactly to those treaties that had been concluded with parliamentary involvement. Indeed, it would be unreasonable to ask for a parliamentary assent only for the denunciation where the conclusion of the treaty could be realised by the executive branch alone.

5. The form of parliamentary action

27. The legal format required for parliamentary approval of the conclusion (and sometimes also of the denunciation) of an international treaty varies.

28. The typical mode of involvement is that the initiative lies with the executive branch. Parliament must approve, but parliament cannot force the executive branch to sign or express consent to be bound at the international level. (An exception seems to be Latvia, where Parliament gives a mandate to the executive branch.)[21]

29. Some states explicitly demand that parliamentary involvement must take the shape of a formal parliamentary statute.[22]

30. Slovakia even requires a "constitutional law" for the accession or withdrawal from an international organisation ("union with other states").

31. The parliamentary act may also take the form of parliamentary decision, adopted in special (relaxed) procedures, with less formality than the adoption of a formal statute[23] (e.g. the Swiss federal decree ("*Bundesbeschluss"*[24]).

32. In parliamentary systems where the government do not command a majority (not uncommon in the Nordic countries), the formal procedures do not tell the whole constitutional picture. Here, parliamentary involvement may take the form of consultation and indirect approval by not engaging a vote of no confidence.

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[19] This is done for example in Cyprus, Turkey, Slovenia, and in South Africa.

[20] Verdier and Versteeg, Table 1, p. 140.

[21] S. 3(1) Latvian Act (1993): "*The Saeima of the Republic of Latvia (hereinafter - the Saeima) may take a decision to conclude any international treaty, stating in its decision the persons responsible for drafting the specific treaty and the scope and content of their authority*." S. 6(1) Latvian Act (1993): "*If the decision to conclude an international treaty is taken by the Saeima, the authority to negotiate and sign the treaty shall be issued by the Saeima and signed by the President*".

[22] Examples are Art. 121(1) Albania (1998); Art. 169(2) Cyprus (1960); Art. 59 (2) German Basic Law (1949); Art. 80 Italy (1947); Art. 36(2) Greece (1975); Art. 8(1) of the Lithuanian Law on Treaties (1999); Art. 55(2) Morocco (2011); Art. 89(1) Poland (1997); Art. 14 Russian Federal Law on International Treaties (1995); Art. 90(1) Turkey (1982); Art. 85(32) Ukraine (1996).

[23] See also Art. 50(1) Austria (1920); Art. 29(5)(2) Ireland (1937); Art. 53(1) France (1958) "act of parliament"; Art. 26(2) Norway (1814); Art. 91(1) Netherlands (1815); Art. 161(i) Portugal (1976) – described as simple approval; Art. 86 Slovenia (1991); Art. 94(1) Spain (1978); Ch. 10, Art. 3 Sweden (1809).

[24] Art. 24(3) of the Federal Act on the Federal Assembly of 13 December 2002 of Switzerland.

6. Additional or alternative involvement of the voters

33. In some states, the voters can be involved in treaty-making, in addition to parliaments.[25] The referendums can be triggered in various ways: top-down by order of the president, or bottom-up upon initiative of the voters. They may be limited to specific types of (especially important) treaties, such as treaties involving territorial changes, or accession to an international organisation, notably the EU.[26]

34. Such popular votes are not necessarily based on the constitution or on general laws but have been conducted more or less *ad hoc* for concrete treaties, based on special laws for the occasion or on governmental or presidential orders. The quorums for the validity of such a referendum vary, and the majority requirements for a positive vote are often fairly high. The legal force of such a popular vote can vary from mere consultation to a mandatory and binding referendum.

35. Hungary, which generally is open to popular referendums, explicitly excludes votes on obligations arising out of international treaties in order to ensure compliance with international law. According to Art. 8(3)(d) of the Fundamental Law (2011), no national referendum may be held on any obligation arising from international treaties. The case law of the Kúria (Supreme Court of Hungary) concludes that any referendum question which intends to withdraw from a valid international treaty falls within the scope of the prohibited referendum according to Article 8 Section (3) point (d) of the Fundamental Law.

36. As it follows from the case-law of the Constitutional Court, Lithuania seems to exclude from popular referendums the issues assigned to the exclusive competence of the Parliament, including the ratification and denunciation of international treaties. Moreover, one of the substantial limitations on amending the Constitution of Lithuania is the prohibition to adopt amendments that would be contrary to the existing international obligations, including those undertaken by international treaties, as long as these obligations are not denounced in accordance with international law.

II. NATIONAL LEGISLATION

A. Council of Europe (at the same time VC) member states: Asymmetrical model - Parliamentary approval is required for the conclusion but not for the denunciation of treaties in 18 out of 47 states

37. In 18 member states of the Council of Europe, parliamentary approval is required only for the conclusion of international treaties and not for their denunciation.[27] Among those 18 states, 13 have parliamentary systems and 5 have presidential or semi-presidential systems. We call this the asymmetrical model of parliamentary involvement.

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[25] See. e.g., Art. 53(3) France for ceding of territory; Art. 66bis(1) Liechtenstein (1921); Art. 11(3) Moldavian Act (1999); Art. 141 Switzerland (1999) (for certain types of treaties).
[26] Art. 10a(2) Czech Republic (1992) – international organisations*;* Art. 120(3) North Macedonia (1991) – international organisations*;* Art. 68(3) Latvia (1991) – EU*;* Art. 90(3), 125 Poland (1997) –for the delegation of powers to an international organisation.
[27] We here include the UK where the House of Commons may veto a treaty under the Constitutional reform and Governance Act of 2010. A dynamic evolution based on the *Miller* judgment (relating to Brexit) might in the future lead to parliamentary involvement in denunciations, too.

1. Parliamentary systems: 13 states requiring parliamentary approval only for the conclusion of treaties

Belgium

38. Constitutional Provisions: *Constitution of the Kingdom of Belgium of 7 February 1831 (as amended)* *(https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf)*

Art. 167: "§ 1. The King directs international relations, notwithstanding the competence of Communities and Regions to regulate international cooperation, including the concluding of treaties, for those matters that fall within their competences in pursuance of or by virtue of the Constitution. […]

> § 2. The King concludes treaties, with the exception of those regarding matters described in § 3.These treaties take effect only after they have received the approval of the House of Representatives.
> § 3. The Community and Regional Governments described in Article 121 conclude, each one in so far as it is concerned, treaties regarding matters that fall within the competence of their Parliament. These treaties take effect only after they have received the approval of the Parliament. […]
> § 5. The King, by common consent with the Community or Regional Governments concerned, can denounce treaties concluded before 18 May 1993 and covering matters described in § 3. The King denounces these treaties if the Community or Regional Governments concerned invite him to do so […]"

Comment
39. Christian Behrendt summarises that "le Pouvoir exécutif, en matière de dénonciation, agit seul".[28]

Germany

40. Constitutional Provisions: *Basic Law (Grundgesetz, GG) for the Federal Republic of Germany of 23 May 1949 (as amended) (https://www.gesetze-im-internet.de/englisch_gg/)*

> Art. 59 GG: "(1) The Federal President shall represent the Federation in international law. He shall conclude treaties with foreign states on behalf of the Federation. He shall accredit and receive envoys.
> (2) Treaties that regulate the political relations of the Federation or relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law. In the case of executive agreements the provisions concerning the federal administration shall apply, mutatis mutandis."

Comment
41. According to the case-law of the German Federal Constitutional Court (FCCC/BVerfGE), the *Bundestag* (first chamber of the federal parliament) does not need to approve the denunciation of an international treaty. The main argument is that the constitutional scheme of separation of powers has assigned the authority to denounce treaties to the executive branch, and that the democratic principle does and should not override this scheme.[29]

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[28] Christian Behrendt, *La ratification des traités internationaux, une perspective de droit comparé – Belgique*, Service de recherche du Parlament européen, Étude, Mars 2020, p. 34.
[29] FCCC, judgment of 18 December 1984, BVerfGE 68, 1, paras 131-142 (the judgment concerns the unilateral agreement of the federal government to a stationing of NATO forces (Pershing missiles), not

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42. After the German reunification of 1991, an amendment of the Basic Law in the direction of a parliamentary involvement in denunciations of treaties was discussed but rejected by the joint constitutional commission of 1993.[30]

43. Traditional German scholarship has been following the view of the Federal Constitutional Court. As a matter of positive constitutional analysis, these scholars interpret the constitution as not requiring an involvement of parliament in treaty terminations.[31] And as a normative matter, a number of scholars does not find a parliamentary involvement necessary or even desirable for various reasons.

44. More recent scholarship tends to pronounce itself in favour of parliamentary approval for the denounciation of international treaties.[32] Some authors find that the law as it stands already demands such an involvement for those treaties whose conclusion demands a parliamentary statute, especially the ones that "relate to subjects of federal legislation" (Art. 59(2) sentence 1, second variant).[33] It seems fair to characterise the German scholarly trend as moving in the

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specifically on a treaty denunciation). See ibid. para. 138: "*Die grundsätzliche Zuordnung der Akte des auswärtigen Verkehrs zum Kompetenzbereich der Exekutive beruht auf der Annahme, daß institutionell und auf Dauer typischerweise allein die Regierung in hinreichendem Maße über die personellen, sachlichen und organisatorischen Möglichkeiten verfügt, auf wechselnde äußere Lagen zügig und sachgerecht zu reagieren und so die staatliche Aufgabe, die auswärtigen Angelegenheiten verantwortlich wahrzunehmen, bestmöglich zu erfüllen.*" See also FCCC, judgment of 15 Dec. 2015 (treaty override), BVerfGE 141, 1, para. 89: The legislature may not pronounce a denunciation.

[30] BT Drs. 12/6000, p. 113 - https://dserver.bundestag.de/btd/12/060/1206000.pdf.

[31] Karl Josef Partsch, "Parlament und Regierung im modernen Staat", *Veröffentlichung der Vereinigungen der Deutschen Staatsrechtslehrer* Vol. 16 (Berlin: Walter de Gruyter 1958), 98; Franz Klein, "Art. 59", in: Bruno Schmidt-Bleibtreu/Franz Klein, *Kommentar zum Grundgesetz für die Bundesrepublik Deutschland* (6th ed Neuwied/Darmstadt: Luchterhand 1983), para. 14; Rudolf Bernhardt, "§ 174: Normativität und Schutz der Verfassung – Internationale Beziehungen", in: Josef Isensee and Paul Kirchhof (eds), *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, Vol. VII (Heidelberg: C.F. Müller 1992), para. 15; Manfred Zuleeg, "Art. 59", in: Erhard Denninger, Wolfgang Hoffmann-Riem, Hans-Peter Schneider, Ekkehart Stein (eds), *Kommentar zum Grundgesetz für die Bundesrepublik Deutschland*, vol. 2 (Neuwied: Luchterhand 3d ed 2002), para. 41; Werner Heun, "Article 59", in Horst Dreier (ed.), *Grundgesetz Kommentar* Volume II (Tübingen: Mohr Siebeck 2015), para. 39; Sebastian Graf von Kielmansegg, *Ratifikation völkerrechtlicher Verträge, eine rechtsvergleichende Perspektive – Deutschland*, Service de recherche du Parlament européen, Étude, Avril 2018, p. 23; Dietrich Rauschnig, "Art. 59", in: Wolfgang Kahl, Christian Waldhoff & Christian Walter (eds), *Bonner Kommentar zum Grundgesetz* (Heidelberg: C.F. Müller, loose-leaf collection, April 2021), para. 127.

[32] Hermann Mosler, *Das Völkerrecht in der Praxis der deutschen Gerichte* (Karlsruhe: C.F. Müller 1957), 22-23; Felix Lange, "Art. 59 Abs. 2 S. 1 GG im Lichte von Brexit und IStGH-Austritt - Zur Parlamentarisierung der Kündigung völkerrechtlicher Verträge", AöR 142 (2017), 442-470; Frank Schorkopf, *Staatsrecht der internationalen Beziehungen* (C.H. Beck: München 2017), § 3, paras 179-180.

[33] See notably Ulrich Fastenrath, Kompetenzverteilung im Bereich der auswärtigen Gewalt (München: C.H. Beck 1986), 238; Juliane Kokott, "Art. 59 Abs. 2 GG und einseitige völkerrechtliche Akte", in Kay Hailbronner/Georg Ress/Torsten Stein (eds), Staat und Völkerrechtsordnung: Festschrift für Karl Doehring (Berlin: Springer-Verlag 1989, 503-528 (511-513); Volker Röben, *Außenverfassungsrecht: Eine Untersuchung zur auswärtigen Gewalt des offenen Staates* (Mohr Siebeck: Tübingen 2007), 115-116; Ingolf Pernice, "Art. 59", in: Horst Dreier (ed.), *Grundgesetz Kommentar* Vol. II (Tübingen: Mohr Siebeck 2010), para. 40; Ondolf Rojahn, "Art. 59", in: Ingo von Münch, Philip Kunig (founders), *Grundgesetz-Kommentar* (München: C.H. Beck 6th ed. 2012), para. 74 (for "existential" treaties); Paulina Starski, "Art. 59", in: Ingo von Münch, Philip Kunig (founders), *Grundgesetz-Kommentar* (München: C.H. Beck 7th ed. 2021), paras 58-71. See also Martin Nettesheim, Article 59, in: Theodor Maunz, Günther Dürig (founder) Roman Herzog, Matthias Herdegen, Rupert Scholz, Hans H. Klein (eds) *Grundgesetz Kommentar*, Volume IV (München: Beck, loose-leaf collection, January 2021), Article 59, paras 164-165.

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direction of a parliamentarisation of treaty terminations which has given rise to a sophisticated normative debate on the underlying principles. These normative arguments in favour and against an involvement of parliaments in treaty terminations are discussed below section III.E.

Greece

45. Constitutional Provisions: *The Constitution of Greece of 11 June 1975 (as amended)* (https://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma/)

> Art. 37: "(1) The President of the Republic, complying absolutely with the provisions of article 35 paragraph 1 *[= counter-signature by competent minister]* , shall represent the State internationally, declare war, conclude treaties of peace, alliance, economic cooperation and participation in international organizations or unions and he shall announce them to the Parliament with the necessary clarifications, whenever the interest and the security of the State thus allow.
> (2) Conventions on trade, taxation, economic cooperation and participation in international organizations or unions and all others containing concessions for which, according to other provisions of this Constitution, no provision can be made without a statute or which may burden the Greeks individually, shall not be operative without ratification by a statute voted by the Parliament.
> (3) Secret articles of a treaty may in no case reverse the open ones.
> (4) The ratification of international treaties may not be the object of delegation of legislative power as specified in article 43 paragraphs 2 and 4."

Comment
46. We did not find anything on the denunciation of treaties in the literature available to us. It is unlikely that denunciation requires parliamentary approval.

Iceland

47. Constitutional Provisions: *Constitution of the Republic of Iceland of 17 June 1944 (as amended to 2013)*

> Art. 21: "The President of the Republic concludes treaties with other States. Unless approved by Althingi *[Parliament]*, he may not make such treaties if they entail renouncement of, or servitude on, territory or territorial waters, or if they require changes in the State system."

> Art. 13(1): "The President entrusts his authority to Ministers"

Comment
48. The requirement of approval by the Althing is in principle exceptional. The country report on Iceland in *CoE TreatyMaking 2001* highlights that the political practice of parliamentary approval is broader than the constitutional prescriptions: "In practice, at the discretion of the Minister for Foreign Affairs, many treaties not falling clearly within these categories *[enumerated in Article 21]* are submitted to the Althingi for approval. In deciding on such submission the Minister assesses the importance of the subject matter dealt with by a treaty, including its possible effect on the rights of the individual and whether it has been the subject of political controversy."[34] "Since a treaty is not of itself incorporated into the law of Iceland […] in cases where legislation is necessary to implement the treaty, consent to be bound is not expressed before such legislation is enacted."[35]. The words "changes in the state system" in Article 21 have been taken to mean that the approval of the Althing must be sought when the obligations inherent in a treaty cannot

[34] *CoE TreatyMaking 2001,* pp. 147-150, quote at p. 147.
[35] ibid., p. 148.

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be realized without amendments of domestic law. The government has also sought the approval of the Althing when treaties entail significant political controversies

49. Article 21 of the current Constitution has not been amended for more than a century (only the term "King" was replaced by "President" when Iceland became a Republic). It therefore remains unclear whether the approval of the Althing is needed for the denunciation of a treaty which the legislative body has priorly approved, while it seems logical that this would be the case in practice.[36]

Ireland

50. Constitutional Provisions: *Constitution of Ireland of 1 July 1937 (as amended to 2020) (http://www.irishstatutebook.ie/eli/cons/en/html)*

> Art. 29(4): "1° The executive power of the State in or in connection with its external relations shall in accordance with Article 28 of this Constitution be exercised by or on the authority of the Government.
> 2° For the purpose of the exercise of any executive function of the State in or in connection with its external relations, the Government may to such extent and subject to such conditions, if any, as may be determined by law, avail of or adopt any organ, instrument, or method of procedure used or adopted for the like purpose by the members of any group or league of nations with which the State is or becomes associated for the purpose of international co-operation in matters of common concern.
> […]
>
> Art. 29(5): 1° Every international agreement to which the State becomes a party shall be laid before Dáil Éireann.
> 2° The State shall not be bound by any international agreement involving a charge upon public funds unless the terms of the agreement shall have been approved by Dáil Éireann.
> 3° This section shall not apply to agreements or conventions of a technical and administrative character."

Comment:
51. The executive branch remains the master of the proceedings and cannot be forced to conclude a treaty: "Even when the Dail [i.e. the *House of Representstives*] has approved the terms of an agreement, and the Oireachtas [*Parliament as a whole*] has enacted legislation enabling effect to be given to it in domestic law, there is no legal obligation to proceed to ratification."[37]

52. Art. 29(5) 1° (prescribing that "every international agreement to which the State becomes a party shall be laid before Dáil Éireann") is interpreted in the sense of an obligation to inform parliament about a planned denunciation. Irish practice is that, like signature and ratification, denunciation is treated as a treaty action for which express Government authority is required, and this is done by the Minister for Foreign Affairs seeking formal Government (but not Parliamentary) approval. Dail Eireann is informed of the act of denunciation after it has taken place and its prior information or approval is not required.[38]

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[36] One of the aims of revising the Constitution of Iceland with the Act on a Constitutional Assembly No. 90/2010, legislating a special Constitutional Assembly to revise the 1944 Constitution was to address the transfer of sovereign powers to international organisations and the conduct of foreign affairs. The draft Constitution was never adopted but was dealt with by the Venice Commission in CDL(2013)005.
[37] Questionnaire in *CoE Treaty Making* 2001, p. 153.
[38] See https://www.dfa.ie/our-role-policies/international-priorities/international-law/treaties/.

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Italy

53. Constitutional Provisions: *Constitution of the Italian Republic of 22 December 1947 (as amended)* (https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf)

> Art. 80: "Parliament shall authorise by law the ratification of such international treaties as have a political nature, require arbitration or a legal settlement, entail change of borders, spending or new legislation."
>
> Art. 87(3): "[…] The President shall […] accredit and receive diplomatic representatives, and ratify international treaties which have, where required, been authorised by Parliament. […]"

Comment

54. The majority of Italian scholars asks for the approval of parliament also for the denunciation of international treaties.[39] A reform in that sense was demanded by parliament in 1984.[40]

55. However, constitutional practice does not involve the parliament in denunciations.[41] No parliamentary approval is required for the suspension and denunciation of treaties, not even for those which had been internally ratified by a parliamentary statute. Constant practice attributes this competence exclusively to the government.[42] Put differently, once the treaty has been ratified, subsequent events that may affect its life — from revision to denunciation — are at the disposal of the government.[43]

Liechtenstein

56. Constitutional Provisions: *Constitution of the Principality of Liechtenstein of 5 October 1921*

> Art. 8: "(1) The Prince Regnant shall represent the State in all its relations with foreign countries, without prejudice to the necessary participation of the responsible Government.
> (2) Treaties by which national territory is ceded, national property alienated, rights of sovereignty or State prerogatives disposed of, any new burden for the Principality or its citizens imposed or any obligation to the detriment of the rights of the People of the Principality contracted shall not be valid unless they have received the assent of Parliament."
>
> Art. 62: "In particular, the following matters shall fall within the sphere of activity of Parliament: […] b. participation in the conclusion of treaties (Art. 8);"
>
> Art. 66bis(1): "Any resolution of Parliament concerning assent to a treaty (Art. 8) must be submitted to a referendum if Parliament so decides or if not less than 1,500 citizens with the right to vote or not less than four communes submit a petition to that effect, according to the procedure prescribed in Art. 64, within 30 days of the official publication of the resolution of Parliament."

Comment

57. In a case on the Treaty on the European Economic Area, the question arose which body was competent to invoke a safeguard clause and could pronounce a partial suspension of the

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[39] Giovanni Bognetti, "The Role of Italian Parliament in the Treaty-Making Process", *Chicago-Kent Law Review* 67 (1991), 391-412, at p. 404.

[40] Bognetti pp. 406-407.

[41] Bognetti p. 404.

[42] Susanna Cafaro, *La ratifica dei trattati internazionali, una prospettiva di diritto comparato – Italia*, Direzione generale dei Servizi di ricerca parlamentare, Studio, Giuglio 2018), p. 31.

[43] Susanna Cafaro, *La ratifica dei trattati internazionali, una prospettiva di diritto comparato – Italia*, Direzione generale dei Servizi di ricerca parlamentare, Studio, Giuglio 2018), p. 20.

treaty as a safeguard measure. The Constitutional Court (*Staatsgerichtshof*) of Liechtenstein found that the competence for the suspension (and partial suspension) of a treaty is solely and exclusively incumbent on the executive branch.[44] It would seem that the Court's reasoning applies not only to a (temporal) suspension but also to the (permament) denunciation of treaties. This decision has been critically commented in the literature. Pointing to the strong position accorded to Parliament in Art. 8 of the constitution, Bussjäger argues that the denunciation of treaties that have major significance for the international standing of the state may be terminated only with the approval of Parliament.[45] At any rate, the decision of the Constitutional Court is related to the specific provisions of the EEA-Agreement, which contains a certain mechanism of suspension. If a treaty lacks such a mechanism, it is likely that the Constitutional Court would consider that the approval of the Landtag is necessary in any case according to Art 8 (2) of the Constitution.

Luxembourg

58. Constitutional Provisions: *Constitution of the Grand Duchy of Luxembourg of 17 October 1968 (as amended to 2020)*

> Art. 37: "The Grand Duke makes the treaties. The treaties will not have effect before having been approved by the law and published in the forms specified for the publication of the laws.

59. The treaties referred to in Chapter III, § 4, Article 49bis *[the EU-treaties]* are approved by a law voted under the conditions of Article 114, paragraph 2."

Comment

60. The Conseil d'État of Luxembourg has rendered two opinions on the question of denunciation.[46] Relying on the wording of Art. 37, the Conseil d'État argues that since this provision focuses on the conclusion of treaties, the requirement for parliamentary approval does e contrario not extend to their denunciation.[47]

Malta

61. Constitutional Provisions: *Constitution of the Republic of Malta of 21 September 1964 (as amended) (*https://legislation.mt/eli/const/eng/pdf*)*

62. The constitution does not contain any provisions on treaty making power and foreign relations. International law is only marginally mentioned, for example in a broad provision (Art. 65(1)): "Parliament may make laws for the peace, order and good government of Malta in conformity with full respect for human rights, generally accepted *principles of international law*

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[44] StGH 1998/56, judgment of 28 September 1999, cons. 2.4.

[45] Peter Bussjäger, "Artikel 8", in: Liechtenstein-Institut (ed.), *Kommentar zur liechtensteinischen Verfassung*, Online-Kommentar, Bendern 2016, verfassung.li, para. 98: "*In Einzelfällen, insbesondere bei einseitiger Aufkündigung des Staatsvertrags, die für die aussenpolitische Stellung des Landes von erheblicher Bedeutung sind, wird man daher annehmen müssen, dass eine solche nur mit Genehmigung des Landtages zulässig ist.*"

[46] Avis du Conseil d'État du 27 septembre 1979 sur le projet de loi portant approbation de la Convention sur la célébration et la reconnaissance de la validité des mariages, signée à La Haye, le 14 mars 1978 (Doc. parl. no 2372), p. 1; Avis du Conseil d'État du 26 octobre 1999 sur le projet de loi portant approbation de l'instrument pour l'amendment de la Constitution de l'Organisation internationale du Travail, adopté par la Conférence internationale du Travail à sa quantre-vingt-cinquième session, à Genève, le 19 juin 1997 (Doc. Parl. No 4516). Both opinions can be accessed by their document number: https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RechercheArchives.

[47] Avis du 27 septembre 1979, p. 11.

and *Malta's international and regional obligations* in particular those assumed by the treaty of accession to the European Union signed in Athens on the 16th April, 2003."

63. Ratification of Treaties Act (Act V of 1983), Chapter 304 of the Laws of Malta

64. A statute of 1983 regulates the involvement of parliament in the context of international treaties and lays down the executive's obligation to *inform* parliament about denunciations of such (important) treaties that had been ratified with parliamentary authorisation:

> Art. 3: "(1) Where a treaty to which Malta becomes party after the coming into force of this Act is one which affects or concerns -
> (a) the status of Malta under international law or the maintenance or support of such status, or
> (b) the security of Malta, its sovereignty, independence, unity or territorial integrity, or
> (c) the relationship of Malta with any multinational organization, agency, association or similar body,
> such treaty shall not enter into force with respect to Malta unless it has been ratified or its ratification has been authorised or approved in accordance with the provisions of this Act.
> (2) A treaty to which subarticle (1) applies shall be ratified or shall have its ratification authorised or approved as follows: (a) where such treaty concerns a matter referred to in subarticle (1) (a) or (b) or contains any provision which is to become, or to be enforceable as, part of the law of Malta, by Act of Parliament; (b) in any other case, by Resolution of the House of Representatives.
> (3) No provision of a treaty shall become, or be enforceable as, part of the law of Malta except by or under an Act of Parliament.
> (4) The instrument of ratification shall be issued under the signature of the Minister responsible for foreign affairs. […]"
>
> Art. 4: "Where Malta ceases, or does any act whereby it will cease, to be a party to a treaty affecting or concerning any of the matters mentioned in article 3 (1)(a), (b) or (c), the Minister responsible for foreign affairs shall inform the House of the fact, giving the reasons therefor, at the earliest opportunity and in no case later than the second sitting of the House after the expiration of one month from the date of the denunciation or other act whereby Malta ceases or will cease to be a party to a treaty as aforesaid."

Comment
65. Malta singles out the familiar types of important treaties. While the conclusion of such important treaties requires parliamentary approval, parliament must only be informed about their denunciation.

Monaco

66. Constitutional Provisions: *Constitution of the Principality of Monaco of 17 December 1962 (as amended to 2002)*

> Art. 14: "(1) After consulting the Crown Council, the Prince signs and ratifies international treaties and agreements. He communicates them to the Conseil National *[Parliament]*, through the Minister of State, before their ratification.
> (2) However, the following treaties must be ratified by law: 1. treaties and international agreements affecting the constitutional order; 2. treaties and international agreements whose ratification entails the modification of existing legislative provisions; 3. international treaties and agreements which entail the Principality's adhesion to an international organisation the functioning of which implies the participation of the National Council's members 4. Treaties and international organisations the implementation of which results in a budget expenditure pertinent to expenditure type or use, which is not provided by the budget act.

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(3) The Principality's external policy is accounted for in an annual report prepared by the government and notified to the National Council."

Comment
67. The form of parliamentary invovelment is statutory law. In substance, not all but a rather broad range of treaty types require such a law.

68. The Monegasque Constitution does not expressly provide for the denunciation of treaties, but it could be considered that a distinction should be made between two hypotheses: the first is that in which the denunciation of the treaty takes the form of a treaty and, in this case, the National Council must intervene insofar as this treaty had been ratified by virtue of a law, under the provisions of article 14 of the Constitution; the second is that where the international agreement had as its object an authorisation to participate in an international organisation or body, in which case the withdrawal could be considered as falling within the competence of the Prince, under the provisions of Article 68 of the Constitution ("The Prince issues, when necessary, ordinances to ensure the enforcement of laws and the implementation of international treaties or conventions.").

Norway

69. Constitutional Provisions: *Constitution of the Kingdom of Norway of 27 May 1814 (as amended to 2020) (https://lovdata.no/dokument/NLE/lov/1814-05-17)*

Art. 26: "(1) The King has the right to call up troops, to engage in war in defence of the realm and to make peace, to conclude and denounce treaties, to send and to receive diplomatic envoys.
(2) Treaties on matters of special importance, and, in all cases, treaties whose implementation, according to the Constitution, necessitates a new law or a decision by the Storting *[Parliament]*, are not binding until the Storting has given its consent thereto."

Art. 115: "(1) In order to safeguard international peace and security or to promote the international rule of law and cooperation, the Storting may, by a three-fourths majority, consent that an international organisation to which Norway belongs or will belong shall have the right, within specified fields, to exercise powers which in accordance with this Constitution are normally vested in the authorities of the state, although not the power to alter this Constitution. For the Storting to grant such consent, at least two thirds of its Members shall be present, as required for proceedings for amending the Constitution.

(…)

Comment
70. The form of parliamentary involvement is less than a formal statutory law, simple "consent" suffices. In substance, a general clause ("matters of special importance") defines which treaties are subject to the consent requirement.

71. In Norwegian constitutional law, the concept "treaties" has been interpreted to include also unilateral declarations that entail binding obligations for Norway according to international law.

72. Despite the special procedure in Article 115, a number of such treaties have also been adopted pursuant to Article 26 (2), which only requires an ordinary majority. In an example of extreme pragmatism, the Government and Parliament have interpreted Article 26(2) so that it

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allows the transfer of sovereign powers to international organisations if the powers in question are minor.[48]

73. Article 26 (2) is interpreted in the sense that denunciation does not require parliamentary approval.[49] However, by convention, the Government will in all important issues of foreign affairs consult Parliament through the Standing Committee on Foreign Affairs and Defence (the ordinary standing committee, plus the president of the parliament and the leaders of all the party groups). All discussions in this committee are secret. In case of the denunciation of an important treaty, or if denunciation may have political consequences, Parliament should be consulted. Parliament will during the spring session of 2022 consider a proposal for constitutional amendment, to the effect that consultation is mandatory before all important foreign affairs decisions.[50] Moreover, in many cases, parliamentary consent is required regardless of the importance of the treaty since treaties may often require either legislative acts or have budgetary consequences, which requires a "decision by the Storting" and thus also consent to the treaty according to Art. 26 (2).

San Marino

74. Constitutional Provisions: San Marino does not have a single written constitution. Constitutional provisions are to be found in multiple legislative instruments, most notably the Statute of 1600 and the Declaration of Citizens' Rights and of the Fundamental Principles of San Marino Legal System of 1974, as modified in 2002.

75. According to established practice or constitutional custom, "[t]he ratification procedure is as follows: The Foreign Minister proposes to the Congress of State to proceed with the ratification of a treaty. The Congress of State, after having considered the appropriateness of such a ratification, expresses its agreement by issuing a decision. Then the parliamentary commission for Foreign Policy meets to express an evaluation of whether such ratification is politically appropriate and desirable. If it is, then the treaty is submitted to the Great and General Council for discussion and subsequent ratification. As a rule, the ratification of a treaty requires the majority generally needed for the approval of ordinary laws."[51] In addition, the Captains Regent are responsible for promulgating and issuing the decrees of ratification of treaties and international agreements, following the deliberation of the Great and General Council (art. 5, para. 3, Constitutional Law no. 185/2005 and art. 11, para. 2, Qualified Law no. 186/2005).

(The "Great and General Council" is parliament).

76. There are no written norms regulating the denunciation of treaties. As for the practice, according to the information available, no treaty has ever been denunciated.

United Kingdom

77. Constitutional Provisions: The UK does not have a written constitution.

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[48] This approach was approved by the Norwegian Supreme Court in an advisory opinion to the Parliament in 2021, see HR-2021-655-P. For a fundamental criticism of this development, see Christoffer Conrad Eriksen and Eirik Holmøyvik, "Høyesteretts jernbanebetenkning: en statsrettslig avsporing", *Lov og rett* 2022, p. 28-52.
[49] See e.g. Eivind Smith, Konstitusjonelt demokrati, 5th edition, Fagbokforlaget: Bergen 2021, p. 240.
[50] See Dokument 12:27 (2019-2020), https://www.stortinget.no/globalassets/pdf/grunnlovsforslag/2019-2020/dok12-201920-027.pdf
[51] CoE, *Treaty Making* 2002, p. 193, quote at 194.

78. As a matter of constitutional principle, both the conclusion and the denunciation of treaties lie within the "royal prerogative".[52] In line with the UK's dualist system (separation between international law and domestic law), parliament is responsible for the "transformation" of international treaty law into domestic law.[53]

79. Parliament is not directly involved in the treaty making process as such, but the practice and constitutional custom of consultation have evolved. In practice, (informal) parliamentary approval has often been secured before a treaty is concluded to ensure transformation into national law and thus to avoid responsibility for a breach under public international law.[54]

80. Since 2010, the Constitutional Reform and Governance Act (section 20) regulates the participation of Parliament in the conclusion of international treaties as follows.

81. Constitutional Reform and Governance Act 2010

> Section 20: "(1) Subject to what follows, a treaty is not to be ratified unless (a) a Minister of the Crown has laid before Parliament a copy of the treaty, (b) the treaty has been published in a way that a Minister of the Crown thinks appropriate, and (c) period A has expired without either House having resolved, within period A, that the treaty should not be ratified.
> (2) Period A is the period of 21 sitting days beginning with the first sitting day after the date on which the requirement in subsection (1)(a) is met.
> (3) Subsections (4) to (6) apply if the House of Commons resolved as mentioned in subsection (1)(c) (whether or not the House of Lords also did so).
> (4) The treaty may be ratified if (a) a Minister of the Crown has laid before Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why, and (b) period B has expired without the House of Commons having resolved, within period B, that the treaty should not be ratified.
> (5) Period B is the period of 21 sitting days beginning with the first sitting day after the date on which the requirement in subsection (4)(a) is met.
> (6) A statement may be laid under subsection (4)(a) in relation to the treaty on more than one occasion.
> (7) Subsection (8) applies if (a) the House of Lords resolved as mentioned in subsection (1)(c), but (b) the House of Commons did not.
> (8) The treaty may be ratified if a Minister of the Crown has laid before Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why.
> (9) 'Sitting day' means a day on which both Houses of Parliament sit."

Comment

82. Under this Statute, the House of Commons may veto the conclusion of a treaty pursuant to section 20(1)(4). If only the House of Lords objects to a treaty, the minister of the crown may override the objection of the House (subsec. 8).

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[52] Ian Sinclair, Susan J. Dickson & Graham Maciver, "United Kingdom", in: Duncan B. Hollis, Merrit R. Blakeslee & L. Benjamin Ederington (eds), *National Treaty Law and Practice* (Leiden/Boston: Nijhoff Publishers 2005), 727-764 (727, 733, 746); See for an overview Mario Mendez, "Neglecting the Treaty-Making Power in the UK: The Case for Change", 136 *Law Quarterly Review* (2020), 630-657 (esp. at pp. 632 et seqq.)..
[53] Sinclair et al., 733 et seq.
[54] Ibid., 733 et seq.

Denunciation of treaties

83. In *Miller*, occasioned by Brexit, the UK Supreme Court ruled that the UK's withdrawal from the European Union demands involvement of and approval by parliament.[55] The Court found this requirement in the *European Communities Act of 1972* and its provisions on incorporation of EU law.[56]

84. It has been discussed whether the *Miller* judgment demands that parliament would have to be involved should the UK decide to denounce the European Convention on Human Rights.[57] The debate turns on the question whether the denunciation would alter the constitutional structure of the UK and whether English law would be devalued. The basic concerns here hinge on the substantive legal impact of the treaty denunciation for the domestic legal system. The more important an international treaty is in that sense, the more persuasive is the need for parliamentary involvement in its denunciation.

85. Overall, it is currently not clear whether the UK's general constitutional structure and the overall competence of parliament in relation to international treaties leads to a requirement of parliamentary approval for the denunciation of other international treaties which are in substance as important as the EU treaties. If *Miller* is interpreted as indicative of a trend towards a stronger role of parliament, the UK could be counted among the states with an implicit requirement of parliamentary approval for the denunciation of international treaties, also beyond EU law.

2. (Semi-)presidential Systems: 5 states requiring parliamentary approval only for the conclusion of treaties

Cyprus

86. Constitutional Provisions: *Constitution of the Republic of Cyprus of 6 April 1960 (as amended to 2013)*

> Art. 169: "Subject to the provisions of Article 50 and paragraph 3 of Article 57:
> (1) every international agreement with a foreign State or any International Organisation relating to commercial matters, economic co-operation (including payments and credit) and modus vivendi shall be concluded under a decision of the Council of Ministers;
> (2) any other treaty, convention or international agreement shall be negotiated and signed under a decision of the Council of Ministers and shall only be operative and binding on the Republic when approved by a law made by the House of Representatives whereupon it shall be concluded;
> (3) treaties, conventions and agreements concluded in accordance with the foregoing provisions of this Article shall have, as from their publication in the official Gazette of the Republic, superior force to any municipal law on condition that such treaties, conventions and agreements are applied by the other party thereto. […]"
>
> Art. 57(3): "If a decision relates to foreign affairs, defence or security as in Article 50 set out, the President or the Vice-President of the Republic or both shall have a right of veto which they shall exercise within four days of the date when the decision has been transmitted to their respective offices."
>
> Art. 50(1): "The President and the Vice-President of the Republic, separately or conjointly, shall have the right of final veto on any law or decision of the House of Representatives or any

[55] UK Supreme Court, *R (on the application of Miller) v. Secretary of State for Exiting the European Union,* [2017] UKSC 5.
[56] cf. ibid., paras 77 et seq.
[57] Gavin Phillipson and Alison L Young, "Would use of the prerogative to denounce the ECHR 'frustrate' the Human Rights Act? Lessons from Miller", Public Law 2017, 150.

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part thereof concerning (a) foreign affairs, except the participation of the Republic in international organisations and pacts of alliance in which the Kingdom of Greece and the Republic of Turkey both participate. For the purposes of this sub-paragraph "foreign affairs" includes […] (ii) the conclusion of international treaties, conventions and agreements;"

Art. 37: "The President of the Republic as Head of the State […] (c) signs […] (ii) the letter relating to the transmission of the instruments of ratification of any international treaties, conventions or agreements approved as provided in this Constitution;"

Comment
87. Most treaties need parliamentary agreement. (except those relating to commercial matters, economic co-operation and modus vivendi). While there is no legal provision on denunciation, parliamentary approval is considered as necessary in some cases. .

France

88. Constitutional Provisions: *Constitution of 4 October 1958 (as amended) (https://www.elysee.fr/en/french-presidency/constitution-of-4-october-1958)*

Art. 52: "(1) The President of the Republic shall negotiate and ratify treaties. (2) He shall be informed of any negotiations for the conclusion of an international agreement not subject to ratification."

Art. 53: "(1) Peace Treaties, Trade agreements, treaties or agreements relating to international organization, those committing the finances of the State, those modifying provisions which are the preserve of statute law, those relating to the status of persons, and those involving the ceding, exchanging or acquiring of territory, may be ratified or approved only by an Act of Parliament. (2) They shall not take effect until such ratification or approval has been secured. (3) No ceding, exchanging or acquiring of territory shall be valid without the consent of the population concerned"

Art. 55: "Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party."

89. Special constitutional provisions exist with regard to the EU (Art. 88 et seq.).

90. Décret relatif à la ratification et à la publication des engagements internationaux souscrits par la France (No. 53-192 (14 March 1953))
Article 1: "Le ministre des affaires étrangères est seul chargé de pourvoir à la ratification et à la publication des conventions, accords, protocoles et règlements internationaux dont la France est signataire ou par lesquels la France se trouve engagée. Il en est de même en ce qui concerne le renouvellement ou la dénonciation de ces accords."

Comment – Denunciation of Treaties
91. Several reference works explain only the conclusion of treaties but do not analyse denunciation.[58]

[58] See in detail on the conclusion of treaties : Marie-Claire Ponthoreau, *La ratification des traités internationaux, une perspective de droit compare – France*, Service de recherche du Parlament européen, Étude, Juin 2019 ; Cécile Isodoro, in : François Luchaire, Gérard Conac & Xavier Prétot (eds), *La Constitution de la République française* (Paris: Economica, 3rd edt. 2009), pp. 1308-1327 , comment on Article 52: on the prominent role and the competences of the President; Laurence Burgorgue-Larsen, in Conac & Prétot (eds), Comment on Article 53: on the nature of the requirement of parliamentary approval under Art. 53(2). These contributions do not discuss the denunciation.

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92. Those who discuss denunciation agree that it lies in the sole competence of the executive branch. Pierre Michel Eisemann & Raphaële Rivier point out that, “[u]nlike the Constitution of the Fourth Republic, the 1958 Constitution contains no provisions dealing with the suspension or abrogation of treaties. Thus, the Executive is deemed to have discretionary power in this regard. Parliament is not involved in the termination of treaties.”[59]

93. Similarly, Geneviève Burdeau attests that “[l]e retrait et la dénonciation d’un traité sont traditionnellement de la compétence gouvernementale, sans que le respect du parallélisme des formes ne vienne imposer une consultation parlementaire lorsque le traité porte sur l’une des matières énumérées à l’article 53. C’est ainsi par exemple que la France s’est retirée en 1982 du Bureau - Intergouvernemental pour l’Informatique sans consultation parlementaire.”[60]

94. The literature does accordingly not accept the idea of a symmetry or parallelism of powers for conclusion and denunciation (*actus contrarius*), and no reasons are given for the negation of parliamentary involvement in denunciations.

North Macedonia

95. Constitutional Provisions: *Constitution of the Republic of North Macedonia of 17 November 1991 (as amended to 2019) (https://vlada.mk/sites/default/files/dokumenti/zakoni/the_constitution_of_the_republic_of_north_macedonia_containing_the_valid_constitutional_provisions_in_force_as_amended_by_constitutional_amendments_i-xxxvi.pdf)*

Art. 68: “The Assembly of the Republic of Macedonia […] ratifies international agreements;”

Art. 119: “(1) International agreements are concluded in the name of the Republic of North Macedonia by the President of the Republic of North Macedonia.
(2) International agreements may also be concluded by the Government of the Republic of North Macedonia, when it is so determined by law.”

96. Law on the Conclusion, Ratification and Implementation of International Agreements of 22 January 1998 (Zakon-za-skluchuvan-e-ratifikatsija-i-izvrshuvan-e-na-megunarodni-dogovori-22-01-1998.pdf)

Art. 23: “The denunciation of international treaties of the Republic of North Macedonia is carried out by the Government of the RNM and the President of RNM.”

Art. 24: “International treaties, which create direct obligations for the Republic, are denounced by those organs, in whose competence falls the matter regulated by the treaty.”

Comment
97. Art. 120 is the EU-clause of the constitution: It demands a 2/3 majority in Parliament and a simple majority in a popular referendum for a potential accession to the EU.

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[59] Pierre Michel Eisemann & Raphaële Rivier, “France”, in: Duncan B. Hollis, Merrit R. Blakeslee & L. Benjamin Ederington (eds.), National Treaty Law and Practice (Leiden/Boston: Nijhoff Publishers 2005), 253-316, pp. 273-274.

[60] Geneviève Burdeau, Les engagements internationaux de la France et les exigences de l’Etat de droit, *Annuaire Français de Droit International* 32 (1986), 873-856 (854).

98. The available literature only discusses the conclusion of treaties.[61] Other literature mentions ordinary laws that were not accessible to us or translatable.[62] It is therefore to be assumed that denunciations do not require parliamentary approval.

Portugal

99. Constitutional Provisions: *Constitution of the Portuguese Republic of 2 April 1976 (as amended) (https://dre.pt/constitution-of-the-portuguese-republic)*

> Art. 135: "In international relations the President of the Republic shall be responsible for: […] (b) Once they have been duly passed, ratifying international treaties;
>
> Art. 134: The President of the Republic shall be personally responsible for: […] (b) enacting laws, executive laws and regulatory orders and having them published, and signing both resolutions of the Assembly of the Republic that pass international agreements and the rest of the Government's decrees;"
>
> Art. 161: "The Assembly of the Republic shall be responsible for: […] (i) passing treaties, particularly those that entail Portugal's participation in international organisations, friendship, peace, defence, the rectification of borders or military affairs, as well as international agreements that address matters which are the exclusive responsibility of the Assembly, or which the Government deems fit to submit to the Assembly for consideration;"

Comment

100. With regard to reservations, it has been said that "[t]he decision of making or withdrawing *reservations* to a Treaty is taken by the same authority competent to approve the Treaty, i.e., the Parliament or the government."[63] This statement reflects the idea of a parallelism of forms. A reservation is a unilateral statement made by a State when approving a treaty, whereby it purports to "exclude or to modify the legal effect of certain provisions of the treaty in their application to that State" (Art. 2 lit d) VCLT). It can be argued that if already a reservation (which excludes some provisions of the treaty) demands a parallelism of forms, this a fortiori governs the denunciation of treaties as well.

101. Based on this argument, Portugal could be counted among the states implictly demanding a parliamentary involvement in the denunciation of important international treaties. However, there is no settled scholarly Commentary or case law in this direction.

102. Therefore, this report placed Portugal in the group of states not demanding parliamentary approval for the denunciation.

Turkey

103. Constitutional Provisions: *Constitution of the Republic of Turkey of 18 October 1982 (as amended to 2019) (https://www.anayasa.gov.tr/en/legislation/turkish-constiution/)*

> Art. 87: "The duties and powers of the Grand National Assembly of Turkey are to enact, amend, and repeal laws; to debate and adopt the budget bills and final accounts bills; to decide to issue currency and declare war; to approve the ratification of international treaties, to decide

[61] Blerton Sinani & Sami Mehmeti, "The Legal Position of International Treaties in the Constitutional Order of the Republic of Macedonia". 2014 *Acta Universitatis Danubius Juridica*, 37-50, on the conclusion of treaties at pp. 44 et seq.
[62] Aneta Stokanovska-Stefanova & Drasko Atanasoski, "International Relations as Constitutional Matter in Republic of Macedonia" 12 *US-China Law Review* (2015), 1015-1025.
[63] Questionnaire in *CoE Treaty Making 2002*, p. 183.

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with the majority of three-fifths of the Grand National Assembly of Turkey to proclaim amnesty and pardon; and to exercise the powers and carryout the duties envisaged in the other articles of the Constitution."

Art. 90: "(1) The ratification of treaties concluded with foreign states and international organisations on behalf of the Republic of Turkey shall be subject to adoption by the Grand National Assembly of Turkey by a law approving the ratification.
(2) Agreements regulating economic, commercial or technical relations, and covering a period of no more than one year, may be put into effect through promulgation, provided they do not entail any financial commitment by the State, and provided they do not interfere with the status of individuals or with the property rights of Turks abroad. In such cases, these agreements shall be brought to the knowledge of the Grand National Assembly of Turkey within two months of their promulgation.
(3) Implementation agreements based on an international treaty, and economic, commercial, technical, or administrative agreements, which are concluded depending on the authorization as stated in the law, shall not require approval of the Grand National Assembly of Turkey. However, economic, commercial agreements or agreements relating to the rights of individuals concluded under the provision of this paragraph shall not be put into effect unless promulgated.
(4) Agreements resulting in amendments to Turkish laws shall be subject to the provisions of the first paragraph.
(5) International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail."

Art. 104: "(1) The President of the Republic is the head of the State. Executive power belongs to the President of the Republic.
(2) In this capacity, he/she shall represent the Republic of Turkey and the unity of the Turkish Nation; he/she shall ensure the implementation of the Constitution, and the regular and harmonious functioning of the organs of the State. […]
(11) He/she ratifies and promulgates international treaties."

Comment
104. English-language scholarship has seized upon the question of competences for denunciation of international treaties at the occasion of the denunciation of the Istanbul Convention in 2021.

105. Başak Çali argues that "Human rights treaties, therefore, first become domestic law by way of a vote in Parliament passing a ratification law. Any law that is passed by Parliament cannot be the subject of executive amendment under the Constitution. The executive, that is the President, cannot exercise legislative functions. As a matter of domestic law, it cannot repeal a law, in this case, the Parliament's act of ratification of the Istanbul Convention on 24 November 2011. This law can only be amended or repealed by the Parliament by passing a domestic law to denounce a treaty." The power to withdraw from a treaty "cannot be used to override the acts of the legislative, making a human rights treaty part of domestic law by way of enacting a legislation".[64]

106. İlayda Eskitaşçıoğlu writes that "[t]he President is only vested with executive power, and can only issue presidential decrees on executive matters. In this case, the Istanbul Convention became a part of domestic law when the Grand National Assembly of Turkey passed the

[64] Başak Çali, "Withdrawal from the Istanbul Convention by Turkey: A Testing Problem for the Council of Europe", *EJIL Talk*, 22 March 2021 - https://www.ejiltalk.org/withdrawal-from-the-istanbul-convention-by-turkey-a-testing-problem-for-the-council-of-europe/

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ratification law. However, the President cannot repeal a domestic law, which would require legislative functions, that are clearly vested in the Parliament (Article 87 of the Constitution)."

107. "In addition, the denunciation of the Istanbul Convention through a presidential decision, without the Parliament having a vote on the matter is at odds with the principle of parallelism of competence and procedure."[65]

108. Both contributions opine that a denunciation by the President alone is unconstitutional. However, there is no codification or case law in that sense. Therefore, we placed Turkey in the group of states not demanding parliamentary approval for the denunciation.

B. Council of Europe (at the same time VC) member states: Symmetrical model - Parliamentary approval is required for both the denunciation and conclusion of treaties in 29 out of 47 states

109. This study lists in this group only those CoE Member States that possess express rules requiring parliamentary approval for both the conclusion and denunciation of all or some groups of international treaties, or where a settled opinion, practice or jurisprudence in that sense exists. We call this the symmetrical model, or parallelism of powers.

110. States in which only *scholarly* pronouncements suggest an implicit requirement of parliamentary approval (Germany, Portugal, the UK, and Turkey) are not listed in this group.

1. Parliamentary Systems: 17 states

Albania

111. Constitutional Provisions: *Constitution of the Republic of Albania of 28 November 1998 (as amended to 2016)*

Art. 92: "The President also exercises these powers: […] ë) sign international agreements according to the law;"

Art. 121: "(1) The ratification and denunciation of international agreements by the Republic of Albania is done by law when they involve: a. territory, peace, alliances, political and military issues; b. human rights and freedoms, and obligations of citizens as provided in the Constitution; c. the membership of the Republic of Albania in international organizations; ç. the assumption of financial obligations by the Republic of Albania; d. the approval, amendment or repeal of laws.
(2) The Assembly may, with a majority of all its members, ratify other international agreements that are not contemplated in paragraph 1 of this article.
(3) The Prime Minister notifies the Assembly whenever the Council of Ministers signs an international agreement that is not ratified by law."

Comment
112. The Albanian Constitutional Court has held that a treaty cannot be signed unless the President of the Republic has provided authorization on negotiating and signing it.[66]

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[65] İlayda Eskitaşçıoğlu, "Turkey's Withdrawal from the Istanbul Convention: A Sudden Presidential Decision in the Dead of the Night and an Alarming Setback", *Völkerrechtsblog*, 27 March 2021 - https://voelkerrechtsblog.org/de/turkeys-withdrawal-from-the-istanbul-convention/#

[66] Albanian Constitutional Court, *Socialist Party v Council of Minsters - Gjykates Kushtetuese [Constitutional Court] Apr. 15, 2010, 52 FLETORJA ZYRTARE [OFFICIAL GAZETTE] 187),* cited in Korenica/Doli (p. 100); no translation found. See on the signing-power Fisnik Korenica & Dren Doli,

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113. The constitution distiguishes between important treaties (listed in Art. 121(1)) whose ratification and denunciation demands a formal statute, and other treaties. Other (less important) treaties cannot be concluded by the executive branch alone, but the involvement of parliament is less intense. Parliament must not adopt a formal statute but can ratify the treaty by decision, taken with the majority of members of parliament (Art. 121(2)). This section 2 does not mention the denunciation of those minor treaties. The wording suggests that the denunciation of the minor treaties does not require an involvement of Parliament.

Andorra

114. Constitutional Provisions: *Constitution of 2 February 1993*

> Art: 64: "(1) The international treaties shall be approved by the General Council by absolute majority of the Chamber in the following cases: a. Treaties linking the State to an international organization; b. Treaties related to internal security and to defence; c. Treaties related to the territory of Andorra; d. Treaties affecting the fundamental rights regulated in TITLE II; e. Treaties implying the creation of new burdens for the Public Finances; f. Treaties creating or modifying dispositions of a legislative nature or requiring legislative measures for their implementation; g. Treaties dealing with diplomatic representation or consular functions, about judiciary or penitentiary cooperation.
> (2) The Govern shall inform the General Council and the Coprinces of the conclusion of the other international agreements.
> (3) The previous agreement of the absolute majority of the Chamber shall be required for the repeal of the international treaties affecting the matters enumerated in epigraph 1."
>
> Art. 65: "For the purpose of furthering the interests of the Andorran people, of international progress and peace, legislative, judicial and executive functions may be relinquished only to international organizations and by means of a treaty which shall be passed by a majority of two-thirds of the members of the General Council."
>
> Art. 45(1): "The Coprinces *[= President of France, Bishop of Urgell]* with the countersignature of the Head of Government, or when appropriate, of the Syndic General, as politically responsible: […] h) Express the consent of the State to honour its international treaties under the provisions of chapter III of TITLE IV of the Constitution."
>
> Art. 72(2): "Under the direction of its Head, the Govern conducts the national and international policy of Andorra. […]".

Comment
115. Denunciation ("repeal") is regulated in a parallelism of forms for the various types of important treaties. Less important treaties can be concluded and denounced without approval of parliament, but parliament must be informed about the conclusion. Nothing is said about an obligation to inform parliament about the denunciation of such treaties.

Armenia

116. Constitutional Provisions: *Constitution of the Republic of Armenia of July 5, 1995 (as amended to 2015)*

> Art. 116: " (1) The National Assembly shall ratify, suspend, or renounce international treaties that: 1. Concern the fundamental rights and freedoms, as well as obligations of citizens; 2.

"The Relationship between International Treaties and Domestic Law: A View from Albanian Constitutional Law and Practice", *Pace International Law Review* 24 (2012), 92 (pp. 98 et seq).

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Have a political or military nature; 3. Contemplate the membership of the Republic of Armenia in an international organization; 4. Contemplate financial or property obligations for the Republic of Armenia; 5. Imply a change of law or the adoption of a new law in order to be applied, or include norms that contradict a law; 6. Directly contemplate ratification; or 7. Contain matters that are subject to regulation by law.
(2) The National Assembly shall, by proposal of the Government, ratify, suspend, and denounce international treaties by means of adopting a law by majority vote of the total number of parliamentarians.
(3) International treaties contravening the Constitution may not be ratified."

According to Article 205 of the Constitution, accession of Armenia to supranational organisations and territorial changes – which both need an international treaty - shall be resolved by referenda.

Comment
117. A clear parallelism of forms is established in the constitution itself. Treaties that "concern fundamental rights and freedoms" are subject to authorisation by Parliament. Armenia has a Law on International Treaties of 2018 (https://www.arlis.am/documentview.aspx?docid=129479). But it is silent on the role of parliament in the termination of treaties. Article 92 of the Rules of Procedure of Parliament, by addressing under the same title the procedure for submitting and debating a draft law on the ratification, suspension or revocation of international treaties, confirms the parallel approach to ratification and revocation.

Austria

118. Constitutional Provisions: *Austria's Constitution of 1 October 1920, Reinstated in 1945 (as amended) (https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1930_1/ERV_1930_1.html)*

Art. 50: "(1) The conclusion of 1. Political state treaties and state treaties the contents of which modify or complement existent laws and do not fall under Art. 16 para 1, as well as 2. State treaties by which the contractual bases of the European Union are modified, require the approval of the National Council.
(2) To state treaties according to para 1 subpara 1 additionally the following applies:
1. In case a state treaty provides its simplified modification such modification does not require approval according to para 1, unless the National Council has reserved such approval.
2. State treaties approved according to para I subpara I require the approval of the Federal Council to the extent they settle matters falling within the autonomous sphere of competence of the Laender.
3. At the time of approval of a state treaty, the National Council can resolve to which extent the treaty in question shall be implemented by the issue of laws.
(3) Art. 42 paras I to 4 inclusive shall be analogously applied to resolutions of the National Council in accordance with paras I subpara I and para 2 subpara 3 above.
(4) Notwithstanding Art. 44 para 3 state treaties according to para 1 subpara 2 may only be concluded with the approval of the National Council and the approval of the Federal Council. These resolutions each require the presence of at least half of its members and the majority of two thirds of the votes cast. […]"

Comment
119. According to Article 50 para. 1 (1) of the Constitution, two types of treaties require parliamentary approval: (1) political treaties and (2) treaties the content of which modify or complement existing laws. The term "Political treaties" includes treaties, which are relevant for the existence of the state, its independency or its status in the international community (e.g. peace treaties). Usually, such treaties modify or complement existing laws. Accordingly, the first alternative of Article 50 para. 1 (1) is not of practical relevance.[67]

[67] Theo Öhlinger & Harald Eberhard, *Verfassungsrecht* (Vienna: Facultas, 12th edn 2019), para. 117.

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120. Practice and scholarship follow an *actus contrarius* approach by which parliamentary approval is required whenever a treaty was concluded with participation of the parliament.[68] This approach is not called into question or criticised.

Czech Republic

121. Constitutional Provisions: *Constitution of the Czech Republic of 16 December 1992 (as amended) (https://public.psp.cz/en/docs/laws/constitution.html)*

> Art. 49: "The assent of both Chambers of Parliament is required for the ratification of treaties: a) affecting the rights or duties of persons; b) of alliance, peace, or other political treaties; c) by which the Czech Republic becomes a member of an international organization; d) of a general economic nature; e) concerning additional matters, the regulation of which is reserved to statute."
>
> Art. 63(1): "In addition, the President of the Republic: […] b) negotiates and ratifies international treaties; she may delegate the negotiation of international treaties to the Government or, with its consent, to individual members thereof;"
>
> Art. 10: "Promulgated treaties, to the ratification of which Parliament has given its consent and by which the Czech Republic is bound, form part of the legal order; if treaty provides something other than that which statute provides, the treaty shall apply"
>
> Article 10a: "(1) Certain powers of Czech Republic authorities may be transferred by treaty to an international organization or institution.
> (2) The ratification of treaty under paragraph 1 requires the consent of Parliament, unless constitutional act provides that such ratification requires the approval obtained in referendum."

Comment
122. The Czech constitution enumerates familiar types of important treaties (which resemble the types mentioned in other states) that are subject to parliamentary approval. This includes treaties "affecting the rights or duties of persons".

123. While the Constitution of the Czech Republic is silent on the denunciation of treaties, in practice the approval by the Parliament is consistently sought and required. Originally, this practice had its basis in Article 33 of Guidelines for the Negotiation, National Deliberation, Implementation and Denunciation of International Treaties, adopted by the Government in 1993 (as an internal normative act).[69] This provision stipulated that *"treaties concluded with the approval of the parliament shall be denounced by the President of the Republic with the prior consent of the former organ"* (Article 33(2)). It is interesting to note that the revised guidelines, published in 2014 do not mention the role of the Parliament in the denunciation process (see Article 30(3)).[70] Despite that, the practice of requesting the approval by the Parliament has remained unaltered.

[68] Franz Cede & Gerhard Hafner, "Austria", in: Duncan B. Hollis, Merrit R. Blakeslee & L. Benjamin Ederington (eds.), *National Treaty Law and Practice* (Leiden/Boston: Nijhoff Publishers 2005), 59-90 (pp. 69-70); Theo Öhlinger & Andreas Th. Müller, "Art. 50", in: Karl Korinek, Michael Holoubek, Christoph Bezemek, Claudia Fuchs, Andrea Martin & Ulrich E. Zellenberg (eds.), *Österreichisches Bundesverfassungsrecht*, Volume I, Sub-Volume 3 (Vienna: Verlag Österreich/Heidelberg: C.F. Müller: loose-leaf-collection, 2018), para. 18.
[69] Government Resolution No. 328 of 16 June 1993.
[70] Government Resolution No. 131 of 11 February 2004.

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124. When considering the denunciation of any international treaty whose ratification is subject to parliamentary approval, the Government turns to the Parliament and requests its approval. It does it on the assumption, expressed several times in the requests for the approval, that *"although the Constitution does not regulate the specific procedure for the denunciation of international treaties, it can be inferred that it is necessary to proceed analogically as when adopting them".* The very same procedure that is foreseen for the ratification of international treaties (Articles 10, 10a and 49 of the Constitution) is thus followed in the process of their denunciation.

125. Over the years, the request has been repeatedly granted, mostly in case of bilateral treaties. In such cases, the President of the Republic then formally proceeded to the denunciation of the treaty. The information about such denunciation, published first in the Collection of Law and then, since its establishment in 2000, in the Collection of International Treaties, always indicates that the withdrawal from the treaty (or its termination) is carried out "following the approval of the Parliament of the Czech Republic".[71] In case where the Parliament does not grant the request, the Government does not proceed with the denunciation. That was for instance the case with the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,* and its Protocol, adopted in 1949 and acceded to by Czechoslovakia in 1958. In 2005, the Government requested the approval of the Parliament to withdraw from this convention. The Chamber of Deputies denied its approval[72] and the Government did not take any steps to withdraw from the treaty.

Denmark

126. Constitutional Provisions: *The Constitutional Act of Denmark of 5 June 1953 (as amended) (https://www.thedanishparliament.dk/en/democracy/the-constitutional-act-of-denmark)*

> Art. 19(1): „The King shall act on behalf of the Realm in international affairs. Provided that without the consent of the Folketing the King shall not undertake any act whereby the territory of the Realm will be increased or decreased, nor shall he enter into any obligation which for fulfillment requires the concurrence of the Folketing, or which otherwise is of major importance; nor shall the King, except with the consent of the Folketing, terminate any international treaty entered into with the consent of the Folketing."

Comment

127. The consent of Parliament is required only for specific treaties, for example where the concurrence of the Folketing is needed for the fulfilment of the international obligation in question. This refers mainly to cases where fulfilment necessitates national legislation to be passed (the Folketing is co-legislator). An obligation which is otherwise of major importance is, for example, the official recognition of another state. If a treaty has been entered into with the consent of the Folketing, consent is also required for termination. Such consent is required even if consent for entry was not mandatory.

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[71] See, for instance, Communication of the Ministry of Foreign Affairs No. 229/1997 Coll. on the termination of the Naturalization Convention between Czechoslovakia and the United States of America proclaimed under No. 169/1929 Coll.; Communication of the Ministry of Foreign Affairs No. 77/2005 Coll. IT on the termination of the Treaty between the Czechoslovak Socialist Republic and the Mongolian People's Republic on the regulation of dual citizenship; Communication of the Ministry of Foreign Affairs No. 55/2010 Coll. IT on the denunciation of the Underground Work (Women) Convention.

[72] Resolution of the Chamber of Deputies of the Parliament of the Czech Republic No 1939 of the 48th Meeting of 20 October 2005.

Estonia

128. Constitutional Provisions: *Constitution of the Republic of Estonia of 28 June 1992 (as amended to 2015)*

Art. 65: "The Riigikogu *[Parliament]* shall: […] 4. ratify and denounce international treaties, in accordance with Article 121 of the Constitution;"

Art. 121: "The Riigikogu shall ratify and denounce treaties of the Republic of Estonia: 1. which alter state borders; 2. the implementation of which requires the passage, amendment or repeal of Estonian laws; 3. by which the Republic of Estonia joins international organizations or unions; 4. by which the Republic of Estonia assumes military or proprietary obligations; 5. in which ratification is prescribed."

Comment
129. The constitution enumerates familiar types of important treaties (which resemble the types mentioned in other states) that are subject to approval and establishes a clear parallelism between conclusion and denunciation.

Finland

130. Constitutional Provisions: *The Constitution of Finland of 11 June 1999 (as amended to 2018) (*https://finlex.fi/en/laki/kaannokset/1999/en19990731.pdf*)*

Art. 94(1): "The acceptance of the Parliament is required for such treaties and other international obligations that contain provisions of a legislative nature, are otherwise significant, or otherwise require approval by the Parliament under this Constitution. The acceptance of the Parliament is required also for the denouncement of such obligations."

Comment
131. The constitution contains a rather broad and general clause about important "significant" treaties and establishes a clear parallelism of forms.

Hungary

132. Constitutional Provisions: *Fundamental Law of Hungary of 25 April 2011*

Art. 1(2): "The National Assembly: […] d) shall authorise the expression of consent to be bound by international treaties falling within its functions and powers"

Art. 9: "[…] (3) The President of the Republic: a) shall represent Hungary; […]
(4) The President of the Republic: a) shall, on the basis of authorisation of the National Assembly, express consent to be bound by international treaties;
(5) The counter-signature of a Member of the Government shall be required for all actions and decisions of the President of the Republic under Paragraph (4)."

Art. 8(3): "No national referendum *[which is called by Parliament under Art. 8(1) upon the initiative of part of the electorate of the President of the Republic]* may be held on: […] d) any obligation arising from international treaties"

Art. Q:
(1) In order to create and maintain peace and security, and to achieve the sustainable development of humanity, Hungary shall strive for cooperation with all the peoples and countries of the world.

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(2) In order to comply with its obligations under international law, Hungary shall ensure that Hungarian law is in conformity with international law.
(3) Hungary shall accept the generally recognised rules of international law. Other sources of international law shall become part of the Hungarian legal system by promulgation in laws.

133. With regard to accession to EU treaties, Art. E(2), (4) requires the votes of two-thirds of the Members of the National Assembly.

"Act L of 2005 on procedures relating to international agreements" (2005. évi L. törvény a nemzetközi szerződésekkel kapcsolatos eljárásról - https://net.jogtar.hu/jogszabaly?docid=a0500050.tv)

Section 7: "(1) Recognition of the binding effect of an international treaty may take place if, with the knowledge of the text of the treaty,
(a) in the case of an international treaty falling within the tasks and powers of the National Assembly, the National Assembly,
(b) in the case of an international agreement not falling under subparagraph (a), the Government gave authorisation to do so.

(2) The authorization to recognize the binding effect of an international treaty is contained in the law or government decree promulgating the international treaty (hereinafter: the promulgating legal act).

(3): "An international treaty shall fall within the competence of Parliament if
(a) it is an international treaty within the meaning of Article E(2) of the Fundamental Law *[those are: EU-treaties]*;
(b) regulates a subject matter which is provided for by law or which, under the Fundamental Law, must be provided for by a cardinal or other law, or
(c) concerns other matters falling within the competence of Parliament pursuant to Article 1(2)(a) to (c) and (e) to (k) of the Fundamental Law." *[those are: competences such as constitutional amendment, budget, election of the Prime Minster, etc]*

Section 9 (1) An international treaty falling within the functions and powers of Parliament shall - with the exception of paragraph (2) - be promulgated by Act. In other cases, the international treaty shall be promulgated by government decree.
(2) The annex to an international treaty not regulating the matters referred to in Section 7(3) shall be promulgated by government decree if the Act promulgating the international treaty authorises the Government to promulgate the annex by decree.

Section 12: "The provisions of Sections 4 to 10 shall apply mutatis mutandis to the amendment, suspension, termination, denunciation, withdrawal from, and, without prejudice to the provisions of an international treaty under Article E(2) of the Fundamental Law, to the decisions of the body established by the international treaty which establishes, modifies or terminates international legal rights and obligations for Hungary on the basis of the treaty's authorisation."

Comment
134. Hungary complements the constitutional provisions by detailed rules in a statute. The types of treaties that require parliamentary approval are the familiar ones. according to Section 9 (1) of Act L (2005) treaties shall be promulgated a) by Acts (in form of a statutes), or b) by government decrees.

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Latvia

135. Constitutional Provisions: *Constitution of the Republic of Latvia of 15 February 1922, Reinstated in 1991 (as amended) (https://likumi.lv/ta/en/en/id/57980)*

Art. 41: “The President shall represent the State in international relations, appoint the diplomatic representatives of Latvia, and also receive diplomatic representatives of other states. The President shall implement the decisions of the Saeima *[Parliament]* concerning the ratification of international agreements.”

Art. 68: “(1) All international agreements, which settle matters that may be decided by the legislative process, shall require ratification by the Saeima.
(2) Upon entering into international agreements, Latvia, with the purpose of strengthening democracy, may delegate a part of its State institution competencies to international institutions. The Saeima may ratify international agreements in which a part of State institution competencies are delegated to international institutions in sittings in which at least two-thirds of the members of the Saeima participate, and a two-thirds majority vote of the members present is necessary for ratification.
(3) Membership of Latvia in the European Union shall be decided by a national referendum, which is proposed by the Saeima.
(4) Substantial changes in the terms regarding the membership of Latvia in the European Union shall be decided by a national referendum if such referendum is requested by at least one-half of the members of the Saeima.”

136. Law on International Treaties of the Republic of Latvia of 13 January 1994 (“Par Latvijas Republikas starptautiskajiem līgumiem”) (https://likumi.lv/ta/en/en/id/57840#_ftnref1&pd=1)

Section 3(1): “The Saeima of the Republic of Latvia (hereinafter - the Saeima) may take a decision to conclude any international treaty, stating in its decision the persons responsible for drafting the specific treaty and the scope and content of their authority.”

Section 6(1): “If the decision to conclude an international treaty is taken by the Saeima, the authority to negotiate and sign the treaty shall be issued by the Saeima and signed by the President.”

Section 8: “Interstate treaties are ratified by a law adopted by the Saeima, on the basis of which the Ministry of Foreign Affairs shall prepare an instrument of ratification to be signed by the President and co-signed by the Minister for Foreign Affairs.”

Section 9: “The Saeima shall also ratify the following international treaties:
(1) treaties settling the issues to be decided under the legislative process;
(2) treaties on the residence (not related to training and manoeuvring) of the military personnel of the Republic of Latvia in foreign states, if the total number of personnel exceeds 200 persons and the period of residence exceeds one year;
(3) treaties on the residence (not related to training and manoeuvring) of the military formations of foreign states in Latvia, if the total number of personnel exceeds 100 persons per event and the period of residence exceeds six months, except within the framework of the North Atlantic Treaty Organisation, including agreements made with separate member states thereof on the residence of military formations in Latvia;
(4) treaties on the residence (not related to training and manoeuvring) of the military formations of such foreign states in Latvia, which are not member states of the North Atlantic Treaty Organisation or of the European Union;
(5) other treaties, if the ratification is explicitly provided for in the text of the treaty or if it is requested in a motivated application of the Cabinet.”

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Section 14: "(1) A decision to denounce international treaties or suspend their operation shall be taken by the Cabinet.
(2) If the international treaty was ratified by the Saeima or the Saeima adopted a law on accession to the international treaty, the Saeima shall adopt a law on denunciation of such international treaty, its suspension, or withdrawal."

Comment
137. The constitutional provisions are detailed in a statute. The requirement of enacting a law on the planned denunciation is spelled out only in the statute (of 1994), not in the constitution itself. The types of treaties that require parliamentary approval (for conclusion and denunciation) are the familiar ones.

Lithuania

138. Constitutional Provisions: *Constitution of the Republic of Lithuania of 25 October 1992 (as amended)*

Art. 67: "The Seimas *[Parliament]*: […] 16) shall ratify and denounce international treaties of the Republic of Lithuania and consider other issues of foreign policy;"

Art. 138: "The Seimas shall ratify or denounce the following international treaties of the Republic of Lithuania:
1) on the alteration of the State boundaries of the Republic of Lithuania;
2) on political co-operation with foreign states, mutual assistance treaties as well as treaties of defensive nature related to the defence of the State;
3) on the renunciation of the use of force or threatening by force as well as peace treaties;
4) on the presence and status of the armed forces of the Republic of Lithuania on the territories of foreign states;
5) on the participation of the Republic of Lithuania in universal international organisations and regional international organisations;
6) multilateral or long-term economic treaties.
Laws as well as international treaties may also provide for other cases when the Seimas ratifies international treaties of the Republic of Lithuania. […]."

139. Law on Treaties of 22 June 1999 (with amendments) (https://www.e-tar.lt/portal/lt/legalAct/TAR.5BCEC9B41811/asr)

Article 7. "Treaties of the Republic of Lithuania Subject to Ratification
1. The following treaties of the Republic of Lithuania shall be subject to ratification:
1) on the determination and changing of the state borders of the Republic of Lithuania, on the delimitation of its exclusive economic zone and continental shelf;
2) on political co-operation with foreign states, mutual assistance as well as defensive treaties relating to the state defence;
3) on refraining from the use of force or threat of force, also peace treaties;
4) on the stationing of the armed forces of the Republic of Lithuania and their status on the territories of foreign states;
5) on the participation of the Republic of Lithuania in universal international organisations and regional international organisations;
6) multilateral treaties;
7) on the stationing of foreign state armed units and their status on the territory of the Republic of Lithuania;
8) establishing legal norms other than the effective laws of the Republic of Lithuania;
9) long-term economic treaties which are concluded for over a 5 year period, provided that they do not foresee the possibility of a unilateral denunciation or a minimum term to notice about such a denunciation is longer than one year;

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10) international mixed treaties;
11) amendments to the Treaty on the Functioning of the European Union, which are adopted under Art. 48(6) of the Treaty on the European Union.
2. Also subject to ratification shall be treaties in which their ratification is provided for."
Article 8. "Procedure of Ratification of Treaties of the Republic of Lithuania
1. Treaties of the Republic of Lithuania shall be ratified by the Seimas of the Republic of Lithuania by a law.
2. Treaties of the Republic of Lithuania shall be submitted to the Seimas of the Republic of Lithuania for ratification by the President of the Republic of Lithuania on his own initiative or on the proposal of the Government."
Article 14. "Denunciation of Treaties of the Republic of Lithuania or Suspension of their Operation
[…] 2. The decision concerning denunciation of a treaty of the Republic of Lithuania or suspension of its operation according to the universally recognised norms of international law shall be taken by the Government of the Republic of Lithuania, except for the ratified valid treaties the issue of denunciation or suspension of operation whereof shall be decided by the Seimas of the Republic of Lithuania on the recommendation of the President of the Republic of Lithuania (on his initiative or upon the proposal of the Government of the Republic of Lithuania)".

Comment
140. A parallelism of forms is established in the constitution itself. The types of treaties whose ratification and denunciation lies in the competence of Parliament are the typical ones. The requirement to involve Parliament is extended by law to further treaties and can be extended by other treaties. The text of the constitution considers parliament as the decisive player in the ratification and denunciation of treaties, while the executive branch is given the right to initiate the conclusion or termination of treaties."

Moldova (Republic of)

141. Constitutional Provisions: *Constitution of the Republic of Moldova of 27 August 1994 (as amended) (https://www.presedinte.md/eng/constitution)*

Art. 66: "The Parliament shall be vested the following basic powers: […] g) to ratify, terminate, suspend and repeal the action of the international treaties concluded by the Republic of Moldova;"

Art. 86(1): "The President of the Republic of Moldova shall be empowered to hold official negotiations, to conclude international treaties on behalf of the Republic of Moldova and to submit them, in the manner and term established by the law, to the Parliament for ratification."

142. Law No. 595-XIV of 24.09.1999 on International Treaties of the Republic of Moldova, Monitorul Oficial al R. Moldova N 24-26/137 of 02.03.2000 (https://www.legislationline.org/documents/id/3661)

Art. 11: "(1) The Parliament of the Republic of Moldova shall make decisions on ratification, adoption, approval or accession of the Republic of Moldova to:
a) international treaties concluded on behalf of the Republic of Moldova;
b) international treaties, signed at the level of governments and related to any of the following categories: peace treaties; political treaties or treaties stipulating political obligations; treaties of military character that relate to the defense capacity of the Republic of Moldova, issues of disarmament or international control over weapons, provision of peace and security; territorial agreements; treaties that require adoption of new laws or amendments to existing ones; treaties on participation of the Republic of Moldova in international organizations; treaties

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stipulating financial obligations; treaties on the status of persons, fundamental human rights and freedoms; any treaties that directly include ratification in their provisions.

(2) If an international treaty requires adoption of new laws or amendment of existing ones, a draft law on ratification, adoption, approval of or accession to the international treaty and draft laws on changes in the legislation shall be simultaneously presented for consideration to the Parliament of the Republic of Moldova.

(3) No ratification, adoption, approval of or accession to an international treaty shall be allowed if the treaty limits the sovereign, independent or unitary character of the state, also affects its constant neutrality, as reflected in particular in recession or exchange of a territory, transfer of the national competence to the jurisdiction of a supranational structure or affiliation in collective security organizations, other than after considering the issue at a republican referendum."

Art. 24(4): "Decisions on suspension, denunciation or termination of an international treaty shall be made by the authority that made a decision on the consent of the Republic of Moldova to be bound by the treaty."

Comment
143. The constitutional provisions are detailed in a statute. The requirement of parliamentary involvement in a treaty denunciation (by "decision") is spelled out both in the constitution and in the statute of 1999.

144. The types of treaties that require parliamentary approval (for conclusion and denunciation) are the familiar ones. Importantly, the Moldovan statute specifically mentions "treaties on the status of persons, fundamental human rights and freedoms" whose denunciation requires a parliamentary decision.

The Netherlands

145. Constitutional Provisions: *Constitution of the Kingdom of the Netherlands of 24 August 1815 (as amended to 2018) (https://www.government.nl/documents/reports/2019/02/28/the-constitution-of-the-kingdom-of-the-netherlands)*

Art. 91(1): "The Kingdom shall not be bound by treaties, nor shall such treaties be denounced without the prior approval of the States General. The cases in which approval is not required shall be specified by Act of Parliament."
(2) The manner in which approval shall be granted shall be laid down by Act of Parliament, which may provide for the possibility of tacit approval.
(3) Any provisions of a treaty that conflict with the Constitution or which lead to conflicts with it may be approved by the Houses of the States General only if at least two-thirds of the votes cast are in favour.

Comment
146. The constitution sets out parliamentary involvement as the rule, both for conclusion and denunciation.

147. Sentence 2 refers to a statute which spells out the exceptions. Various treaties can be concluded and denounced without parliamentary consent. They mostly concern treaties of minor relevance: examples are merely implementing treaties, treaties for a limited duration of less than one year or extensions of already existing treaties.[73]

[73] Jan Klabbers, "The New Dutch Law on the Approval of Treaties", *International and Comparative Law Quarterly* 44 (1995), 629-643.

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Slovenia

148. Constitutional Provisions: *Constitution of the Republic of Slovenia of 23 December 1991 (https://www.us-rs.si/media/constitution.pdf)*

Art. 86: "The National Assembly may pass decisions if a majority of deputies are present at the session. The National Assembly adopts laws and other decisions and ratifies treaties by a majority of votes cast by those deputies present, save where a different type of majority is provided by the Constitution or by law."

Art. 107: "The President of the Republic: […] issues instruments of ratification"

Art. 8: "Laws and regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly."

149. Foreign Affairs Act of 25 May 2001, Official Gazette No. 45/01 of 7 June 2001 ("Zakon o zunanjih zadevah" - *official translation of the Slovenian government).*

Art. 75: "[…] (4) International treaties shall be ratified by the National Assembly, with the exception of those which, in accordance with paragraph six of this Article, are ratified by the Government. […]
(6) The Government shall ratify international treaties that: regulate matters which, according to internal legal order, fall within the competence of the Government; are concluded with the aim of implementing the instruments of international organisations binding on the Republic of Slovenia; are concluded with the aim of implementing concluded international treaties; are concluded by ministries and deal with the exchange of experience and maintenance of contacts with ministries in other countries; regulate issues associated with diplomatic and consular relations; involve the implementation of assumed obligations or adopted decisions on international cooperation of the Republic of Slovenia in the field of defence or internal affairs. […]
(8) The Government shall have the competence to ratify international treaties referred to in paragraph five of this Article only if such treaties do not require the passing of new laws or the amending of laws already in force."

Art. 86: "(1) Authority to denounce an international treaty shall rest with the Government.
(2) The denunciation of an international treaty that has been ratified by the National Assembly shall require the consent of the competent National Assembly working body."

Comment
150. Denunciation is not mentioned in the constitution itself, but is regulated only in the Foreign Affairs Act.
Competence for the conclusion (ratification) of treaties is split up between Parliament and Government, with a preponderance of parliament. The position of the government for the denunciation appears slightly stronger: its competence to denounce a treaty is established as the fallback-rule. Nevertheless, a parallelism of forms for ratification and denunciation is clearly established.

Spain

151. Constitutional Provisions: *The Spanish Constitution of 31 October 1978 (as amended) (https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf)*

Art. 74: "(2) The decisions of the Cortes Generales specified in sections 94(1), 145(2) and 158(2) shall be taken by a majority vote of each of the Houses. In the first case, the

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procedure shall be initiated by the Congress, and in the remaining two by the Senate. In any case, if an agreement is not reached between the Senate and the Congress, an attempt to reach agreement shall be made by a Mixed Committee consisting of an equal number of Members of Congress and Senators. The Committee shall submit a text which shall be voted on by both Houses. If this is not approved in the established manner, the Congress shall decide by overall majority"

[comment: and, if it is the case, the special regime for every European Treaty and other treaties with secession of sovereignty by the State (only used for the ratification of the Statute of International Criminal Court in Ley Orgánica 6/2000): art. 93 SC]

Art. 93:
Authorization may be granted by an organic act for concluding treaties by which powers derived from the Constitution shall be transferred to an international organization or institution. It is incumbent on the Cortes Generales or the Government, as the case may be, to ensure compliance with these treaties and with resolutions originating in the international and supranational organizations to which such powers have been so transferred.

Art. 94: " (1) Before contracting obligations by means of treaties or agreements, the State shall require the prior authorisation of the Cortes Generales in the following cases: a) treaties of a political nature; b) treaties or agreements of a military nature; c) treaties or agreements affecting the territorial integrity of the State or the fundamental rights and duties established under Title I; d) treaties or agreements which imply financial liabilities for the Public Treasury; e) treaties or agreements which involve amendment or repeal of some law or require legislative measures for their execution.
(2) Congress and the Senate shall be informed forthwith regarding the conclusion of other treaties or agreements."

Art. 96: "(1) Validly concluded international treaties, once officially published in Spain, shall form part of the internal legal order. Their provisions may only be repealed, amended or suspended in the manner provided in the treaties themselves or in accordance with the general rules of international law.
(2) The same procedure shall be used for denouncing international treaties and agreements as that, provided in Article 94, for entering into them."[74]

A brief comment of each art. in Spanish: 94 and 96.

https://app.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=94&tipo=2

https://app.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=96&tipo=2

Art. 63(2): "It is incumbent upon the King to express the State's assent to the entering into of international commitments through treaties, in conformity with the Constitution and the law."

Comment
152. A clear parallelism of forms is established in the constitution itself. Treaties "affecting […] fundamental rights and duties" are subject to authorisation by Parliament.

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[74] See the following short comments on Article 94 and 96 (in Spanish):
https://app.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=94&tipo=2
https://app.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=96&tipo=2

Sweden

153. Constitutional Provisions: *Instrument of Government of 6 June 1809 (as amended) (https://www.riksdagen.se/globalassets/07.-dokument--lagar/the-instrument-of-government-2015.pdf)*

Chapter 10, Art. 1: "Agreements with other states or with international organisations are concluded by the Government."

Chapter 10, Art. 3: "The Riksdag's *[Parliament]* approval is required before the Government concludes an international agreement which is binding upon the Realm: 1. if the agreement requires the amendment or abrogation of an act of law or the enactment of a new act of law; 2. or if it otherwise concerns a matter to be decided by the Riksdag.
[…2nd sentence on Riksdag-procedures…]
The Riksdag's approval is also required in cases other than those under paragraph one, before the Government concludes an international agreement which is binding upon the Realm, if the agreement is of major significance. The Government may however act without obtaining the Riksdag's approval if the interests of the Realm so require. In such a case the Government shall instead confer with the Advisory Council on Foreign Affairs before concluding the agreement."

Chapter 10, Art. 5: "The rules laid down in Articles 1 to 4 apply in a similar manner to the commitment of the Realm to an international obligation in a form other than an agreement, and to the denunciation of an international agreement or obligation."

Comment
154. A clear parallelism of forms is established in the constitution itself. The type of treaties subject to "prior approval" authorisation by Parliament is *inter alia* broadly described by a general clause ("major significance").

Switzerland

155. Constitutional Provisions: *Federal Constitution of the Swiss Federation of 18 April 1999 (https://www.fedlex.admin.ch/eli/cc/1999/404/en)*

Art. 166: "(1)The Federal Assembly shall participate in shaping foreign policy and supervise the maintenance of foreign relations. (2) It shall approve international treaties, with the exception of those that are concluded by the Federal Council under a statutory provision or an international treaty."

Art. 184: "(1) The Federal Council is responsible for foreign relations, subject to the right of participation of the Federal Assembly; it represents Switzerland abroad. (2) It signs and ratifies international treaties. It submits them to the Federal Assembly for approval. (3) Where safeguarding the interests of the country so requires, the Federal Council may issue ordinances and rulings. Ordinances must be of limited duration."

Art. 140: " (1) The following must be put to the vote of the People and the Cantons: a) amendments to the Federal Constitution; b) accession to organisations for collective security or to supranational communities; […]"

Art. 141: "If within 100 days of the official publication of the enactment any 50,000 persons eligible to vote or any eight Cantons request it, the following shall be submitted to a vote of the People: […] d. international treaties that: 1. are of unlimited duration and may not be terminated; 2. provide for accession to an international organization; 3. contain important legislative provisions or whose implementation requires the enactment of federal legislation."

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Art. 147: "The Cantons, the political parties and interested groups shall be invited to express their views when preparing important legislation or other projects of substantial impact as well as in relation to significant international treaties."

156. Federal Act on the Federal Assembly of 13 December 2002 (as amended to December 2020) (https://www.fedlex.admin.ch/eli/cc/2003/510/en)

Art. 24: "(1) The Federal Assembly shall follow international developments and participate in the decision-making process on important foreign policy issues.
(2) It shall approve the conclusion or amendment of or the withdrawal from international treaties, unless the Federal Council may conclude, amend or withdraw from the treaty at its own behest under Articles 7a and 7bbis of the Government and Administration Organisation Act of 21 March 1997
(3) If the conclusion or amendment of or withdrawal from the international treaty is subject to a referendum, the Federal Assembly shall approve the conclusion, amendment or withdrawal by issuing a federal decree. If this is not the case, it shall approve the conclusion, amendment or withdrawal by issuing a simple federal decree.
(4) It shall participate in international parliamentary conferences and cultivate relations with foreign parliaments."

157. Government and Administration Organisation Act (RVOG) of 21 March 1997 (as amended to December 2019) (https://www.fedlex.admin.ch/eli/cc/1997/2022_2022_2022/en)

Art. 7a: "(1) The Federal Council may conclude, amend or withdraw from treaties under international law at its own behest in as far as it is authorised to do so by a federal act or by an international treaty approved by the Federal Assembly. Authorisation to conclude an international treaty includes authorisation to amend or withdraw from it.
(1bis) It may withdraw from an international treaty at its own behest in as far as the Federal Constitution provides for withdrawal.
(2) It may conclude international treaties of limited scope at its own behest. It may likewise independently make amendments of limited scope to treaties or withdraw from international treaties of limited scope.
(3) International treaties or amendments of limited scope are those that: a) do not create new obligations for Switzerland and do not constitute a waiver of existing rights; b) serve to implement treaties approved by the Federal Assembly and simply provide more detail on rights, obligations or organisational principles that are already set out in the main treaty; c) primarily concern the authorities and involve technical administrative issues.
(4) International treaties or amendments of limited scope do not include those that: a) meet any of the requirements for an optional referendum on an international treaty under Article 141 paragraph 1 letter d of the Federal Constitution; b) contain provisions on matters the regulation of which falls solely under cantonal jurisdiction; c) cause non-recurring expenditure exceeding five million francs or recurring expenditure of more than two million francs per year."

Art. 7b: "(1) Where the Federal Assembly is responsible for approving the conclusion of or amendment to an international treaty, the Federal Council may determine or agree the provisional application of the treaty without the approval of the Federal Assembly when it is necessary to safeguard important Swiss interests and the matter is of particular urgency.
(1bis) It shall refrain from applying the treaty provisionally if the competent committees of both Councils are against doing so.
(2) The provisional application of an international treaty ends if the Federal Council fails to present the Federal Assembly with a draft of a federal decree on the treaty in question within six months.
(3) The Federal Council shall notify the parties to the treaty of the termination of the provisional application."

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Art. 7b^{bis}: "(1) Where the Federal Assembly is responsible for approving withdrawal from an international treaty, the Federal Council may withdraw from the treaty without the approval of the Federal Assembly if it is necessary to do so in order to safeguard important interests of Switzerland and if there is a particular urgency in doing so.
(2) It may not withdraw urgently if the responsible committees of both chambers object to withdrawal."

Comment
158. Switzerland possesses probably the most detailed rules on denunciation of international treaties.[75] The fallback rule is a joint competence of government and parliament.

159. Denunciation is not mentioned in the constitution itself. The procedures for denunciation are fleshed out in great detail in several statutes.

160. Government may act alone only in less important cases. The form of parliamentary approval is a federal decree (not a formal statute). In certain cases, the Swiss people may or must additionally vote on the denunciation.

161. In 2019, a new legislative provision (Art. 7b^{bis}) was inserted in the Government and Administration Organisation Act (RVOG) which allows the government to withdraw from a treaty without the approval of the Parliament in important and urgent cases.[76] (This emergency power to denounce is established as a parallel to the emergency power to conclude a treaty).

2. (Semi-) Presidential Systems: 12 states

Azerbaijan

162. Constitutional Provisions: *Constitution of the Republic of Azerbaijan of 12 November 1995 (as amended to 2016)*

Art. 95(1): "The Milli Majlis *[Parliament]* of the Republic of Azerbaijan is competent to determine the following matters: […] 4) the ratification and denunciation of international treaties and intergovernmental agreements containing rules contrary to the laws of the Republic of Azerbaijan";

In 2009 this constitutional provision was amended and now it provides that the Milli Majlis is empowered to decide the following issues […] (4) the ratification and denunciation of inter-state treaties, and of those inter-governmental agreements that contain rules contradicting the laws of the Republic of Azerbaijan. So, all inter-state treaties and only those inter-governmental agreements that contain rules contradicting the laws of the Republic of Azerbaijan shall be ratified (denounced) by the Parliament.

Art. 109: "The President of the Republic of Azerbaijan: […] 17) concludes international treaties and intergovernmental agreements, submits international and intergovernmental agreements

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[75] See for overviews: Nina Blum, Vera Naegeli, Anne Peters, Die verfassungsmässigen Beteiligungsrechte der Bundesversammlung und des Stimmvolkes an der Kündigung völkerrechtlicher Verträge, Schweizerisches Zentralblatt für Staats- und Verwaltungsrecht 114 (2013), 527-562; Raffaela Kunz & Anne Peters, "Constitutionalisation and Democratisation of Foreign Affairs: The Case of Switzerland", in: Anneli Albi and Samo Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law* (The Hague: Asser Press 2019; Berlin/Heidelberg Springer 2019), 1491-1522; Elisabeth Chiariello, *Kündigung von völkerrechtlichen Verträgen*, 31 LeGes (2020), 2-6.
[76] Inserted by No. I 2 of the federal law of 21 June 2019 (*Bundesgesetz über die Zuständigkeiten für den Abschluss, die Änderung und die Kündigung völkerrechtlicher Verträge*), in force since 2 Dec. 2019 (AS 2019 3119; BBl 2018 3471 5315).

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containing rules contrary to the laws of the Republic of Azerbaijan to the Milli Majlis of the Republic of Azerbaijan for ratification or denunciation, and signs decrees on the ratification of international treaties and agreements;"
This Article was amended in 2009 in accordance with the revised Article 95.

This division of international treaties (between those whose ratification and denunciation has to be submitted to Parliament and the other ones) can be also viewed in the Law on the procedure of conclusion, execution and denunciation of international treaties of the Republic of Azerbaijan

Comment
163. The constitution establishes a parallelism of forms. Parliament is involved only when the conclusion of an international treaty requires the amendment of domestic law. If such a treaty needs to be denounced, parliament again has to approve.

Bosnia & Herzegovina

164. Constitutional Provisions: *Constitution of the of Bosnia and Herzegovina of 14 December 1995*

Art. IV(4): "The Parliamentary Assembly shall have responsibility for: […] d) Deciding whether to consent to the ratification of treaties".

Art. V(3): "The Presidency shall have responsibility for: […] d) Negotiating, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties of Bosnia and Herzegovina."

165. Law on the Conclusion and Execution of International Treaties of 30 November 2000 (https://mft.gov.ba/Content/OpenAttachment?id=53125a9a-0616-46dd-bb28-a8efa34493fb&lang=bs))

Article 33: "(1) International treaty is denounced or withdrawn from in accordance with the provisions of such treaty or according to the general rules of international customary and international treaty law.
(2) The denunciation or withdrawal from an international treaty by Bosnia and Herzegovina is made upon the decision of the Presidency of Bosnia and Herzegovina, on its own initiative or on the proposal of the Council of Ministers of Bosnia and Herzegovina, upon the previously obtained consent of the Parliamentary assembly of Bosnia and Herzegovina."

Comment
166. The legal situation concerning the power to denounce treaties is not clear. Considering that this question involves a situation that is regulated by law, it cannot be concluded that either the Presidency or the Parliamentary Assembly have the sole jurisdiction to approve the denunciation of the treaties. In the procedure of review of constitutionality before the Constitutional Court of BiH this issue was not raised.

Bulgaria

167. Constitutional Provisions: *Constitution of the Republic of Bulgaria of 12 July 1991 (as amended to 2007) (https://www.parliament.bg/en/const)*

Art. 85: "(1) The National Assembly shall ratify or denounce by law all international treaties which: 1. Are of a political or military nature; 2. Concern the Republic of Bulgaria's participation in international organizations; 3. Envisage corrections to the borders of the Republic of Bulgaria; 4. Contain obligations for the treasury; 5. Envisage the State's participation in

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international arbitration or legal proceedings; 6. Concern fundamental human rights; 7. Affect the action of the law or require new legislation in order to be enforced; 8. Expressly require ratification; 9. Confer to the European Union powers ensuing from this Constitution."

Art. 98: "The President of the Republic shall: […] 3. Conclude international treaties in the circumstances established by the law;"

Art. 106: "The Council of Ministers shall manage the implementation of the state budget; organize the management of the state's assets; conclude, confirm or denounce international treaties when authorized to do so by law."

Art. 158. The Grand national Assembly shall exercise the following powers: […] 2. resolve on the matter concerning a change of the territory of the Republic of Bulgaria, and ratify any international treaties providing for any such changes;

Comment
168. According to the case law of the Constitutional court the legislature is not bound by art. 85.1 of the Constitution in such a way that it precludes the parliament from ratification of other international agreements[77]. A clear parallelism of forms is established in the constitution itself. Treaties concerning "fundamental human rights "are subject to authorisation by Parliament.
Bulgaria has a special Law on International Treaties of the Republic of Bulgaria of 2001 (https://www.lex.bg/laws/ldoc/2135213056). This law is silent on termination of treaties.

Croatia

169. Constitutional Provisions: *Constitution of the Republic of Croatia of 22 December 1990 (as amended to 2014) (https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf*)

Art. 132: "Pursuant to the Constitution, law and rules of international law, the concluding of international treaties, depending on the nature and content of the international treaty, shall be under the competence of the Croatian Parliament, the President of the Republic or the Government of the Republic of Croatia."

Art. 133: "(1) The Croatian Parliament shall ratify all international treaties which require the adoption of amendments to laws, international treaties of a military and political nature, and international treaties which give rise to financial commitments for the Republic of Croatia.
(2) International treaties which grant an international organisation or alliance powers derived from the Constitution of the Republic of Croatia shall be ratified by the Croatian Parliament by a two-thirds majority of all Members of Parliament.
(3) The President of the Republic shall sign the documents of ratification, accession, approval or acceptance of international treaties ratified by the Croatian Parliament in conformity with paragraphs (1) and (2) of this Article.
(4) International treaties which are not subject to ratification by the Croatian Parliament shall be concluded by the President of the Republic, at the proposal of the Government, or by the Government of the Republic of Croatia."

Art. 134: "International treaties which have been concluded and ratified in accordance with the Constitution, which have been published and which have entered into force shall be a component of the domestic legal order of the Republic of Croatia and shall have primacy over domestic law. Their provisions may be altered or repealed only under the conditions and in the manner specified therein or in accordance with the general rules of international law."

[77] Decision No.9/ 1999 on c.c. No. 8/1999.

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170. Law on the Conclusion and Execution of International Treaties (1996, text here: https://narodne-novine.nn.hr/clanci/sluzbeni/1996_04_28_542.html)

> Article 41: International treaty shall be denounced or withdrawn in accordance with the provisions of the treaty itself or under the rules of general international law.
> The denuciation or withdrawal from the international treaty by the Republic of Croatia is carried out according to the provisions of this Act applicable to the conclusion of international treaties.

Comment – Denunciation of Treaties
171. The *Law on the procedures for the conclusion and implementation of international agreements* ("Zakon o sklapanju i izvršavanju međunarodnih ugovora", 1996) contains detailed provisions also on the denunciation of treaties.

172. According to unofficial translations Art. 41 of the law foresees that the denunciation of treaties must follow the procedures on the conclusion/ratification. This would mean that under Art. 18 of the law a parliamentary approval is needed for all treaties mentioned in Art. 133 of the constitution, both for conclusion and denunciation.

Georgia

173. Constitutional Provisions: *Constitution of the Republic of Georgia of 24 August 1995 (as amended to 2020*)

> Art. 47: (1) "The Parliament of Georgia shall ratify, denounce and annul international treaties by a majority of the total number of its members. Parliament shall ratify, denounce and annul international treaties provided for by paragraph 2(c) of this article by a majority of at least three fourths of the total number of its members.
> (2) Besides those international treaties that envisage ratification, it shall also be mandatory to ratify international treaties that: a. provide for Georgia's accession to an international organisation or interstate union; b. are of a military nature; c. concern the territorial integrity of the State or changes to the state border; d. concern loans issued or taken by the State; e. require changes to domestic legislation or the adoption of laws that are necessary to fulfil international obligations.
> (3) Other international treaties shall be submitted to Parliament."
>
> Art. 52(1): "The President of Georgia shall: a. with the consent of the Government, exercise representative powers in foreign relations, negotiate with other states and international organisations, conclude international treaties, and accept the accreditation of ambassadors and other diplomatic representatives of other states and international organisations; upon nomination by the Government, appoint and dismiss ambassadors and other heads of diplomatic missions of Georgia;"
>
> Art. 55(3): "3. The Prime Minister shall represent Georgia in foreign relations and conclude international treaties on behalf of Georgia."

Comment
174. Parliamentary involvement is foreseen for both ratification and denunciation. Treaties on territorial changes require a ¾ majority of members of Parliament.

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Montenegro

175. Constitutional Provisions: *Constitution of Montenegro of 19 October 2007 (as amended to 2013)*

Art. 82: "The Parliament shall […] (17) confirm international agreements"
A pre-2013 translation of the constitution[78] and practice suggests that "confirm" is to be understood as "ratify".

Art. 100: "The Government shall: […] (4) sign international agreements"

176. Law on the Conclusion and Execution of International Treaties of 16 December 2008 (http://www.podaci.net/_gCGO/zakoni/Zakon_o_zakljucivanju_i_izvrsavanju_medjunarodnih_ugovora/olhwoz.html)

Art. 27: "An international agreement shall be terminated or withdrawn in accordance with the provisions of that agreement or in accordance with generally accepted rules of international law."
The provisions of this Law which shall apply to the procedure of cancellation or withdrawal from an international agreement by Montenegro are those relating to the conclusion of treaties.

Art. 14: "The Parliament of Montenegro (hereinafter: the Parliament) confirms international agreements that require the adoption of new or amendments to existing laws, international agreements concerning accession to political or military alliances, as well as international agreements whose provisions explicitly provide for their confirmation."

Art. 15: "An international agreement is confirmed by law. […]"

Comment
177. While the constitution is silent on questions of denunciation, Articles 27 and 14 of the above-stated law establish a clear parallelism of forms: if parliamentary consent is required upon the conclusion of a treaty, the same applies to its denunciation. Yet the types of treaties for which such approval is necessary are quite limited (see Article 14).

Poland

178. Constitutional Provisions: *Constitution of the Republic of Poland of 2 April 1997 (as amended) (https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm)*

Art. 89: "1) Ratification of an international agreement by the Republic of Poland, as well as renunciation thereof, shall require prior consent granted by statute - if such agreement concerns: 1. peace, alliances, political or military treaties; 2. freedoms, rights or obligations of citizens, as specified in the Constitution; 3. the Republic of Poland's membership in an international organization; 4. considerable financial responsibilities imposed on the State; 5. matters regulated by statute or those in respect of which the Constitution requires the form of a statute.
2) The President of the Council of Ministers (the Prime Minister) shall inform the Sejm of any intention to submit, for ratification by the President of the Republic, any international agreements whose ratification does not require consent granted by statute.
(3.)The principles of and procedures for the conclusion and renunciation of international agreements shall be specified by statute."

[78] Non-official translation but issued by the CoE.

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Art. 90: "(1) The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters.
(2) A statute, granting consent for ratification of an international agreement referred to in para.1, shall be passed by the Sejm by a two-thirds majority vote in the presence of at least half of the statutory number of Deputies, and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of Senators.
(3) Granting of consent for ratification of such agreement may also be passed by a nationwide referendum in accordance with the provisions of Article 125 […]"

Art. 133: "(1) The President of the Republic, as representative of the State in foreign affairs, shall: 1. ratify and renounce international agreements, and shall notify the Sejm and the Senate thereof; […]"

Art. 146(4): To the extent and in accordance with the principles specified by the Constitution and statutes, "the Council of Ministers, in particular, shall: […] 10. conclude international agreements requiring ratification as well as accept and renounce other international agreements; […]"

179. Law on International Treaties of 14 April 2000 (https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20000390443)

Article 22: The provisions of Article 14 on the request for ratification or approval of an international treaty and Article 15 on the submission of an international treaty to the President of the Republic of Poland for ratification or approval of paragraphs 1 and 2 shall apply mutatis mutandis to the termination of an international agreement by the Republic of Poland.

Comment
180. A parallelism of forms is established in the constitution itself. The required form of the consent is a statute. The type of treaties whose denunciation lies in the competence of Parliament are the typical ones. The transfer of powers to international organisations is regulated separately and with strict requirements (qualified majority or referendum), but the denunciation of such a treaty (relating to international organisations) is not mentioned.

Romania

181. Constitutional Provisions: *The Romanian Constitution of 21 November 1991 (https://www.presidency.ro/en/the-constitution-of-romania)*

Art. 11(2): "The treaties ratified by Parliament in accordance with the law are part of the domestic legal order"

Art. 75(1): "Bills and legislative proposals concerning the ratification of treaties or other international agreements and the legislative measures relating to the implementation of such treaties and agreements, as well as Government bills of organic laws […] shall be submitted first to the Chamber of Deputies for debate and adoption. The other bills or legislative proposals shall be submitted first to the Senate for debate and adoption."

Art. 91(1): "On behalf of Romania, the President concludes international treaties negotiated by the Government and submits them to Parliament for ratification within a reasonable time. The other treaties and international agreements are concluded, approved and ratified in accordance with the procedure established by law."

182. Law No. 4 of 11 January 1991 on the conclusion and ratification of treaties ("Lege Nr. 4 din 11 ianuarie 1991 privind incheierea si ratificarea tratatelor" – AI-translation)

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Art. 4: “(1) International treaties signed on behalf of Romania, as well as agreements, conventions and understandings signed at the level of the Romanian government, which refer to political and military cooperation, those which require the adoption of new laws or the revision of existing laws, as well as those which imply a political or financial commitment or refer to issues concerning the political and territorial regime of the state or the status of persons, citizens’ rights and freedoms or participation in international organizations, as well as those which expressly provide for this, are submitted to Parliament for ratification by law.
(2) The provisions of para. 1 concerning ratification by Parliament shall also apply to accession to the international treaties provided for in this paragraph.
(3) Denunciation of treaties referred to in paragraphs 1 and 2 shall follow the same procedure.”

Original: *“(1) Tratatele internationale semnate in numele Romaniei, precum si acordurile, conventiile si intelegerile semnate la nivelul guvernului roman, care se refera la colaborarea politica si militara, cele care fac necesara adoptarea unor legi noi sau revizuirea legilor in vigoare, precum si cele care implica un angajament politic sau financiar ori se refera la probleme privind regimul politic si teritorial al statului sau la statutul persoanelor, drepturile si libertatile cetatenesti sau participarea la organizatii internationale, precum si acelea care prevad expres aceasta, sint supuse Parlamentului pentru ratificare prin lege.*
(2) Prevederile alin. 1 cu privire la ratificarea de catre Parlament se aplica si pentru aderarea la tratatele internationale prevazute in acest alineat.
(3) Denuntarea tratatelor internationale prevazute la alin. 1 si 2 urmeaza aceeasi procedura.”

Comment
183. The types of treaties that are subject to ratification and denunciation by Parliament are circumscribed not in the constitution itself but in the relevant statute. The statute establishes a parallelism of forms. The important treaties mentioned here are the typical ones. They include treaties concerning “citizens’ rights and freedoms.”

Russia

184. Constitutional Provisions: *Constitution of the Russian Federation of 12 December 1993 (http://archive.government.ru/eng/gov/base/54.html)*

Art. 86: “The President of the Russian Federation: a) shall direct the foreign policy of the Russian Federation; b) shall hold negotiations and sign international treaties of the Russian Federation; c) shall sign instruments of ratification; d) shall receive letters of credence and letters of recall of diplomatic representatives accredited to his (her) office.”

Art. 106: “Federal laws adopted by the State Duma on the following issues must compulsorily be examined by the Council of Federation *[second chamber]*: […] d) ratification and denunciation of international treaties of the Russian Federation;”

Art. 125:
[…]
2. The Constitutional Court of the Russian Federation upon requests of the President of the Russian Federation, the Council of the Federation, the State Duma, one fifth of the members of the Council of the Federation or of the deputies of the State Duma, the Government of the Russian Federation, the Supreme Court of the Russian Federation and the Higher Arbitration Court of the Russian Federation, the bodies of legislative and executive power of the subjects of the Russian Federation shall consider cases on the correspondence to the Constitution of the Russian Federation of:
[…]
d. international treaties and agreements of the Russian Federation which have not come into force.

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[…]
6. Acts or their certain provisions recognized as unconstitutional shall become invalid; international treaties and agreements not corresponding to the Constitution of the Russian Federation shall not be liable for enforcement and application.

185. Federal Law No. 101-FZ of July 15, 1995 on the International Treaties of the Russian Federation (34 I.L.M. 1370 (1995))

Art. 13: Powers to conduct negotiations and to sign international treaties of the Russian Federation shall be provided:
(a) with respect to treaties to be concluded in the name of the Russian Federation: by the President of the Russian Federation, and with respect to treaties to be concluded in the name of the Russian Federation with regard to questions relegated to the jurisdiction of the Government of the Russian Federation: by the Government of the Russian Federation. Powers to conduct negotiations and to sign the said treaties shall be formalized in the name of the President of the Russian Federation or in the name of the Government of the Russian Federation by the Ministry of Foreign Affairs of the Russian Federation;
(b) with respect to treaties to be concluded in the name of the Government of the Russian Federation: by the Government of the Russian Federation. Powers to conduct negotiations and to sign the said treaties shall be formalized in the name of the Government of the Russian Federation by the Ministry of Foreign Affairs of the Russian Federation;
(c) with respect to treaties of an interdepartmental character : by a federal minister or director of another federal agency of executive power.

Art. 14: "In accordance with the Constitution of the Russian Federation the ratification of international treaties of the Russian Federation shall be effectuated in the form of a Federal Law."

Art. 15: "(1) International treaties of the Russian Federation shall be subject to ratification:
a) the performance of which requires changes of prevailing or the adoption of new federal laws, and also the establishing of other rules than those provided for by a law;
b) the subject of which is the basic rights and freedoms of man and citizen;
c) concerning the territorial demarcation of the Russian Federation with other States, including treaties on the course of the State boundary of the Russian Federation, and also the demarcation of the exclusive economic zone and continental shelf of the Russian Federation;
d) on the basic principles of inter-State relations, regarding questions affecting the defense capability of the Russian Federation, regarding questions of disarmament or international control over armaments, regarding questions of ensuring international peace and security, and also peace treaties and treaties on collective security;
e) on the participation of the Russian Federation in inter-State unions, international organizations, and other inter-State associations, if such treaties provided for the transfer to them of the effectuation of part of the powers of the Russian Federation or establish the legal bindingness of decisions of their organs for the Russian Federation.
(2) International treaties of the Russian Federation likewise shall be subject to ratification when during the conclusion of which the parties have stipulated subsequent ratification.

Art. 37: (1) The termination (including denunciation) and suspension of the operation of international treaties of the Russian Federation shall be effectuated in accordance with the conditions of the treaty itself and norms of international law by the agency which adopted the decision concerning consent to the bindingness of the international treaty for the Russian Federation.

(2) The President of the Russian Federation shall adopt, if this is necessary, decisions concerning the termination or suspension of the operation of international treaties of the

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Russian Federation, the consent to the bindingness of which for the Russian Federation was given by the Government of the Russian Federation.

(3) The State Duma shall consider proposals concerning the termination or suspension of the operation of international treaties of the Russian Federation and after the preliminary discussion in committees and commissions of the State Duma shall adopt respective decisions. Federal Laws adopted by the State Duma concerning termination (including denunciation) or suspension of the operation of international treaties of the Russian Federation shall be subject, in accordance with the Constitution of the Russian Federation, to obligatory consideration in the Soviet of the Federation. A Federal Law adopted by the Federal Assembly of the Russian Federation concerning the termination (including denunciation) or suspension of the operation of an international treaty of the Russian Federation shall be sent, in accordance with the Constitution of the Russian Federation, to the President of the Russian Federation for signature and promulgation.

(4) The operation of an international treaty of the Russian Federation, the decision concerning consent to the bindingness of which for the Russian Federation was adopted in the form of a Federal Law may be suspended by the President of the Russian Federation in instances requiring the taking of urgent measures, with the obligatory immediate informing of the Soviet of the Federation and the State Duma and the submission to the State Duma of a draft respective Federal Law. In the event the State Duma rejects the draft Federal Law concerning the suspension of the operation of an international treaty of the Russian Federation, the operation of the treaty shall be subject to immediate renewal.

[...]

(7) Decisions concerning the termination (including denunciation) and suspension of the operation of international treaties in which the Russian is a party as the State-continuer of the U.S.S.R. shall be adopted by agencies of State power of the Russian Federation in accordance with their competence established by the Constitution of the Russian Federation, by the present Federal Law, and by other acts of legislation of the Russian Federation. The making of respective proposals and draft laws shall be effectuated according to the procedure established by Article 36 of the present Federal Law."

Comment

186. The constitution itself does not explicitly establish a requirement of a parliamentary consent, but implies it. All details are spelled out in the relevant law. The treaties that are subject to parliamentary involvement are the typical ones, they include treaties on "basic rights and freedoms of man and citizen". The form of involvement is (mostly) a federal statute. The law also sets out emergency powers of the President. The parallelism of forms is not very clear but seems to be the guiding idea.[79]

Serbia

187. Constitutional Provisions: *Constitution of the Republic of Serbia of 8 November 2006*

Art. 16: "(2) Generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly.
(3) Ratified international treaties must be in accordance with the Constitution."

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[79] William E. Butler, "Russia", in: Duncan B. Hollis, Merrit R. Blakeslee & L. Benjamin Ederington (eds.), *National Treaty Law and Practice* (Leiden/Boston: Nijhoff Publishers 2005), 537-580, especially on denunciations pp. 558-560.

Art. 99: "The National Assembly shall: […] 4. ratify international contracts when the obligation of their ratification is stipulated by the Law;"

Art. 105(3): "By means of majority vote of all deputies, the National Assembly shall decide on laws which regulate: […] 6. conclusion and ratification of international contracts;"

Art. 112: "The President of the Republic shall: 1. represent the Republic of Serbia in the country and abroad;"

188. Law No. 32 on the Conclusion and Execution of International Agreements of 8 April 2013 ("ЗАКОН о закључивању и извршавању међународних уговора" – AI-translation; see the Serbian original here*)*

Art. 14: "(1) The National Assembly confirms international agreements of military, political and economic nature, agreements that create financial obligations for the Republic of Serbia, agreements that require the adoption of new or amendments to existing laws and agreements that deviate from existing legal solutions.
(2) International agreements that do not fall under the agreements referred to in paragraph 1 of this Article shall not be subject to the ratification procedure. The Government shall submit information on these agreements to the competent committee of the National Assembly."

Art. 28(2): "The provisions of this law relating to the conclusion of international agreements shall apply accordingly to the procedure of termination of an international agreementt initiated by the Republic of Serbia."

Comment
189. Denunciation is only mentioned in the relevant statute, not in the constitution itself. The statute circumscribes the familiar types of treaties subject to parliamentary approval. A clear parallelism of form is established. On less important treaties, parliament must be informed.

Slovakia

190. Constitutional Provisions: *Constitution of the Slovak Republic of 1 September 1992 (as amended)*

Art. 86: "The power of the National Council of the Slovak Republic comprises, above all: […]
b. approving by means of a constitutional law a treaty on the Slovak Republic's entering into a union with other states and on its abrogation of such a treaty […]
d. expressing consent, prior to ratification, with the international treaties on human rights and fundamental freedoms, international political treaties, international treaties of military nature, international treaties establishing membership of the Slovak Republic in international organizations, international economic treaties of a general nature, international treaties whose execution requires the enactment of a law, as well as with international treaties that directly establish rights or obligations of natural persons or legal persons, and at the same time making determination if these are international treaties stipulated in Article 7, paragraph 5 [= *treaties on fundamental freedoms, self-executing international treaties & treaties directly establishing rights or obligations for individuals – all of which have "primacy over the laws"*]"

Art. 102(1)(a): "The President represents the Slovak Republic outwardly and concludes and ratifies international treaties. […]"; *Art. 102(1) in conjunction with Art. 119(f) allows delegation to government.*

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Comment
191. Denunciation of treaties is mentioned only in the "EU clause" of Art. 86 lit. b). With regard to accession to or exit from a "union with other states", Parliament must even approve in the form of a constitutional statute (not only by ordinary statute).

192. The constitutional provision on other (important) treaties mentions only ratification and not denunciation. This legal scheme might be interpreted as saying that such denunciations do not require parliamentary involvement.

193. The Rules on the Conclusion of International Treaties and Contractual Practice, approved by the Government in 2009,[80] provide however a different interpretation. The competences of the National Council (Parliament), enlisted in its Article 7, encompass the competence to *"give its consent to the termination of the presidential treaty before approval by the President"* (para 3). The practice corresponds to this regulation. For those treaties whose ratification requires the approval by the National Council (Article 86c), such an approval is also required and sought in case of denunciation.[81]

Ukraine

194. Constitutional Provisions: *Constitution of Ukraine of 28 June 1996*

> Art. 85: "The authority of the Verkhovna Rada *[Parliament]* of Ukraine includes: […] (32) granting consent - by adopting a law - to the binding nature of international treaties of Ukraine and denouncing international treaties of Ukraine;"
>
> Art. 106: "The President of Ukraine: […] (3) represents the state in international relations, administers the foreign political activity of the State, conducts negotiations and concludes international treaties of Ukraine;"

195. Law No. 1906-IV of 29 June 2004 on International Treaties of Ukraine

196. Art. 9: Ratification of international treaties of Ukraine

> "1. Ratification of international treaties of Ukraine is carried out by adopting a law on ratification, an integral part of which is the text of an international treaty.
> […]
> The law on ratification of the international agreement on change of the territory of Ukraine adopted by the Verkhovna Rada of Ukraine is approved at the all-Ukrainian referendum on change of the territory of Ukraine in accordance with the Law of Ukraine On All-Ukrainian Referendum.
>
> 2. The following international treaties of Ukraine are subject to ratification:
> a) political treaties (on friendship, mutual assistance and cooperation, neutrality), territorial treaties and those related to state borders, delimitation of the exclusive (maritime) economic zone and the continental shelf of Ukraine, peace treaties;
> b) treaties concerning the rights, freedoms and responsibilities of man and citizen;
> c) general economic treaties (on economic and scientific-technical cooperation), treaties on general financial issues, on granting loans and economic assistance to Ukraine to foreign states and international organizations, as well as on obtaining by Ukraine from foreign states and international financial organizations loans not provided by the State Budget of Ukraine;

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[80] Resolution no. 743 of the Government of the Slovak Republic of 21 October 2009.
[81] See, for instance, Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 214ú2012 Coll. on the termination of the Treaty on Friendship and Cooperation between the Czechoslovak Socialist Republic and the People's Republic of Angola.

d) treaties on Ukraine's participation in interstate unions and other interstate associations (organizations), collective security systems;
e) treaties on military assistance and sending units of the Armed Forces of Ukraine to other states or admission of units of the armed forces of foreign states to the territory of Ukraine, conditions of temporary stay in Ukraine of foreign military formations;
e) treaties concerning the transfer of historical and cultural values of the Ukrainian people, as well as objects of state property rights of Ukraine;
f) treaties which implementation leads to changes in the laws of Ukraine or the adoption of new laws of Ukraine;
g) other international agreements, the ratification of which is provided by an international agreement or the law of Ukraine."

Art. 24: Termination and suspension of international agreements of Ukraine

"1. Proposals to terminate or suspend international agreements of Ukraine shall be submitted by the Ministry of Foreign Affairs of Ukraine, other central executive bodies and state collegial bodies in accordance with the procedure established by Article 4 of this Law for proposals on concluding an international agreement of Ukraine.

2. Termination and suspension of an international agreement of Ukraine shall be carried out:

a) in respect of an agreement approved by the Verkhovna Rada of Ukraine, in the form of a law of Ukraine; …"

Comment
197. A clear parallelism of form is established by the constitution itself. The treaties that are subject to parliamentary involvement are listed in the statute and they include "treaties concerning the rights, freedoms and responsibilities of man and citizen". The form of involvement is ratification by statute. Parliament is equally involved for denunciation of treaties which it earlier approved.

C. Other Venice Commission member states or states participating in the work of the Venice Commission (non CoE members)

198. This list comprises the remaining 15 VC Member States who are not at the same time Members of the CoE as well as Belarus (associate member State of the EoC) and South Africa (special cooperation status with the CoE). Out of these 17 states, seven follow a symmetrical model, requiring parliamentary approval for both the ratification and denunciation of (certain) treaties. In the remaining ten states, parliamentary involvement is limited to the conclusion of (certain) treaties.

1. Asymmetrical model in ten out of 17 states

a) Parliamentary systems

Canada

199. Constitutional Provisions: Canada's constitution is silent on the topic of treaty making.

200. On the denunciation of treaties, René Provost writes: "La liberté d'action de l'exécutif en matière de traités s'applique : en 2002 l'adoption d'une motion par la Chambre des communes

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recommandant la ratification du Protocole de Kyoto n'impliquait nullement que cette dernière doive être consultée par l'exécutif avant sa dénonciation de ce traité en 2011."[82]

201. Canadian Federal Court, *Turp v Canada*, 2012 Federal Court 893, para. 31:

> "The motion passed by the House of Commons *[concerning accession to the "Kyoto Protocol"]* was not binding and acknowledged in its content that the power to conclude or withdraw from this treaty still lay with the executive branch. […] it is up to Parliament to pass a law that would force the House of Commons to be consulted before a treaty is ratified or withdrawn from, but that was never done"

Israel

202. Constitutional Provisions: Israel does not have a written constitution.

Comment
203. Approval of the legislature is not required, neither for the conclusion nor for the denunciation of treaties. According to Ruth Lapidoth, "the executive organs have full discretion in deciding whether an agreement should receive the approval of the legislature prior to ratification or other form of acceptance"[83] The same is true for the denunciation.[84]

Tunisia

204. Constitutional Provision: *Constitution of the Republic of Tunisia of 26 January 2014*

> <u>Art. 67(1)</u>: "Commercial treaties and treaties related to international organizations, to borders of the state, to financial obligations of the state, to the status of individuals, or to dispositions of a legislative character shall be submitted to the Assembly of the Representatives of the People for ratification."
>
> <u>Art.77(2)</u>: "(6) He also has the following powers:
> Ratifying treaties and ordering their publication;
>
> <u>Art. 82</u>: "(1) The President of the Republic <u>may, in exceptional circumstances</u>, within the deadlines for return of a draft law, submit for a referendum draft laws related to the ratification of treaties, to freedoms and human rights, or personal status, which were adopted by the Assembly of the Representatives of the People. The submission to referendum shall be deemed a waiver of the right to return the draft law to the Assembly. (2) If the result of the referendum is the ratification of the draft law, the President of the Republic shall sign it and order to publish it within a period not exceeding ten days from the date of announcement of the results of the referendum."

Comment
205. The types of treaties for which Art. 67(1) requires parliamentary ratification fall within the familiar categories. Tunisia mentions expressly treaties relating to individuals. Law No. 2016-29 of April 5, 2016, relates to the regime for the ratification of treaties.

206. The direct democratic involvement of voters is possible, in a top down fashion (not upon initiative of citizens (Art. 82).

[82] René Provost, *La ratification des traités internationaux, une perspective de droit comparé – Canada*, Service de recherche du Parlament européen, Étude, Février 2019, p. 13.
[83] Ruth Lapidoth, "Israel", in: Duncan B. Hollis, Merrit R. Blakeslee & L. Benjamin Ederington (eds), *National Treaty Law and Practice* (Leiden/Boston: Nijhoff Publishers 2005), 385-413 (392-393).
[84] Ibid. pp. 398-399.

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207. There is no constitutional provision on the denunciation of treaties. We could not find further information.

208. The initiative for the ratification does not lie with parliament: Art. 62(2): "The Head of the Government is the only authority entitled to present draft laws related to the ratification of treaties and draft budget laws." Parliament may not initiate treaty negotiations. According to article 77(2) it is "responsible for determining the general state orientations in the domains of defence, foreign relations and national security in relation to protecting the state and the national territory from all internal and external threats, after consultation with Head of Government."

b) (Semi-) Presidential systems, Monarchy

Algeria

209. Constitutional Provisions *The Algerian Constitution of 1 November 2020*

> Art. 95: "In addition to the powers explicitly conferred upon him by other provisions of the Constitution, the President of the Republic shall have the following powers and prerogatives: […] 13) he shall conclude and ratify international treaties;"
>
> Art. 158: "Armistice agreements, treaties of peace, alliance and union, treaties relating to the borders of the State as well as treaties concerning the status of persons and those which involve expenditures unforeseen in the budget of the State, bilateral and multilateral agreements pertaining to free trade zones and economic associations and integrations shall be ratified by the President of the Republic after explicit approval by each of the two Chambers of Parliament."

210. No information on the denunciation of treaties could be found.

Brazil

211. Constitutional Provisions: *Constitution of the Federative Republic of Brazil of 5 October 1988 (as amended to 2020)*

> Art. 49: "The National Congress has exclusive power: (I) to decide conclusively on international treaties, agreements or acts that result in charges or commitments that are onerous to the national property;"
>
> Art. 84: "The president of the Republic shall have the exclusive power to: […] (VIII) conclude international treaties, conventions and acts, subject to the approval of the National Congress;"

Comment
212. Scholarship has discussed the question whether parliament can compel the executive branch to denounce a treaty. [85] This question is ultimately answered in the negative: Denunciation is predominantly seen as a prerogative of the President.[86] "Although the Constitution does not contain any provision on the matter, it has always been understood that the President of the Republic has the power to unilaterally decide to withdraw from a treaty, that is, without the approval of the National Congress".[87]

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[85] Guido F.S. Soares, "The Treaty-Making Process under the 1988 Federal Constitution of Brazil", 67 *Chicago-Kent Law Review* (1991), 495 (511-512).
[86] Ibid.
[87] Virgilio Afonso da Silva, *The Constitution of Brazil: A Contextual Analysis* (Oxford/London: Hart Publishing 2019), p. 53.

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213. Since 1997, a constitutional proceeding seems to be pending in which plaintiffs demand the approval of parliament for denunciations, based on the *actus contrarius*-argument.[88]

Chile

214. Constitutional Provisions: *Constitution of the Republic of Chile of 11 September 1980 (as amended to 2012)* (The constitution is under revision, a new constitutional assembly was elected in May 2021, a new draft constitution is expected for 2022).

> Art. 32: "The special attributions of the President of the Republic [are]: […] 15. To conduct political relations with foreign powers and international organisms, and carry out negotiations; conclude, sign and ratify the treaties which [he] deems advantageous for the interests of the country, which must be submitted to the approval of Congress in conformity with what is prescribed in Article 54, No. 1."
>
> Art. 54: "The exclusive attributions of the Congress are: 1. To approve or reject the international treaties that the President of the Republic presents [to] it prior to their ratification. […] The President of the Republic shall report to the Congress concerning the content and the scope of the treaty, as well as the reservations that [he] seeks to confirm or formulate. […] The treaties concluded by the President of the Republic in the exercise of his regulatory power will not require the approval of the Congress. […] To the President of the Republic corresponds the exclusive faculty to denounce a treaty or withdraw from it, for which the opinion of both Chambers of the Congress will be requested, in the case of treaties that have been approved by them."

Comment
215. The involvement of parliament is gradated. While parliament must as a rule approve of the conclusion of important international treaties, it must only be consulted on the planned denunciation of those treaties which it had approved.

Costa Rica

216. Constitutional Provisions: *Political Constitution of the Republic of Costa Rica of 7 November 1949 (as amended)*

> Art. 7: "The public treaties, the international agreements and the concordats, duly approved by the Legislative Assembly, will have from their promulgation or from the day designated by them, authority superior to that of the laws.
> The Public treaties and the international agreements referring to the territorial integrity or the political organization of the country, will require the approval of the Legislative Assembly, by a vote of no less than the three-quarters part of the totality of its members, and that of two-thirds of the members of a Constituent Assembly, convoked to [that] effect."
>
> Art. 121: "In addition to the other attributions that this Constitution confers on it, it corresponds exclusively to the Legislative Assembly: […] 4) to approve or not to approve international conventions, public treaties and concordats. Public treaties and international conventions that confer or transfer certain powers to a community legal order for the purpose of achieving common regional objectives shall require the approval of the Legislative Assembly by a vote of not less than two-thirds of its entire membership. Protocols of lesser rank derived from public treaties or international conventions approved by the Assembly, shall not require legislative approval when these instruments expressly authorise such Protocols. [As amended by Law No. 4123, May 31, 1968.]"

[88] http://portal.stf.jus.br/processos/detalhe.asp?incidente=1675413

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Art. 140: "The following powers and duties are held jointly by the President and the appropriate Cabinet Minister: [..] 10) To enter into and sign agreements, public treaties and concordats, and enact and execute them following their approval by the Legislative Assembly or by a Constituent Assembly, when such approval is required by this Constitution."

Comment
217. The constitution mentions only the conclusion, not the denunciation, of treaties. A 1987 opinion of the General Attorney held that the denunciation of treaties lies in the competence of the executive:

"Among us, there is no doubt that the power of denunciation corresponds to the Executive Branch, since the Political Constitution attributes to it the execution (subscription) of international agreements and treaties, as well as their execution (although prior approval by the Legislative Assembly), which indicates that the 'treaty-making power' referred to by Rousseau corresponds to it, but also, because the final paragraph of article 124 of the Constitution states: 'The legislative approval of contracts, agreements and other acts of an administrative nature, will not give those acts the character of laws even if it is done through the ordinary procedures thereof.'"[89] [90]

Korea, Republic of

218. Constitutional Provisions: *Constitution of the Republic of Korea of 17 July 1948 (as amended)* (*https://www.law.go.kr/LSW/lsInfoP.do?lsiSeq=61603&viewCls=engLsInfoR&urlMode=engLsInfoR#0000*)

Art. 60(1): "The National Assembly shall have the right to consent to the conclusion and ratification of treaties pertaining to mutual assistance or mutual security; treaties concerning important international organizations; treaties of friendship, trade and navigation; treaties pertaining to any restriction in sovereignty; peace treaties; treaties which will burden the State or people with an important financial obligation; or treaties related to legislative matters."

Art. 73: "The President shall conclude and ratify treaties; accredit, receive or dispatch diplomatic envoys; and declare war and conclude peace."

Comment
219. Korea's constitution is silent on the denunciation of treaties. As regards their conclusion, parliamentary involvement is envisaged only for certain familiar types of treaties – roughly for all that are "important for and critical to the national interest".[91] Further statutory provisions do not exist. Hence, treaties are concluded mainly along the lines of accumulated practice.[92]There is no

[89] Advisory Opinion of the 'General Attorney' [Procurador General de la República], C-100-87, 11 May 1987 [AI-translation]. For the Spanish original see http://www.pgrweb.go.cr/scij/Busqueda/Normativa/pronunciamiento/pro_ficha.aspx?param1=PRD¶m6=1&nDictamen=1605&strTipM=T – section II at the end.
[90] An amendment to the constitutional control system in 1989 added the possibility for the Constitutional Chamber to order the Executive branch to denounce a treaty that is unreconcilable with the Constitution. The Court must first deem if an interpretation is possible. If it considers otherwise, the Court will suspend the general effects of the treaty and summon the Executive Branch to proceed to denounce the treaty [article 73.e) of the Law of the Constitutional Jurisdiction].
According to the Constitutional Chamber, it must consider those interpretations that preserve the treaty. See https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-552805.
[91] Jaemin Lee, "Incorporation and Implementation of Treaties in South Korea", in: Curtis A. Bradly (ed.), *The Oxford Handbook of Comparative Foreign Relations Law* (New York: OUP 2019), 221-238, p. 223.
[92] Ibid, p. 223-224.

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established practice on the denunciation of treaties, and there is no relevant case-law in the Constitutional Court.

Morocco

220. Constitutional Provisions: *Constitution of Morocco of 1 July 2011*

> Art. 55(2): "He *[the King]* signs and ratifies the treaties. However, the treaties of peace or of union, or those relative to the delimitation of the frontiers, the commercial treaties or those which engage the finances of the State or the application of which necessitate legislative measures, as well as those treaties relative to the individual or collective rights and freedoms of the citizens [feminine] and citizens [masculine], may only be ratified after having been previously approved by the law."
> Art. 55(3): "The King may submit to Parliament any other treaty before its ratification."

Comment
221. The basic competence lies with the King, but certain treaties require the involvement of parliament. The types of treaties subject to parliamentary involvement are the usual ones, they include treaties on "individual or collective rights and freedoms". Parliamentary approval must be given by law.

222. The constitution itself is silent on the topic of denunciations. The literature available to the Venice Commission only shows that the decision to suspend or denounce a treaty is in practice taken by the government.[93] However, according to the principle of parallelism of forms, denunciation of treaties concluded under Article 55(2) or (3) requires parliamentary approval. In practice, Morocco very seldom denounces international treaties. The cases where Morocco ceases to be bound by a treaty are most often, in conformity with international law: (1) non-renewal after expiry of its validity, for treaties whose duration is fixed (limited or extendable period); (2) the conclusion of a treaty which repeals and replaces the old one: a new treaty concluded between two Contracting Parties, the provisions of which update the aspects covered by a previous agreement, repeals and replaces it by means of an express provision included in its final provisions; (3) lapse of the object and scope of the treaty, when the aspects covered by a treaty are obsolete and no longer have a reason to exist, the agreement becomes by force of circumstance obsolete and falls into disuse.

USA

223. Constitutional Provisions: *Constitution of the United States of 21 June 1788 (as amended) (https://www.senate.gov/civics/constitution_item/constitution.htm)*

224. Art. II – Section 2: "He [the President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; […]"

Comment
225. The term "treaty" in the U.S. Constitution is understood in constitutional jurisprudence and consistent practice as being narrower than the category of "treaty" as a matter of public international law. The Article II constitutional term refers only to certain international agreements. There are three other kinds of international agreements, all of which would qualify as "treaties" under the public international law of the Vienna Convention on the Law of Treaties, but which are not considered Article II treaties for U.S. constitutional purposes: sole executive agreements, executive agreements pursuant to a treaty, and congressional-executive agreements.[94] They

[94] See the Restatement (Third) of the Foreign Relations Law of the United States § 301 cmt. a (1987).

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each have different formalities associated with their approval:[95] sole executive agreements and executive agreements pursuant to treaty can, as their names imply, be adopted by the President acting alone and without any approval of either chamber of the legislature. Congressional-executive agreements, instead, are those international agreements that are approved by both the President and a simple majority of both houses of Congress (in the manner of ordinary legislation), rather than by the President and a supermajority of the Senate (in the manner of Article II treaties). It is sometimes assumed that the power to conclude one or the other type of international agreement is dependent on what are otherwise the specific enumerated powers of the political branches: executive agreements are permissible where the subject matter is within the constitutionally-assigned powers of the executive; congressional-executive agreements are limited to those areas where the subject matter is within the enumerated legislative powers of the congress; and Article II treaties – the most exceptional form of federal lawmaking – would be required where the subject matter goes beyond what would otherwise be the ordinary legislative powers of the federal Congress. However, this reading is contested in the scholarly literature and the courts have never definitively adjudicated which international agreements must be considered as Article II treaties that are required obtain the advice and consent of the Senate, or which international agreements can be adopted solely as a matter of executive power or by the congress and executive acting under ordinary lawmaking procedures.[96]

226. The power to denounce a treaty in theory also could depend on the type of international instrument in question, but in practice it is within the authority of the President alone.[97] Sole executive agreements and executive agreements pursuant to a treaty can clearly be denounced also by sole executive authority. Congressional and senate approval of congressional-executive agreements and Article II treaties, respectively, could in principle be made conditional also on their consent to any future denunciation. However, we know of no instance where the legislature has attempted to impose such a condition on an international agreement. In the courts, the President's authority to terminate a sole executive agreement has not been disputed.[98] Although challenges have been levied against the sole Presidential authority to terminate an Article II treaty, in the past the courts have refused to adjudicate those disputes, regarding them as presenting nonjusticiable political questions, and a question of authority to terminate an international agreement would likely be side-stepped by the courts on these or similar grounds.

227. In short, the consistent political practice in the United States has been to consider the President as de facto the sole responsible authority for the denunciation of all international agreements,[99] and historically treaties have been denounced many times by the president without objections to this practice by the legislative branch.[100] A similar point can be made regarding the withdrawal of the signature before ratification, thus before the international treaty has become binding for the US (the constellation of Art. 18 VCLT). The power to "un-sign" also lies with the President alone.[101]

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[95] See generally Ved P. Nanda, "Conclusion and Implementation of Treaties and Other International Agreements in the United States", 38 *American Journal of Comparative Law* (1990), 369-387.
[96] The leading U.S. Supreme Court case, *Weinberger v. Rossi*, 456 U.S. 25 (1982), offered no clear conclusion on the question.
[97] On the Denunciation of treaties see Stephen P. Mulligan, "Withdrawal from International Agreements: Legal Framework, the Paris Agreement, and the Iran Nuclear Agreement", *US Congressional Research Service Report* 4 May 2018, pp. 5 et seq.
[98] *See* Rest. (3d) § 339 n. 4.
[99] The President is the "sole organ of the nation in its external relations, and its sole representative with foreign nations." 6 Annals of Cong. 613 (1800), *quoted in United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936); *see also Crosby v. Nat'l Foreign Trade Council,* 530 U.S. 363 (upholding the "capacity of the President to speak for the Nation with one voice in dealing with other governments").
[100] Mulligan at 10-15.
[101] David C. Scott, "Presidential Power to "Un-sign" Treaties", 69 *Chicago Law Review* (2002) 1447-1477 (pp. 1457 et seq.).

2. Symmetrical model in seven out of 17 states

228. The slightly smaller group of Non-CoE member states applies the model of symmetry and demands an involvement of parliament for the denunciation of those treaties that had been ratified with parliament. Most of those seven states (five states) have presidential or semi-presidential systems. This pattern confirms that presidential systems of government are, as a matter of fact, not hostile per se to parliamentary involvement in treaty denunciations.

a) Parliamentary systems

Kosovo

229. Constitutional Provisions: *Constitution of the Republic of Kosovo of 9 April 2008*

Art. 18: "(1) International agreements relating to the following subjects are ratified by two thirds (2/3) vote of all deputies of the Assembly: 1. territory, peace, alliances, political and military issues; 2. fundamental rights and freedoms; 3. membership of the Republic of Kosovo in international organizations; 4. the undertaking of financial obligations by the Republic of Kosovo;
(2) International agreements other than those in paragraph 1 are ratified upon signature of the President of the Republic of Kosovo.
[…]
(4) Amendment of or withdrawal from international agreements follows the same decision making process as the ratification of such international agreements. […]"

Art. 65: "The Assembly of the Republic of Kosovo: […] 4. ratifies international treaties"

230. Law No. 04/L-052 on International Agreements, Official Gazette of the Republic of Kosova / No. 28 / 16 December 2011 (translation taken from a CoE-Document: https://portal.cor.europa.eu/egtc/about/National%20Provisions%20Docs/RKS%20-%20Ligji_per_marreveshjet_nderkombetare_(anglisht).pdf)

Art. 10: repeats the substance of Art. 18 of the Constitution.

Art. 18(2): "The decision concerning denunciation of an International Agreement of the Republic of Kosovo or suspension of its operation according to the universal norms of international law referred to in paragraph 1. of Article 10 of this Law shall be taken by the Assembly of the Republic of Kosovo by two third (2/3) of votes on the recommendation of the President of the Republic of Kosovo on his own initiative or upon the proposal of the Government of the Republic of Kosovo."

Comment
231. The constitution establishes a clear parallelism of forms. The procedures for denunciation are spelled out in more detail in a statute. The types of treaties subject to parliamentary involvement are the usual ones, they include treaties on "fundamental rights and freedoms". Parliament must decide by qualified majority.

South Africa

232. Constitutional Provisions: *Constitution of the Republic of South Africa of 8 May 1996 (as amended) (https://www.gov.za/documents/constitution-republic-south-africa-1996)*

Art. 231: "(1) The negotiating and signing of all international agreements is the responsibility of the national executive. (2) An international agreement binds the Republic only after it has

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been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3)."

Comment
233. The constitution mentions only the conclusion of international treaties. The basic rule is involvement of parliament, with the exception of less important treaties.

234. A parallelism of forms has however been established in case law. The High Court of South Africa (Gauteng division) opined that a "notice of withdrawal [is] the equivalent of ratification which requires prior parliamentary approval in terms of s. 231(2)."[102]

235. In this judgment, the High Court held that the Country's denunciation of the Rome Statute was unconstitutional because it lacked parliamentary approval.

b) (Semi-) Presidential (and analogous) systems

Belarus

236. Constitutional Provisions: *Constitution of the Republic of Belarus of 15 March 1994 (as amended to 2004)* (http://law.by/document/?guid=3871&p0=V19402875e)

Art. 84: "The President of the Republic of Belarus shall: […] 20. conduct negotiations and sign treaties"

Art. 97: "The House of Representatives shall: […] 2. consider draft laws, including the guidelines of domestic and foreign policy of the Republic of Belarus; military doctrine; ratification and denunciation of treaties; […]"

Law No. 421-3 on International Treaties of the Republic of Belarus of 23 July 2008 (https://pravo.by/document/?guid=3871&p0=h10800421)

Article 19: "Inter-State and intergovernmental treaties are subject to ratification:

- which provide for their ratification as the only means of expressing consent to be bound by an international treaty;
- which establish other rules than those contained in the laws of the Republic of Belarus, decrees and decrees of the President of the Republic of Belarus, except for the cases specified in part two of the present article;
- the subject matter of which is related only to the sphere of legislative regulation but not regulated by the laws of the Republic of Belarus, decrees and decrees of the President of the Republic of Belarus, except for the cases stipulated in part two of the present article;
- territorial delimitation of the Republic of Belarus with other states;
- participation of the Republic of Belarus in international organizations and interstate formations;
- being amendments to interstate and intergovernmental agreements, the consent to be binding on the Republic of Belarus has been expressed in the form of a law of the Republic of Belarus or an act of the Supreme Soviet of the Republic of Belarus
- suspension and termination of interstate and intergovernmental treaties of the Republic of Belarus, whose consent to be binding on the Republic of Belarus has been expressed in the form of a law of the Republic of Belarus or an act of the Supreme Soviet of the Republic of Belarus"

[102] *Democratic Alliance v Minister of International Relations and Cooperation and Others (Council for the Advancement of the South African Constitution Intervening) (83145/2016) [2017] ZAGPPHC 53; 2017 (3) SA 212 (GP); [2017] 2 All SA 123 (GP); 2017 (1) SACR 623 (GP) (22 February 2017)*), para. 47.

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Article 20: "Ratification of international treaties is carried out by the National Assembly of the Republic of Belarus in the form of a law."

Article 44: "Decisions on the suspension or termination of inter-State and intergovernmental treaties shall be taken in respect of:

- interstate and intergovernmental treaties, the consent to be bound by which for the Republic of Belarus was expressed in the form of a law of the Republic of Belarus or an act of the Supreme Council of the Republic of Belarus - by the National Assembly of the Republic of Belarus in the form of a law;
- other interstate treaties, as well as intergovernmental agreements […] aimed at attracting resources of international organizations to the Republic of Belarus - by the President of the Republic of Belarus in the form of a decree;
- other intergovernmental treaties – by the Council of Ministers of the Republic of Belarus in the form of a resolution."

Comment
237. The constitution uses the term "consider", which could be seen as an indication of mere consultative power in both ratification and denunciation. But the provisions of Articles 44 and 21 of law no. 421-3 establish that such ratification must – for certain treaties – be done by law and that the same procedure then applies to their denunciation. Law no. 421-3 hence establishes a clear parallelism of forms.

Kazakhstan

238. Constitutional Provisions: *Constitution of the Republic of Kazakhstan of 30 August 1995*

Art. 44(1): "The President of the Republic shall […] 11. conduct negotiations and sign international treaties of the Republic; sign ratification instruments; receive letters of credentials and recall from diplomatic and other representatives of foreign states accredited to him;"

Art. 54(1): "Parliament at separate sessions of the Chambers through consecutive consideration of issues first in the Majilis and then in the Senate shall adopt constitutional laws and law, including: [...] 7. Ratify and denounce international treaties of the Republic."

239. Law No. 54 on international Treaties of the Republic of Kazakhstan (30 May 2005) (https://adilet.zan.kz/eng/docs/Z050000054_)

Art. 11: "The following international treaties shall be subject to ratification:
1) the subject of which is the rights and freedoms of human and citizen;
2) performance of which requires modification of current or adoption of new laws, as well as establishing other rules than it is provided by the Laws of the Republic of Kazakhstan;
3) on territorial differentiation of the Republic of Kazakhstan with other states including international treaties on the State border of the Republic of Kazakhstan, as well as on differentiation of exclusive economic zone and continental shelve of the Republic of Kazakhstan;
4) on the grounds of interstate relations, on the issues of disarmament or international control of arms, ensuring international peace and safety, as well as peaceful international treaties and international treaties on collective security;
5) on participation of the Republic of Kazakhstan to the interstate associations and international organizations, if such international treaties provide the transfer of carrying out the part of sovereign rights of the Republic of Kazakhstan to them or establish legal binding of decisions of their bodies for the Republic of Kazakhstan;
6) on state loans;

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7) on rendering of economic and another assistance by the Republic of Kazakhstan, except of humanitarian assistance and official development assistance;
8) upon signing of which, the parties that participated in negotiations conditioned on their following ratification;
9) if international treaties provide that such condition is expressed by the ratification."

Art. 28: "Termination of validity of international treaties of the Republic of Kazakhstan shall be carried out in accordance with provisions of international treaties or at any time with the consent of all the participants."

Art. 30: "(1) Laws on denouncement of the ratified international treaties of the Republic of Kazakhstan shall be adopted by the Parliament of the Republic of Kazakhstan in accordance with Article 62 of the Constitution of the Republic of Kazakhstan.
(2) Decisions on suspension of validity of international treaties of the Republic of Kazakhstan or their denouncement shall: 1. be adopted by the President of the Republic of Kazakhstan in respect of international treaties concluded in the name of the Republic of Kazakhstan; 2. be adopted by the Government of the Republic of Kazakhstan in respect of international treaties concluded in the name of the Government of the Republic of Kazakhstan; 3. be adopted by the chief executive officers of the central state bodies of the Republic of Kazakhstan or persons substituting them in respect of international treaties concluded in the name of central state bodies of the Republic of Kazakhstan."

Comment
240. The Kazakh constitution – as well as Law No. 54 – establish a clear parallelism of forms: denunciation by law (cf. Art. 30(1) Law No. 54) is necessary whenever the treaty has been ratified by law (Art. 11, 14 Law No. 54). When ratification is necessary is not specified by the Constitution itself; this is done by Art. 11 Law No. 54, which lists numerous, but familiar categories.

241. Kazakhstan mentions expressly treaties relating to human rights. A human rights treaty can be denounced only with parliament – although the state has a presidential system of government.

242. Ratification and denunciation is done by law. While not directly/clearly apparent from the English version constitution, Art. 14 and 30(1) of Law No. 54 clarifies this.

243. Parliament does not appear to be entitled to initiate treaty negotiations. Pursuant to Art. 2-1 Law No. 54 of 30 May 2005, this domain is reserved for the Ministry of Foreign Affairs.

Kyrgyzstan

244. Constitutional Provisions: *Constitution of the Kyrgyz Republic of 5 May 2021*

Comment:
245. Kyrgyzstan has adopted a new constitution in May 2021, a translation of which was not yet available to us.

246. From the draft version commented on by the Venice Commission see https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2021)017-e.

247. Although this constitution marks a shift towards a presidential system, parliamentary involvement in treaty making remains.

248. Under both Art. 74(2)(3) old version and Art. 80(1)(4) new version (draft), parliamentary approval is necessary both for the ratification and denunciation of international treaties.

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249. Details, scope, and preconditions for these requirements are spelled out further by law. These sources, too, were not available to us.

Mexico

250. Constitutional Provisions: *Political Constitution of the United Mexican States 5 February 1917 (as amended to 2015)*

> Art. 76(1): "The exclusive powers of the Senate are: To analyze the foreign policy conducted by the Federal Executive on the basis of the annual reports that the President of the Republic and the competent Secretary submit to the Congress;
> In addition, the Senate shall have the power to approve the international treaties and conventions signed by the President of the Republic, as well as his decision to terminate, denounce, suspend, modify, or amend such treaties, to withdraw reservations to them and to formulate interpretative declarations with respect to them".

Comment
251. The constitution establishes the parallelism of forms.

Peru

252. Constitutional Provisions: *Political Constitution of Peru of 31 October 1993 (as amended to 2019)*

> Art. 55: Treaties formalized by the State and in force arepart of national law.
>
> Art. 56: "Treaties must be approved by the Congress before their ratification by the President of the Republic, provided that they concern the following matters: 1. Human Rights; 2. Sovereignty, dominion, or integrity of the State; 3. National Defense; 4. Financial obligations of the State. Treaties that create, modify, or eliminate taxes that require modification or repeal of any law, or that require legislative measures for their application, must also be approved by the Congress."
>
> Art. 57: "The President of the Republic may formalize or ratify treaties or accede to them without previous approval by the Congress in matters not contemplated in the preceding article. In all such cases, the President must notify the Congress. When a treaty affects constitutional provisions, it must be approved by the same procedure established to reform the Constitution prior to its ratification by the President of the Republic. Denunciation of treaties is within the power of the President of the Republic, who has the duty to notify the Congress. In the case of treaties subject to approval by Congress, such denunciation requires its previous approval."

Comment
253. The constitution establishes the parallelism of forms. The types of treaties that require involvement of parliament are the usual ones, including human rights treaties.

D. Select other States (presidential systems) outside the Venice Commission

254. All states listed below are presidential systems.

Angola

255. Constitutional Provisions: *Constitution of the Republic of Angola of 2010*

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Art. 161: “Within the political and legislative sphere, the National Assembly shall be responsible for: […]
k. Approving for ratification and signing treaties, conventions, agreements and other international instruments involving matters within its absolute legislative responsibility, in addition to treaties to which Angola is a party involving international organisations, the rectification of borders, friendship, cooperation, defence and military affairs;
l. Approving withdrawal from treaties, conventions, agreements and other international instruments;”

Art. 121: “In the sphere of international relations, the President of the Republic shall be responsible for: […] c. Signing and ratifying international treaties, conventions, agreements and other instruments, as appropriate and after they have been passed;”

Argentina

256. Constitutional Provisions: *Constitution of the Argentine People of 1853, reinstated in 1983 (as amended to 1994)*

Art. 75: “Congress is empowered: […]
22. To approve or reject treaties concluded with other nations and international organizations, and concordats with the Holy See. […] They shall only be denounced, in such They shall only be denounced, in such event, by the National Executive Power after the approval of two-thirds of all the members of each House.
24. To approve treaties of integration which delegate powers and Jurisdiction to supranational organizations under reciprocal and equal conditions, and which respect the democratic order and human rights. […]The denouncement of the treaties referred to in this subsection shall require the prior approval of the absolute majority of all the members of each House.”

Art. 99: “The President of the Nation has the following powers: […] 11. He concludes and signs treaties, concordats and other agreements required for the maintenance of good relations with international organizations and foreign powers, he receives their ministers and admits their consuls.”

Bolivia

257. Constitutional Provisions: *Political Constitution of the Plurinational State of Bolivia of 2009*

Art. 260: “I. The repudiation of the international treaties shall follow the procedures established in the same international treaty, the general norms of international law, and the procedures established in the Constitution and the law for its ratification.
II. The repudiation of ratified treaties must be approved by the Pluri-National Legislative Assembly before being executed by the President of the State.
III. The treaties approved by referendum must be submitted to a new referendum prior to their repudiation by the President of State.”

Art. 158: “I. The attributes of the Pluri-National Legislative Assembly, in addition to those determined by this Constitution and the law are the following: […] 14. To ratify international treaties signed by the Executive, in the manner established by the Constitution”

Art. 172: “The attributes of the President of the State, in addition to those established by this Constitution and the law, are the following: […] 5. To direct foreign policy; sign international treaties; name public diplomats and consuls pursuant to the law; and to admit foreign officials in general.”

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Central African Republic

258. Constitutional Provisions: *Constitution of the Central African Republic of 2016*

Art. 91: “The President of the Republic negotiates, signs, ratifies and revokes [dénonce] the international treaties and agreements. The ratification or the revocation may only intervene after the authorization of the Parliament, notably in that which concerns the peace treaties, the defense treaties, the commercial treaties, the treaties concerning the environment and the natural resources or agreements concerning international organization, those which engage the finances of the State, those which modify the provisions of a legislative nature, those which concern the status of persons and the rights of Man, [and] those which involve cession, exchange or addition of territory. […]”

China

259. Constitutional Provisions: *Constitution of the People’s Republic of China of 1982 (as amended to 2004)*

Art. 67: “The Standing Committee of the National People’s Congress exercises the following functions and powers: […] 15. To decide on the ratification and abrogation of treaties and important agreements concluded with foreign states;”

Art. 81: “The President of the People's Republic of China, on behalf of the People's Republic of China, engages in activities involving State affairs and receives foreign diplomatic representatives and, in pursuance of decisions of the Standing Committee of the National People's Congress, appoints and recalls plenipotentiary representatives abroad, and ratifies and abrogates treaties and important agreements concluded with foreign states.”

Art. 89: “The State Council exercises the following functions and powers: […] 9. To conduct foreign affairs and conclude treaties and agreements with foreign states;”

Ecuador

260. Constitutional Provisions: *Constitution of the Republic of Ecuador of 2008*

Art. 418: “The President is responsible for signing or ratifying treaties and other international instruments. The President of the Republic shall inform the National Assembly immediately of all the treaties he/she signs, with a precise description of its nature and content. A treaty can only be ratified for its subsequent clearance or deposit, ten days after the Assembly has been notified of it.”

Art. 419: “The ratification or denunciation of international treaties shall require prior approval by the National Assembly in the following cases: 1. When referring to territorial or border delimitation matters. 2. When forging political or military alliances. 3. When they involve a commitment to enact, amend or repeal a law. 4. When they refer to the rights and guarantees provided for in the Constitution. 5. When they bind the State’s economic policy in its National Development Plan to conditions of international financial institutions or transnational companies. 6. When they commit the country to integration and trade agreements. 7. When they attribute powers of a domestic legal nature to an international or supranational organization. 8. When they compromise the country’s natural heritage and especially its water, biodiversity and genetic assets.”

Art. 420: “The ratification of treaties can be requested by referendum, citizen initiative or the President of the Republic. Denunciation of a treaty that has been adopted shall pertain to the

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President of the Republic. In the event of denunciation of a treaty adopted by the citizenry in a referendum, the same procedure that adopted the treaty shall be required."

Mozambique

261. Constitutional Provisions: *Constitution of the Republic of Mozambique of 2018 (revised)*

Art. 178(2): "É da exclusive competência da Assembleia da República: […] e) approvar e denunciar os tratados que versem sobre matérias da sua cometência;"

AI-translation: *"It is the exclusive competence of the Assembly of the Republic: [...] e) to approve and denounce treaties that deal with matters within its competence."*

Art. 203(1): "1. Compete, nomeadamente, ao Conselho de Ministros: […] g) preparar a celebração de tratados internacionais e celebrar, ratificar, aderir e denunciar acordos internacionais, em matérias da sua competencia gobernativa"

AI-translation: *"It shall be incumbent upon the Council of Ministers to, inter alia [...] g) to prepare the conclusion of international treaties and to conclude, ratify, accede to and denounce international agreements, in matters within its gubernatorial competence"*

Art. 161: "No domínio das relações internacionais, compete o Presidente da República: […] b) celebrar tratados;"

AI-translation: *"In the field of international relations, the President of the Republic is responsible for: […] b) concluding treaties"*

Tajikistan

262. Constitutional Provisions: *Constitution of Tadjikistan of 1994 (as amended to 2003)*

Art. 57: "Powers of the Majlisi Namoyandagon *[Chamber of Representatives]*: […] 5. Ratification and cancellation of international agreements;"

Art. 69: "Powers of the President: […] 18. Lead the implementation of foreign policy, sign international agreements and submit for approval to the Majlis of Representatives;".

Turkmenistan

263. Constitutional Provisions: *Constitution of the Republic of Turkmenistan of 18 May 1992 (as amended to 2016)*

Art. 71: "The president of Turkmenistan shall: […] 2. supervise the execution of foreign policy, represents Turkmenistan in relations with other nations, negotiate and sign international treaties, […]"

Art. 81: "The Mejlis *[Parliament]* shall: […] 10. ratify and denounce international treaties"

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E. International and Supranational Organisations

1. European Union

264. Relevant Provision: *Treaty on the Functioning of the European Union, 115/01 Official Journal of the European Union of 9 May 2008 (https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:C2008/115/01&from=EN)*

Art. 218: "(1) Without prejudice to the specific provisions laid down in Article 207, agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.
(2) The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.
[…]
(6) The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement. Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreement:
(a) after obtaining the consent of the European Parliament in the following cases:
(i) association agreements;
(ii) agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;
(iii) agreements establishing a specific institutional framework by organising cooperation procedures;
(iv) agreements with important budgetary implications for the Union;
(v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.
The European Parliament and the Council may, in an urgent situation, agree upon a time-limit for consent.
(b) after consulting the European Parliament in other cases. The European Parliament shall deliver its opinion within a time-limit which the Council may set depending on the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.
[…]
(9) The Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision suspending application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.
(10) The European Parliament shall be immediately and fully informed at all stages of the procedure."

Comment

265. The Lisbon Treaty of 2007 has significantly strengthened parliamentary involvement in foreign relations, including international treaties. This reflects the EU principles of closeness to the citizens (Article 1(2) of the Treaty on European Union (TEU)) and democracy (Title III (Articles 9-12) of the TEU). Article 218 Treaty on the Functioning of the European Union (TFEU) now realises, in the words of the European Court of Justice (ECJ), a "symmetry" between the procedures for adopting EU measures internally and for adopting international agreements.[103]

[103] Court of Justice of the European Union (CJEU), Case C-658/11, Judgement of 24 June 2014, para. 56.

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1) Conclusion of international treaties

a) Consultation

Technically, the fallback rule for the conclusion of international agreements is that Parliament must generally be consulted before the conclusion of every international agreement, pursuant to Art. 218(6)(b) TFEU.

b) Consent

A higher degree of parliamentary involvement is set out by Art. 218(6)(a) TFEU, requiring consent for a wide array of agreements. These include the typical categories as reflected in many national constitutions, such as agreements covering areas falling within the legislative competence of Parliament (Art. 218(6)(a)(v)) and agreements with important budgetary implications (Art. 218(6(a)(iv)). Moreover, parliamentary consent is required for agreements more specific to the supranational character of the European Union, such as association agreements with third states (Art. 218(6(a)(i)) and agreements tying the Union into institutional frameworks (Art. 218(6(a)(iii)). It is noteworthy that no distinction is made along the parameters of importance or the political/non-political nature of an agreement. Even mere technical ('unimportant' or 'unpolitical') agreements require parliamentary approval if they fall within the categories listed above.[104]

Finally, no parliamentary involvement is required for agreements that relate exclusively to the common foreign and security policy (CFSP) of the Union. This, too, reflects the Union's internal structure in that field, which excludes legislative acts and which grants Parliament only a limited role (Art. 24(1), 36 TEU).

2) Negotiation of international treaties

Building on the key principle reflected in Art. 218(10) TFEU, the European Parliament has furthermore worked to also involve itself in the negotiation process, which normally lies with the Council (Art. 218(2), (3) TFEU).[105] These efforts have generally been received with sympathy by the European Commission, most notably in a 2010 interinstitutional framework agreement.[106] This particular agreement, however, guaranteeing the presence of parliamentarian representatives in the course of negotiations (without formally taking part), has drawn sharp criticism from the Council.[107]

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[104] Andrea Ott, "The European Parliament's Role in EU Treaty Making", *Maastricht Journal of European and Comparative Law* 23 (2016), 1009-1039 (1016).

[105] The Parliament's key position is that negotiations should not be opened until Parliament has stated a position on the mandate, see European Parliament Resolution of 13 March 2014 on the implementation of the Treaty of Lisbon with respect to the European Parliament, 2013/2130(INI), paras 42-43; Resolution of 13 June 2012 on EU Trade Negotiations with Japan, 2012/2651(RSP), para. 1 (approval given in Resolution of 25 October 2012, 2012/2711(RSP), para. 10); see also Resolution of 9 October 2013 on the EU-China negotiations for a bilateral investment agreement, 2013/2674(RSP).

[106] 2010 Interinstitutional Framework Agreement on Relations between the European Parliament and the European Commission, OJ L 304/47, paras 25-27. The Commission also intervened on behalf of the Parliament in Cases C-658/11 and C-263/14 concerning the information obligation under Art. 218(10).

[107] Note 15018/10 of 18 October 2010 on the Framework Agreement, Annex II, p. 10, 12 considers the agreement to accord to Parliament prerogatives which are not provided for in Art. 218(10) TFEU and threatens legal action before the ECJ in case of an infringement of primary law (https://data.consilium.europa.eu/doc/document/ST%2015018%202010%20INIT/EN/pdf)

3) Provisional application of international treaties
The provisional application of an international treaty is not mentioned in Art. 218 TFEU. In practice, consent of the EP has been sought for the provisional application of CETA.[108] This mirrors the consent needed for the conclusion of the agreement under Art. 218(6) (a)(v) TFEU.[109]

4) Suspension
Under Art. 218 (9) TFEU, under which the Council alone decides on the temporary suspension of the application of international agreements. The rationale seems to be that a temporary suspension is time-sensitive and not important to warrant parliamentary involvement. Nevertheless, here too, Parliament insists on having "a say" in the Council's decision. In light of the clear wording of Art. 218(9) TFEU, however, such insistence can only be political in nature; no legal obligation to obtain parliamentary consent for a temporary suspension of a Treaty exist.

5) Continuous information of Parliament
Regardless of the content of the agreement,[110] Art. 218(10) TFEU obliges all actors[111] to immediately and fully inform parliament. According to the provisions's wording, this obligation applies "at all stages of the procedure" laid out in Art. 218.
This obligation to inform parliament could be read narrowly as only applying to the suspension of treaties which is mentioned in the previous clause (Art. 218(9) TFEU). However, the wording, the context, and the purpose of the obligation to inform leads to the interpretation that this obligation applies to all steps of "the procedure" mentioned in Article 218. The obligation to inform has been interpreted by the CJEU as "an expression of the democratic principles on which the European Union is founded".[112] The obligation to inform is a continuous one, and cumulative to the obligations of obtaining parliamentary consent at the critical junctures of the procedure, as foreseen for the specific international treaties under Art. 218(6)(a) TFEU.
Due to its democratic rationale, the information of parliament under Art. 218(10) TFEU is an "essential procedural requirement" in the sense of Article 263(2) TFEU. This means that a neglect to continuously and fully inform Parliament constitutes a ground for direct action for annulment under Art. 263(2) TFEU.[113] A judicial finding that the obligation to inform Parliament was violated leads to the nullity of the Council decision concluding the agreement.[114]

6) Denunciation
In contrast to these differentiated requirements for the conclusion of international agreements, Art. 218 TFEU is wholly silent on the topic of their denunciation. The EU's power to denounce a treaty follows from its international legal personality (Article 47 TEU) and the concomitant treaty-making power.[115]
The European Parliament has taken advantage of this silence to actively propagate a parallelism of forms: it "insists that Parliament should have a say in decisions regarding the suspension or termination of international agreements whose conclusion needed the consent of Parliament".[116]

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[108] Friedrich Erlbacher, Article 218 TFEU' in Kellerbauer, Manuel; Klamert, Marcus; Tomkin, Jonathan (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary*; (Oxford: OUP 2019), para. 23, quoting the see Council conclusions on CETA.
[109] Ordinary legislative procedure in the field covered by trade agreements; cf. Art. 207(3) TFEU.
[110] Confirmed by Case C-263/14, Judgement of 14 June 2016, para. 68.
[111] *Ibid*., para. 73.
[112] Case C-658/11, Judgement of 24 June 2014, para. 81 (with further references); similarly Case C-263/14, Judgement of 14 June 2016, para. 70.
[113] ECJ, Case C-658/11, Judgement of 24 June 2014, para. 80; Stephan Lorenzmeier, 'Art. 218' in Grabitz, Eberhard; Hilf, Meinhard; Nettesheim, Martin (eds), Das Recht der Europäischen Union – Band 1 EUV/AEUV (München: C.H. Beck, 74. EL 2021), para. 45.
[114] ECJ, Case C-658/11, Judgement of 24 June 2014, para. 80.
[115] Erlbacher (n. 108), para. 33.
[116] European Parliament Resolution of 13 March 2014 on the implementation of the Treaty of Lisbon with respect to the European Parliament, 2013/2130(INI), para. 49. With regard to temporary suspension, this claim is not in line with the wording of Art. 218(9) TFEU.

A legal requirement to obtain parliamentary consent for denunciations at first sight might be seen to contradict the exclusive Council competence on suspension as per Art. 218(9) TFEU. However, temporary suspension is a less important legal act than definite denunciation. Both moves have different legal consequences, also under international law (see for a temporary suspension Art. 72 Vienna Convention on the Law of Treaties (VCLT)) and for a permanent termination (Art. 70 VCLT)).
The better view is that parliament must consent to the denunciation of treaties whose conclusion required consent. The open wording of Art. 218 TFEU does not stand against this understanding. Scholarship mostly formulates the actus contrarius argument (denunciation as the actus contrarius to the conclusion of the treaty) to justify an obligation to obtain consent for the denunciation of those treaties that fell under the consent requirement of Art. 218(6)(a) TFEU.[117]
This understanding is in line with the symmetry-conception[118] as manifest in Art. 218(6)(a) lit. v) TFEU and as put forward by the CJEU. According to the CJEU, "Article 218(6) TFEU establishes symmetry between the procedure for adopting EU measures internally and the procedure for adopting international agreements in order to guarantee that the Parliament and the Council enjoy the same powers in relation to a given field, in compliance with the institutional balance provided for by the Treaties."[119] If parliamentary consent is required to *repeal* internal EU measures and as Art. 218 TFEU aims to mirror these proceedings in the external field, then parliamentary consent would indeed be required for the denunciation. Members of the Commission's legal service have also subscribed to this view.[120]
In conclusion, the case for a legal obligation to obtain parliamentary consent for the denunciation of treaties which could only be concluded with consent of Parliament (as opposed to their temporary suspension) is strong.
If this line of reasoning is accepted, then consent would also have to be qualified as an "essential procedural requirement" in the sense of Article 263(2) TFEU, lack of consent would constitute a ground for an annulment action (Art. 263(2) TFEU), and a judicial finding of violation would lead to the nullity of the Council decision denouncing the agreement.[121]

Prospects:
266. Prospectively, the European Parliament aims to conclude a Quadripartite Memorandum of Understanding between the Parliament, the Commission, the Council, and the European External Action Service to further fill in in the gaps of Art. 218 TFEU.[122] In their 2016 interinstitutional agreement on better law-making, the Parliament, Council, and Commission had pledged "to meet within six months […] to negotiate improved practical arrangements".[123] However, as of now, no such agreement is in sight.

2. Eurasian Economic Community

267. Resolution of the Interparliamentary Assembly of the Eurasian Economic Community of November 23, 2001 No. 1-17 On the Model Law "On the Procedure for Ratification and

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[117] Marc Bungenberg: „Art. 218 (ex-Art. 300 EGV)' in Hans Von der Groeben, Jürgen Schwarze, Armin Hatje (eds), *Europäisches Unionsrecht – Vertrag über die Europäische Union, Vertrag über die Arbeitsweise der Europäischen Union, Charta der Grundrechte der Europäischen Union* (Baden-Baden: Nomos, 7th ed. 2015), para. 83; Lorenzmeier (n. 113), para. 61; Erlbacher (n. 108), para. 33.
[118] Andrea Ott, "The European Parliament's Role in EU Treaty Making", *Maastricht Journal of European and Comparative Law* 23 (2016), 1009-1039 (1028)
[119] CJEU, Case C-658/11, Judgement of 24 June 2014, para. 56.
[120] Unpublished explanatory note (no date) sent by a member of the EU Commission's legal service, to the Venice Commission.
[121] See mutatis mutandis ECJ, Case C-658/11, Judgement of 24 June 2014, para. 80 for the obligation to inform.
[122] European Parliament Resolution of 13 March 2014 on the implementation of the Treaty of Lisbon with respect to the European Parliament, 2013/2130(INI), paras 43.
[123] 2016 Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123/1, para. 40.

Denunciation of International Treaties" (http://continent-online.com/Document/?doc_id=30297446)[124]

Article 18. Denunciation of an international treaty of a state
(…)
2. Proposals for denunciation of international treaties, for which the decision to be bound for the given state was adopted in the form of a law, shall be introduced in the Parliament by the President or the Government, depending on who submitted the proposal, on the basis of which the ratification by Parliament of an international treaty took place.
The Government of the State shall have the right, if necessary, to submit to the President a proposal for the submission to Parliament of proposals for the denunciation of an international treaty, for which the decision to be bound was adopted in the form of a law on the basis of a submission from the Government.

Article 20. Termination and suspension of international Treaties of the State

1. Termination (including denunciation) and suspension of international treaties are carried out in in accordance with the terms of the treaty itself and the norms of the international law, by the organ which made the decision on the consent for the State to be bound by the international treaty.
2. The Parliament of the state considers proposals for the termination or suspension of the operation of international treaties of the State and adopts a law on termination (including denunciation) or suspension of the operation of an international treaty of the State, which is directed in accordance with the Constitution to the President for signature and promulgation.
3. The application of an international treaty of the State, for which the decision to be bound was adopted in the form of a law, can be suspended by the president in cases requiring the adoption of urgent measures, with mandatory immediate notification to the parliament and submission to the Parliament of the draft of the relevant law. In case of the rejection by the Parliament of the draft law /…/ the application of the treaty is immediately restored.
4. Termination and suspension of international interdepartmental agreements of the State are carried out by ministries and organs, on whose behalf such agreements were concluded, in coordination with the Ministry of Foreign Affairs, others state bodies concerned and with the permission of Government.
5. The Government of the State takes decisions on termination or suspension of international inter-agency treaties of that State, if the relevant issues have importance for the state interests of the State.

Comment
This resolution and the model law establish a parallelism of forms: When parliament ratified the treaty by adopting a law, the denunciation (and suspension) can only take place by a parliamentary law. In urgent cases, the President can pronounce a suspension of the treaty (not its termination) and must inform Parliament. Parliament has the last word in any case.
The terminology may be confusing. Ratification by Parliament should be understood as the domestic act of approval of the treaty by Parliament and not the outbound act of expressing consent to be bound in international law (Art. 11 Vienna Convention on the Law of Treaties).

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[124] Models laws appear to be meant to ensure harmonization of national legislation in the member states. States did not have the obligation to implement them. The resolution decides that the Assembly shall simply "send this model law to parliaments for use in national legislation".

III. ANALYSIS

A. Denunciation of Treaties – Terminology and Procedure

268. *Denunciation,* in the general sense, denotes *"a unilateral declaration by which a party terminates its participation in a treaty".*[125] For bilateral treaties, denunciation by one party entails termination of the treaty as such. For multilateral treaties, on the contrary, denunciation by one or even several parties usually does not affect the continuation of the treaty. In this latter case, denunciation – often labelled as withdrawal – simply entails the termination of treaty relations between the withdrawing state and the other parties to the treaty.

269. The general rules applicable to denunciation of treaties are enshrined in the 1969 *Vienna Convention on the Law of Treaties* (VCLT). These rules apply as a fallback if the treaty in question does not regulate the grounds for withdrawal and the procedure in its own provisions (Article 54 VCLT). Treaties often regulate the substantive grounds and the procedures of their denunciation in their final provisions (see, for instance, Article 58 of the European Convention on Human Rights or Article 80 of the Istanbul Convention). For those that do not explicitly foresee denunciation or withdrawal, the legal presumption is that they may not be denounced at all, unless it is established that the parties intended to admit the possibility of denunciation or withdrawal; or a right of denunciation or withdrawal may be implied by the nature of the treaty (Article 56(1) of the VCLT). Several human rights treaties, notably the ICCPR, do not contain any clause on denunciation. It is an open question whether their nature of a human rights treaty suggests that, in the absence of a denunciation clause, withdrawal is not permissible as a matter of international law.

270. The *procedural requirements* in international law for the denunciation from a treaty are stipulated in Articles 65-67 of the VCLT. First, the denouncing party shall inform, in writing, all the other parties of its intention to withdraw and the reasons for this act. Secondly, the other parties have, except in cases of special urgency, no less than three months to raise objections. Thirdly, if such objections are raised, the parties shall seek the solution through the means of peaceful settlement of disputes, as foreseen in Article 33 of the UN Charter. Fourthly, if such objections are not raised or if the dispute is not settled by other means, the state may proceed with the denunciation of the treaty. These rather cumbersome procedures have not been widely applied in practice.

271. International treaties may set (partly or fully) these general rules aside and regulate the procedure of their termination themselves. The European Convention for Human Rights does so in its Article 58, which indicates that the Convention may not be denounced before the expiry of five years from the date on which the state became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties (para. 1). The Istanbul Convention, in its Article 80, indicates that the convention may be denounced at any time by any state party, through a notification addressed to the Secretary General of the Council of Europe and that such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification.

272. Neither the VCLT, nor specific international treaties contain rules relating to the domestic procedure of denunciation of treaties. This procedure is regulated by the domestic law of individual states.[126]

[125] Anthony Aust, Treaties, Termination, Anne Peters and Rüdiger Wolfrum (eds), *Max Planck Encyclopedia of Public International Law* (Oxford University Press online (2006), para. 1.
[126] See on the relationship of international and domestic law in this matter Hannah Woolaver, "From Joining to Leaving: Domestic Law's Role in the International Legal Validity of Treaty Withdrawal", 30 *EJIL* (2019), 73-104.

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B. Denunciation of Treaties under Domestic Law

273. The basic rules relating to the conclusion and denunciation of treaties are usually contained in the Constitution (or in organic or constitutional laws). These rules are often complemented and elaborated upon in statutory law. Special laws on international treaties exist, for instance, in Armenia, Azerbaijan, Bosnia & Herzegovina, Bulgaria, Croatia, France, Hungary, Latvia, Moldova, Montenegro, Netherlands, Poland, Romania, Russia, Serbia, Slovenia, or Switzerland. Exceptionally, statutory regulation exists in the absence of any regulation at the constitutional level, as is the case in Malta, or the UK. Sub-legal acts (procedural rules of the parliaments, etc.) and constitutional habits and traditions also play a role in this area.

274. The comparative study of the 47 member states of the Council of Europe (and 15 additional member States of the Venice Commission, as well as the European Union, Belarus as an associate member of the Commission and South Africa, which has "special cooperation status") has revealed that conclusion and denunciation of treaties is never left to one branch of the government solely. Rather, it presupposes cooperation between the legislative power and the executive power. This cooperation normally involves: a) the initiation of the procedure by the executive and, b) the completion of this procedure with the involvement of the legislative. The involvement typically takes the form of the approval by the parliament.

275. For the conclusion of international treaties, this model is applied in all countries included in the comparative study, with few minor variations.[127]

276. For the denunciation of international treaties, the practice is more diverse. *Two main models* can be distinguished.

a) Under the first, the asymmetrical model, the parliament has a role in the conclusion of treaties but not in their denunciation. This model is currently used in 18 (out of 47) Member States of the Council of Europe. Among these States, 13 are parliamentary systems (Belgium, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco – hybrid -, Norway, San Marino, the UK) and 5 are presidential or semi-presidential systems (Cyprus, France, North Macedonia, Portugal, Turkey).
b) Under the second, the symmetrical model, the parliament has a role both in the conclusion and in the denunciation of treaties. This model is currently used in the remaining 29 (out of 47) Member States of the Council of Europe. Among these States, 17 are parliamentary systems (Albania, Andorra, Armenia, Austria, Czech Republic, Denmark, Estonia, Finland, Hungary, Latvia, Lithuania, Moldova, the Netherlands, Slovenia, Spain, Sweden, Switzerland - hybrid) and 12 are presidential or semi-presidential systems (Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Ukraine).

277. The comparative study has revealed a general trend towards strengthening the parliamentary involvement and moving from the asymmetrical to the symmetrical mode. This trend has been already noted by certain scholars. In the EU context, Hodson and Maher have diagnosed a *"rise of Parliaments in EU Treaty Making"*.[128] On a global level, the statistical analysis by Verdier and Versteeg has shown that *"the proportion of countries in which the executive can withdraw from treaties unilaterally has declined significantly since the 1970s, from a high of*

[127] For instance, in the United Kingdom, the House of Commons does not need to proactively approve ratification but it can place a veto on it. In the United States, the need for legislative approval or involvement does not apply to that subset of international treaties that are regarded in domestic law as "executive agreements" rather than "treaties."
[128] Dermot Hodson & Imelda Maher, The Transformation of EU Treaty Making - The Rise of Parliaments, Referendums and Courts since 1950 (Cambridge/New York: CUP 2018), Chapter IV: "The Rise of Parliaments in EU Treaty Making".

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89 percent to the current level of 72 percent".[129] These findings are fully in line with the conclusions of the present report.

278. The study moreover reveals that the trend to involve parliaments in both the conclusion and the denunciation of treaties is not limited to States with any particular form of government. This trend manifests itself both in parliamentary democracies and in presidential or semi-presidential systems. A presidential system is not, as a general matter, considered to obviate the need for an additional parliamentary basis of treaty denunciations.

C. Modalities of Parliamentary Involvement in the Denunciation of Treaties

279. The parliamentary involvement in the procedure of denunciation of treaties can take *several forms.* Three such forms can in principle be distinguished, on a scale of increasing intensity of involvement:[130]

a) Formal information of parliament before or even after the denunciation is pronounced vis-à-vis the treaty partner. For instance, in Malta, when denunciation of a treaty takes place, *"the Minister responsible for foreign affairs shall inform the House of the fact, giving the reasons therefor, at the earliest opportunity and in no case later than the second sitting of the House after the expiration of one month from the date of the denunciation or other act whereby Malta ceases or will cease to be a party to a treaty as aforesaid"* (Article 4 of the 1983 Ratification of Treaties Act).
b) Consultation or hearing of parliament with the consequence that the advice given by parliament must be taken into account but is not decisive. For instance, in Chile, *"the treaties concluded by the President of the Republic in the exercise of his regulatory power shall not require the approval of the Congress. […] To the President of the Republic corresponds the exclusive faculty to denounce a treaty or withdraw from it, for which the opinion of both Chambers of the Congress will be requested, in the case of treaties that have been approved by them"* (Article 54 of the Constitution).
c) Co-decision by the parliament which has to approve the denunciation. For instance, in Estonia, *"The Riigikogu [Parliament] shall: […] 4. ratify and denounce international treaties […]"* (Article 65 of the 1992 Constitution).

280. The parliamentary involvement can take place through different *legal acts.* Sometimes, it is required that the position of the parliament be expressed in a law/statute.[131] In other cases, the parliamentary act may take the form of parliamentary decision, adopted in special (relaxed) procedures, with less formality than the adoption of a formal statute[132] (e.g. the Swiss federal decree ("*Bundesbeschluss"*[133]).

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[129] Pierre-Hugues Verdier & Mila Versteeg, "Separation of Powers, Treaty-Making, and Treaty Withdrawal: A Global Survey", in: Curtis A. Bradley (ed.), The Oxford Handbook of Comparative Foreign Relations Law (New York: OUP 2019), 135-155, at p. 149 (with figure 4).
[130] See for a typology Paulina Starski, "Art. 59", in: Ingo von Münch, Philip Kunig (founders), *Grundgesetz-Kommentar* (München: C.H. Beck 7th ed. 2021), para. 58.
[131] Examples are Art. 121(1) Albania (1998); Art. 169(2) Cyprus (1960); Art. 59 (2) German Basic Law (1949); Art. 80 Italy (1947); Art. 36(2) Greece (1975); Art. 55(2) Morocco (2011); Art. 89(1) Poland (1997); Art. 14 Russian Federal Law on International Treaties (1995); Art. 90(1) Turkey (1982); Art. 85(32) Ukraine (1996).
[132] See also Art. 50(1) Austria (1920); Art. 29(5)(2) Ireland (1937); Art. 53(1) France (1958) "act of parliament"; Art. 26(2) Norway (1814); Art. 91(1) Netherlands (1815); Art. 161(i) Portugal (1976) – described as simple approval; Art. 86 Slovenia (1991); Art. 94(1) Spain (1978); Ch. 10, Art. 3 Sweden (1809).
[133] Art. 24(3) of the Federal Act on the Federal Assembly of 13 December 2002 of Switzerland.

281. In some states, moreover, citizens can be involved in treaty-making and treaty denunciation, in addition to parliaments, through *referendums.*[134] The referendums can be triggered in various ways: top-down by order of the president, or bottom-up upon initiative of the voters, or they can be foreseen as necessary in the legal order. The holding of a referendum is usually required/possible only in case of the conclusion or denunciation of especially important treaties, such as treaties involving territorial changes, or accession to or withdrawal from an international organisation, notably the EU.[135] The quorums for the validity of such a referendum vary, and the majority requirements for a positive vote are often fairly high. The legal force of the referendum also varies, from mere consultation to a binding referendum.

D. Types of Treaties for which Parliamentary Involvement is Foreseen

282. Many national legal orders do not subject all treaties to the same procedure at the national level. It is quite common to find a distinction between "important" and other treaties and to have different categories of treaties (usually defined by the subject matter) subject to somewhat different procedures of conclusion and denunciation at the domestic level. These differences also concern the role of parliaments. Even when the parliamentary involvement in the conclusion of denunciation of treaties is foreseen, it is often limited to certain types of treaties.

283. The following (overlapping) types of treaties are often singled out for parliamentary approval: treaties modifying domestic law (see below), treaties on defence and military matters,[136] accession to or transfer of powers to international organisations (often requiring qualified majorities in parliament or other additional procedural safeguards),[137] treaties related to territory and state borders,[138] treaties affecting the state budget and spending,[139] trade agreements,[140] treaties affecting citizens and human rights treaties,[141] as well as "political" treaties.[142]

284. Three main legislative *techniques* are used to indicate the distinction between treaties whose conclusion and/or denunciation requires parliamentary involvement and those whose conclusion and/or denunciation is left to the executive. The first technique consists in the positive enumeration of treaties of the former type in the constitution or a special law on treaties.[143] The second technique, conversely, relies on the negative indication of treaties for the latter type.[144] Under the third technique, the distinction between the two types of treaties is indicated through general characteristics of the two categories, with no specific lists provided (e.g., in Norway, parliamentary involvement is required for treaties *"on matters of special importance"* [Article 26 of the Constitution]).

285. Human rights treaties or treaties concluded within a specific international organization, such as the Council of Europe, are rarely singled out and dealt with in a way different from other treaties. There are however some exceptions to this rule. For instance, in the Czech Republic,

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[134] See. e.g., Art. 53(3) France for ceding of territory; Art. 66bis(1) Liechtenstein (1921); Art. 11(3) Moldavian Act (1999); Art. 141 Switzerland (1999) (for certain types of treaties).
[135] Art. 10a(2) Czech Republic (1992) – *international organisations);* Art. 120(3) North Macedonia (1991) – *international organisations);* Art. 68(3) Latvia (1991) – *EU);* Art. 90(3), 125 Poland (1997) –for the delegation of powers to an international organisation.
[136] E.g. in Andorra, Georgia, Russia (and many other states).
[137] For example in Andorra (2/3 majority); Croatia (2/3 majority); Estonia; Georgia; Latvia; Monaco (and many other states).
[138] E.g. in Albania; Estonia; France; Portugal, and many other states.
[139] E.g. in Albania; Croatia, France; Andorra; Georgia, and many other states.
[140] E.g. in France and many other states.
[141] See list in Annex A, I.1.
[142] E.g. Albania; Germany.
[143] See, for instance, Article 49 of the Constitution of the Czech Republic.
[144] This is done for example in Cyprus, Turkey, Slovenia, and in South Africa.

from 1993-2002, the requirement of the parliamentary involvement in the conclusion and denunciation of treaties was limited to human rights treaties. More frequently, however, such treaties are only one category among those whose conclusion and/or denunciation requires parliamentary involvement.

E. Arguments in Support of Parliamentary Involvement in the Denunciation of Treaties

286. The comparative study has revealed a clear trend towards parliamentary involvement in the denunciation of treaties, more specifically those treaties which were ratified with the engagement of parliament. These typically encompass, albeit they are not limited to, treaties granting human rights and fundamental freedoms. Involving the parliament, in one way or another, in both the conclusion and ratification of treaties has become a common and widespread practice in recent decades, and now represents a clear majority of the states in the Council of Europe (29 out of 47 Member States). Moreover, the treaty practice of the European Union itself also moves in this direction (in the absence of an explicit provision on the denunciation of treaties in the primary law of the EU). This majority practice does not in itself create a new rule of international or regional customary law. In order to give rise to a new legal rule, the practice needs to be widespread, extend over time, and manifest a legal conviction that it is required by law (*opinio iuris*). The stark increase in the parliamentarisation of treaty denunciations has occurred in the 1990s (see Annex B)). 30 years of practice would seem to be long enough to generate customary law. It is however unclear whether the practice of 29 out of 47 Member States is widespread enough to constitute a "general practice" in Europe and whether this practice is guided by a sense of obligation under international law. The Venice Commission can therefore not conclude that there already is a rule of regional customary international law which demands that a state's legislature is involved in the denunciation of an international treaty. At the same time, it is manifest that states in Europe and beyond have been increasingly recognising the need to engage the legislative branch (and, occasionally, also the broader public) in treaty procedures, including denunciation and not only ratification, as important and preferable.

287. The main normative argument supporting the involvement of the legislature in the denunciation of treaties stems from the constitutional principle that essential, important governmental action must be based on a formal act of the legislative branch and must be subject to its control.[145] This idea derives from the principles of democracy and the rule of law: Involvement of the legislative branch composed of elected representatives of the people gives a stronger democratic basis to the decision. Also, it offers the possibility of a more intense deliberation and debate and allows for public oversight, all of which contribute to publicity and transparency, components of the rule of law. Treaties are in functional terms a form of "internationalised legislation".[146] They may have significance for the domestic legal order and affect the legal position of individuals, as is typically the case of human rights treaties. In that perspective, denunciation of treaties amounts to "negative legislation", as it often changes the legal framework applicable not only to the public authorities but also to natural and legal persons within the country. For human rights treaties, the denunciation typically results in the decrease of substantive guarantees of protection of individuals and/or in the removal of some institutional or procedural mechanisms that monitor and enforce the implementation of and respect for such

[145] Paulina Starski, "Art. 59", in: Ingo von Münch, Philip Kunig (founders), *Grundgesetz-Kommentar* (München: C.H. Beck 7th ed. 2021), para. 68; Juliane Kokott, "Art. 59 Abs. 2 GG und einseitige völkerrechtliche Akte", in Kay Hailbronner/Georg Ress/Torsten Stein (eds), Staat und Völkerrechtsordnung: Festschrift für Karl Doehring (Berlin: Springer-Verlag 1989), p. 512.
[146] Ulrich Fastenrath, Kompetenzverteilung im Bereich der auswärtigen Gewalt (München: C.H. Beck 1986), p. 238.

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guarantees.[147] It is therefore often said that the withdrawal from a treaty is the counterpart (or flipside, "*actus contrarius*") of its conclusion, and that therefore, there should be a "symmetry" in parliamentary involvement.[148] Similarly, just as the creation of treaty obligations frequently entails the need to pass new legislation or to amend existing legislation, in a parallel sense the termination of treaty obligations can also have important effects on the domestic legal system, including ones that can only be addressed through legislative action.

288. Certain arguments can also be advanced in favour of an asymmetrical model. For example, insofar as the objective of asking for a parliamentary act is to secure the implementation or execution of the treaty, this objective is not relevant in the event of a denunciation. It is sometimes argued that the Executive is better equipped to handle foreign relations as a whole, which would include the question of treaty denunciation. In particular, the executive branch is perceived as institutionally more capable of responding swiftly and in an informed manner to changing foreign relations.[149] And in some constitutional traditions, the distinctive ways of understanding and giving effect to the principle of the separation of powers can lead to asymmetrical responsibilities and authority.

289. On the whole, the Venice Commission regards the normative arguments in favour of the symmetrical model to be weightier and more persuasive, as they seem more consistent with the principles of the rule of law and democracy. This likely explains also the clear trend in Council of Europe countries toward greater involvement of the legislative branch in treaty denunciation. Importantly, both the empirical trend and the normative assessment is independent of the form of government, whether it is a parliamentary or a presidential democracy.

290. However, several important qualifications must be added to this conclusion. First, it is clear that as a matter of law, the question of whether to adopt a symmetrical or asymmetrical model remains one within the sphere of domestic political preference, and international law leaves this choice to the sovereign discretion of each individual state. Second, notwithstanding the general preference for a symmetrical model, in certain states there may be good reasons related to their specific constitutional structures and traditions to maintain a more asymmetrical system of addressing treaty ratification and denunciation. And third, even among symmetrical models there are enormous variations regarding the degree and manner of legislative involvement in the denunciation of treaties – so much so that no general conclusions can be drawn at that level of specificity.

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[147] Martin Nettesheim, "Article 59", in: Theodor Maunz, Günther Dürig (founder) Roman Herzog, Matthias Herdegen, Rupert Scholz, Hans H. Klein (eds) *Grundgesetz Kommentar*, Volume IV (München: Beck, loose-leaf collection, January 2021), para. 140 (with regard to Germany).

[148] North Gauteng High Court, Pretoria, Judgment of 22 February 2017, *Democratic Alliance v Minister of International Relations and Cooperation and Others* (*Council for the Advancement of the South African Constitution Intervening*) (83145/2016), para. 51 (with regard to South Africa). Starski (n. 145) para. 63 (on Germany); Felix Lange, "Art. 59 Abs. 2 S. 1 GG im Lichte von Brexit und IStGH-Austritt - Zur Parlamentarisierung der Kündigung völkerrechtlicher Verträge", AöR 142 (2017), p. 464 (with regard to Germany); Çali (with regard to Turkey); Eskitaşçıoğlu (with regard to Turkey).

[149] German Federal Constitutional Court, BVerfG, judgment of 18 December 1984, 2 BvE 13/83, BVerfGE 68, 1-132 – paras. 137, 138 (with regard to Germany); Curtis A. Bradley & Lawrence R. Helfer, "Treaty Exit in the United States: Insights from the United Kingdom or South Africa?", 111 *AJIL Unbound* (2017), 428-433, p. 432 (with regard to the US); See on Italy Giovanni Bognetti, "The Role of Italian Parliament in the Treaty-Making Process", 67 *Chicago-Kent Law Review* (1991), 391-412, pp. 411-412 (arguing especially that a coalition government's ability to conduct foreign relations would be significantly impaired if parliamentary approval is strictly necessary and that existing measures of parliamentary control (enquiries etc.) are sufficient). However, practice has often demonstrated that Parliaments can act quickly enough when necessary. Paulina Starski, "Art. 59", in: Ingo von Münch, Philip Kunig (founders), *Grundgesetz-Kommentar* (München: C.H. Beck 7th ed. 2021), para. 64.

IV. ANNEXES

<u>Annex A)</u> Tables on Member States of the Council of Europe on procedures relating to "Council of Europe Conventions"

291. Most states foresee parliamentary involvement only for – roughly speaking – important international treaties. And most states circumscribe the types of such important treaties with more or less broad clauses and categories.

292. One of those categories are fundamental (human) rights treaties (or equivalents such as rights and status of citizens, or the like). We deem such treaties to be the most important "Council of Europe Conventions."

A. Approval of Parliament in the context of the <u>conclusion</u> of international treaties

293. Member states of the Council of Europe require the approval of parliament for the conclusion of treaties relating to human rights. 12 of those states mention fundamental (human) rights treaties (or equivalents such as right and status of citizens, or the like) explicitly (table 1). This is also the case for the European Union. Other states' constitutions or laws establish other categories of important international treaties under which human rights treaties would fall. These are in total 25 member states of the Council of Europe (table 2). Finally, four Council of Europe member states seem to require parliamentary approval for the conclusion of all international treaties; this then includes human rights treaties (Table 3).

1) 12 CoE member states (and the European Union) in which parliamentary approval for treaties relating to the rights and status of its citizens (or equivalents) is explicitly required

Country	Source	Relevant provision(s) & requirements
Albania	Art. 121(1)(b)	"Treaties relating to „human rights and freedoms, and obligations of citizens as provided in the Constitution"
Andorra	Art. 64(1)(d)	"Treaties affecting the fundamental rights regulated in TITLE II"
Armenia	Art. 116(1)(1)	Treaties which "concern fundamental rights and freedoms, as well as obligations of citizens"
Bulgaria	Art. 85(1)(6)	"Treaties which […] concern fundamental human rights"
France	Art. 53(1)	Treaties or agreements "relating to the status of persons […] may be ratified or approved only by an Act of Parliament"
Czech Republic	Art. 49(a)	"affecting the rights or duties of persons".
Moldova (Rep.)	Art. 66(g) in conjunction with Art.	<u>Art. 66(g)</u>: "The Parliament shall be vested the following basic powers: […] g) to ratify, terminate,

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	11(1)(b) Law No. 595-XIV of 24.09.1999	suspend and repeal the action of the international treaties concluded by the Republic of Moldova;" Art. 11(1)(b) Law No. 595-XIV: "treaties on the status of persons, fundamental human rights and freedoms"
Poland	Art. 89(1)(2)	Treaties concerning "freedoms, rights or obligations of citizens, as specified in the Constitution"
Romania	Art. 4(1) Law No. 4 of 11 January 1991	Treaties relating to "the status of persons, citizens' rights and freedoms […] are submitted to Parliament for ratification by law"
Russia	Art. 15(1)(b) of Federal Law No. 101-FZ of July 15 1995	Treaties "the subject of which is the basic rights and freedoms of man and citizen"
Slovakia	Art. 86(d)	"International treaties on human rights and fundamental freedoms"
Spain	Art. 94(1)(c)	Treaties affecting "the fundamental rights and duties established under Title I"
European Union	Art. 218(6) TFEU:	*"(ii)* agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms";

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2) 25 CoE member states in which treaties relating to human rights may fall under other categories of treaties whose conclusion requires parliamentary approval

294. In many of those states, these treaties can then also only be denounced with parliamentary approval ("parallelism of forms"), see below list B.).

Country	Source	Relevant provision(s) & requirements
Austria	Art. 50(1)	Parl. approval if "contents […] modify or complement existing laws"
Azerbaijan	Art. 95(1)(4)	"The [Parliament] is competent to determine […] the ratification and denunciation of international treaties and intergovernmental agreements containing rules contrary to the laws of the Republic of Azerbaijan"
Croatia	Art. 133(1)	All "political" treaties
Cyprus	Art. 169(1), (2)	"Any other treaty, convention and international agreement [not relating to commercial matters, economic co-operation, and modus vivendi] shall […] only be operative and binding on the Republic when approved by a law made by the House of Representatives"
Czech Republic	Art. 49	All "political" treaties
Denmark	Art. 19(1)	"Without the consent of [Parliament] the King shall not […] enter into any obligation […] which otherwise is of major importance"
Estonia	Art. 121	If "amendment of Estonian laws" or "treaties […] in which ratification is prescribed"
Finland	Art. 94(1)	"The acceptance of the Parliament is required for such treaties and other international obligations that contain provisions of a legislative nature, are otherwise significant, or otherwise require approval by the Parliament under this Constitution"

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Georgia	Art. 47(1), (2)	For "treaties that envisage ratification" or "changes to domestic legislation". Otherwise, only "submittal to parliament" (Art. 47(3))
Germany	Art. 59(2)	"Treaties that […] relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law."
Greece	Art. 37(2)	Treaties "containing concessions for which, according to other provisions of this Constitution, no provision can be made without a statute"
Hungary	S. 7(3)(b) of Act L on procedures relating to international agreements (2005)	"An international treaty shall fall within the competence of parliament if […] it regulates a subject matter which is provided for by law or which, under the Fundamental Law, must be provided for by a cardinal or other law"
Italy	Art. 80	All "political" treaties
Latvia	Art. 68(1)	"All international agreements, which settle matters that may be decided by the legislative process, shall require ratification by [Parliament]."
Lithuania	Art. 138(1)(2), (6)	Political co-operation and multilateral treaties
Montenegro	Art. 14 Law on the Conclusion and Execution of International Treaties	Agreements that "require the adoption of new or amendments to existing laws" or "agreements whose provisions explicitly provide for their confirmation"
Netherlands	Art. 91(1)	"The Kingdom shall not be bound by treaties, nor shall such treaties be denounced without the prior approval of the States General. The cases in which approval is not required shall be specified by Act of Parliament" *[The exceptions do not include human rights treaties, which are regarded as important and therefore have to be approved by Parliament]*

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Norway	Art. 26(2)	"Treaties on matters of special importance, and, in all cases, treaties whose implementation, according to the Constitution, necessitates a new law or a decision by [Parliament], are not binding until [it] has given its consent thereto."
Portugal	Art. 161(i)	"The Assembly of the Republic shall be responsible for […] passing […] international agreements that address matters which are the exclusive responsibility of the Assembly"
San Marino	custom	
Slovenia	Art. 75(4), (6) Foreign Affairs Act of 25 May 2001	*Negative rule by which Government may act independently only when implementing existing instruments or agreements, or for treaties on the level of Government*
Sweden	Chapter 10, Art. 3(1)(2), (3) of the Instrument of Government	Approval is required if the agreement "concerns a matter to be decided by [Parliament]" or "if the agreement is of major significance"
Switzerland	Art. 24(1) Act on the Federal Assembly of 13 December 2002 in conjunction with Art. 7a Government and Administration Organisation Act of 21 March 1997	*Negative rule by which Government may not independently conclude treaties relating to rights and status of its citizens*
Turkey	Art. 87, 90(1)-(4)	*Negative rule by which the President may independently conclude treaties relating to rights and status of its citizens*
United Kingdom	S.20 Constitutional Reform & Governance Act 2020	*Rule by which Parliament may veto the conclusion of any international treaty*

3) Four CoE member states where parliamentary approval for the conclusion of all international treaties is required

295. Where a constitution demands that the conclusion of all international treaties require the approval of parliament, the constitutional provision covers all Council of Europe Conventions.

296. However, the rapporteurs are not certain whether in some states additional statutory law narrows down the broad and comprehensive constitutional requirement of parliamentary approval. But if such statutes exist, it is extremely unlikely that they would place human rights treaties under the exception.

Country	Source	Relevant provision(s) & requirements
Belgium	Art. 167(2)	Treaties "take effect only after they have received the approval of the House of Representatives"
Bosnia & Herzegovina	Art. IV(4)(d)	"The Parliamentary Assembly shall […decide] whether to consent to the ratification of treaties"
Luxembourg	Art. 37	"Treaties will not have effect before having been approved by the law"
North Macedonia	Art. 68	"[Parliament] ratifies international agreements"

B. Approval of Parliament in the context of the denunciation of international treaties (29 CoE member states)

297. This list also covers only Council of Europe member states. Approval of Parliament in the context of the denunciation of (some) international treaties is (under certain conditions) required in 29 CoE member states. The two categories "in parallel to the conclusion of treaty" and "when parliament had approved the conclusion of the treaty" are very close to each other. The report uses the label "in parallel to the conclusion of treaty" when the provision mentions ratification and denunciation in one breath (for example in Estonia: "The Riigikogu shall ratify and denounce treaties of the Republic of Estonia, which 1. alter State borders, 2. […]"). The report uses the label: "When parliament had approved the conclusion of the treaty" for those states where the wording of the constitution or statute is not "ratify and denounce" (or equivalents). For example, the Danish Constitutional Act says: "[…] nor shall the King, except with the consent of the Folketing, terminate any international treaty entered into with the consent of the Folketing". In those states, the individual case might play a role. For example, the executive branch might have submitted the treaty voluntarily to parliament for approval before conclusion without being obliged to do so by the constitutional text. The need for approval of the denunciation is here determined by the individual case rather than by the abstract category of treaty.

Country	Source[150]	*Comment*
Albania	Art. 121(1)	In parallel to the conclusion of treaty
Andorra	Art. 64(1), (3)	In parallel to the conclusion of treaty
Armenia	Art. 116(2)	In parallel to the conclusion of treaty
Austria	Settled practice	When parliament had approved the conclusion of the treaty.
Azerbaijan	Art. 95(1)	In parallel to the conclusion of treaty
Bosnia & Herzegovina	Statutory law	Approval required in all cases

[150] Provisions of the state constitution if not mentioned otherwise.

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Bulgaria	Art. 85(1)	In parallel to the conclusion of treaty
Croatia	Art. 133(1) in conjunction with statutory law	*As described in the statute*
Czech Republic	Practice	In parallel to the conclusion of treaty
Denmark	Art. 19(1)	When parliament had approved the conclusion of the treaty
Estonia	Art. 65(4)	In parallel to the conclusion of treaty
Finland	Art. 94(1)	In parallel to the conclusion of treaty
Georgia	Art 47(1)	In parallel to the conclusion of treaty
Hungary	Statutory law	In parallel to the conclusion of treaty
Latvia	Statutory law	When parliament had approved the conclusion of the treaty
Lithuania	Art. 138	In parallel to the conclusion of the treaty
Moldova	Art. 66(g) in conjunction with statutory law	When parliament had approved the conclusion of the treaty
Montenegro	Statutory law	In parallel to the conclusion of treaty
Netherlands	Art. 91(1)	In parallel to the conclusion of treaty
Poland	Art. 89(1)	In parallel to the conclusion of treaty
Romania	Statutory law	In parallel to the conclusion of treaty
Russia	Statutory law	In parallel to the conclusion of treaty
Serbia	Statutory law	In parallel to the conclusion of treaty
Slovakia	Governmental regulations	In parallel to the conclusion of treaty
Slovenia	Statutory law	When parliament had approved the conclusion of the treaty
Spain	Art. 96(2)	In parallel to the conclusion of treaty
Sweden	Chapter 10, Instrument of Government	In parallel to the conclusion of treaty
Switzerland	Statutory law	In parallel to the conclusion of treaty
Ukraine	Art. 85(32)	In parallel to the conclusion of treaty

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Annex B) Table on Trend through Time: Explicit requirements for parliamentary approval treaty for denunciations (all states researched)

298. This list comprises all states researched: Member states of the Council of Europe, other member states of the Venice Commission, and the select further states whose legal provisions are also reproduced in the above section.

299. This table does not distinguish between the various forms and intensities of the involvement of parliaments.

300. The report lists the dates of the adoption of the constitution or of the amendment that forces parliamentary approval for the denunciation. However, in many cases it does not determine exactly whether (and when) the requirement was only later inserted into the constitution. It is assumed that especially in older constitutions, the requirement for parliamentary approval for the denunciation of international treaties was no original clause but has been inserted later.

	Parliamentary Systems	(Semi-) Presidential Systems
2010s	Switzerland 2019 Serbia 2013	Mozambique 2018 Central African Republic 2016
2000s	Hungary 2005 Slovenia 2001	Kosovo 2011 Angola 2010 Bolivia 2009 Ecuador 2008
1990s	Finland 1999 Moldova 1999 Albania 1998 Poland 1997 South Africa 1996 Latvia 1994 Andorra 1993 Estonia 1992 Lithuania 1992 Slovakia 1992 Bulgaria 1991	Ukraine 1996 Armenia 1995 Azerbaijan 1995 Georgia 1995 Russia 1995 Belarus 1994 Tajikistan 1994 Peru 1993 Turkmenistan 1992 Romania 1991
1980s		Argentina 1983 *(reinstated)* China 1983
1970s	Spain 1978	
1900-1960s	Denmark 1953	Mexico 1917
1800s	Netherlands 1815 Sweden 1809	

Annex C) Bibliography

A. Comparative Literature

Bradley, Curtis A. & Lawrence R. Helfer, "Treaty Exit in the United States: Insights from the United Kingdom or South Africa?", 111 *AJIL Unbound* (2017), 428-433

Council of Europe & British Institute of International and Comparative Law (eds), *Treaty Making – Expression of Consent by States to be Bound by a Treaty* (The Hague/London: Kluwer 2001).

Hodson, Dermot & Imelda Maher, *The Transformation of EU Treaty Making - The Rise of Parliaments, Referendums and Courts since 1950* (Cambridge/New York: CUP 2018).

Mendez, Mario, "Constitutional review of treaties: Lessons for comparative constitutional design and practice", *International Journal of Constitutional Law* 15 (2017), 84-109

Verdier, Pierre-Hugues & Mila Versteeg, "Separation of Powers, Treaty-Making, and Treaty Withdrawal: A Global Survey", in: Curtis A. Bradley (ed.), *The Oxford Handbook of Comparative Foreign Relations Law* (New York: OUP 2019), 135-155

Woolaver, Hannah, "From Joining to Leaving: Domestic Law's Role in the International Legal Validity of Treaty Withdrawal", 30(1) *EJIL* (2019), 73-104

B. Literature on individual states, state by state

Albania
Fisnik Korenica & Dren Doli, "The Relationship between International Treaties and Domestic Law: A View from Albanian Constitutional Law and Practice", 24 *Pace Int'l Law Review* (2012), 92

Austria
Franz Cede & Gerhard Hafner, "Austria", in: Duncan B. Hollis, Merrit R. Blakeslee & L. Benjamin Ederington (eds.), *National Treaty Law and Practice* (Leiden/Boston: Nijhoff Publishers 2005), 59-90

Theo Öhlinger & Andreas Th. Müller, "Art. 50", in: Karl Korinek, Michael Holoubek, Christoph Bezemek, Claudia Fuchs, Andrea Martin & Ulrich E. Zellenberg (eds.), *Österreichisches Bundesverfassungsrecht*, Volume I, Sub-Volume 3 (Vienna: Verlag Österreich/Heidelberg: C.F. Müller: loose-leaf-collection, 2018)

Belgium
Christian Behrendt, *La ratification des traités internationaux, une perspective de droit compare – Belgique*, Service de recherche du Parlement européen, Étude, Mars 2020

Brazil
Virgilio Afonso da Silva, *The Constitution of Brazil: A Contextual Analysis* (Oxford/London: Hart Publishing 2019)

Guido F.S. Soares, "The Treaty-Making Process under the 1988 Federal Constitution of Brazil", 67 *Chicago-Kent Law Review* (1991), 495

Draft - restricted

Canada
René Provost, *La ratification des traités internationaux, une perspective de droit comparé – Canada*, Service de recherche du Parlament européen, Étude, Février 2019

France
Geneviève Burdeau, Les engagements internationaux de la France et les exigences de l'Etat de droit, 32 *Annuaire Français de Droit International* (1986), 873-856

Pierre Michel Eisemann & Raphaële Rivier, "France", in: Duncan B. Hollis, Merrit R. Blakeslee & L. Benjamin Ederington (eds.), *National Treaty Law and Practice* (Leiden/Boston: Nijhoff Publishers 2005), 253-316

François Luchaire, Gérard Conac & Xavier Prétot (eds.), *La Constitution de la République française* (Paris: Economica, 3rd edt. 2009)

Marie-Claire Ponthoreau, *La ratification des traités internationaux, une perspective de droit compare – France*, Service de recherche du Parlament européen, Étude, Juin 2019

Germany
Rudolf Bernhardt, "§ 174: Normativität und Schutz der Verfassung – Internationale Beziehungen", in: Josef Isensee and Paul Kirchhof (eds), *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, Vol. VII (Heidelberg: C.F. Müller 1992)

Ulrich Fastenrath, *Kompetenzverteilung im Bereich der auswärtigen Gewalt* (München: C.H. Beck 1986)

Juliane Hettche, *Die Beteiligung der Legislative bei Vorbehalten zu und Kündigung von völkerrechtlichen Verträgen* (Tübingen: Mohr Siebeck 2018)

Werner Heun, "Artikel 59, in: Horst Dreier (ed.), *Grundgesetz Kommentar* Volume II (Tübingen: Mohr Siebeck 2015)."

Sebastian Graf von Kielmansegg, *Ratifikation völkerrechtlicher Verträge, eine rechtsvergleichende Perspektive – Deutschland*, Service de recherche du Parlament européen, Étude, Avril 2018

Franz Klein, "Art. 59", in: Bruno Schmidt-Bleibtreu/Franz Klein (eds), *Kommentar zum Grundgesetz für die Bundesrepublik Deutschland* (6th ed Neuwied/Darmstadt: Luchterhand 1983)

Felix Lange, "Art. 59 Abs. 2 S. 1 GG im Lichte von Brexit und IStGH-Austritt - Zur Parlamentarisierung der Kündigung völkerrechtlicher Verträge", Archiv des öffentlichen Rechts 142 (2017), 442-470

Hermann Mosler, *Das Völkerrecht in der Praxis der deutschen Gerichte* (Karlsruhe: C.F. Müller 1957)

Martin Nettesheim, "Art. 59", in: Theodor Maunz, Günther Dürig (founder) Roman Herzog, Matthias Herdegen, Rupert Scholz, Hans H. Klein (eds) *Grundgesetz Kommentar*, Volume IV (München: Beck, loose-leaf collection, January 2021)

Karl Josef Partsch, "Parlament und Regierung im modernen Staat", *Veröffentlichung der Vereinigungen der Deutschen Staatsrechtslehrer* Vol. 16 (Berlin: Walter de Gruyter 1958)

Dietrich Rauschnig, "Art. 59" in Wolfgang Kahl, Christian Waldhoff & Christian Walter (eds.), *Bonner Kommentar zum Grundgesetz* (Heidelberg: C.F. Müller, loose-leaf collection, April 2021)

Volker Röben, *Außenverfassungsrecht: Eine Untersuchung zur auswärtigen Gewalt des offenen Staates* (Mohr Siebeck: Tübingen 2007)

Ondolf Rojahn, "Art. 59", in: Ingo von Münch, Philip Kunig (founders), *Grundgesetz-Kommentar* (München: C.H. Beck 6th ed. 2012)

Frank Schorkopf, *Staatsrecht der internationalen Beziehungen* (C.H. Beck: München 2017)

Draft restricted

Paulina Starski, “Art. 59”, in: Ingo von Münch, Philip Kunig (founders), *Grundgesetz-Kommentar* (München: C.H. Beck 7th ed. 2021)

Rüdiger Wolfrum, *Kontrolle der auswärtigen Gewalt – Bericht*, 56 VVDStRL (1996), 38-66

Manfred Zuleeg, “Art. 59”, in: Erhard Denninger, Wolfgang Hoffmann-Riem, Hans-Peter Schneider, Ekkehart Stein (eds), *Kommentar zum Grundgesetz für die Bundesrepublik Deutschland*, vol. 2 (Neuwied: Luchterhand 3d ed 2002)

Israel

Ruth Lapidoth, “Israel”, in: Duncan B. Hollis, Merrit R. Blakeslee & L. Benjamin Ederington (eds.), *National Treaty Law and Practice* (Leiden/Boston: Nijhoff Publishers 2005), 385-413

Italy

Giovanni Bognetti, “The Role of Italian Parliament in the Treaty-Making Process”, 67 *Chicago-Kent Law Review* (1991), 391-412

Susanna Cafaro, *La ratifica dei trattati internazionali, una prospettiva di diritto comparato – Italia*, Direzione generale dei Servizi di ricerca parlamentare, Studio, Luglio 2018

Liechtenstein

Peter Bussjäger, “Artikel 8”, in: Liechtenstein-Institut (ed.), *Kommentar zur liechtensteinischen Verfassung*, Online-Kommentar, Bendern 2016, verfassung.li

Lithuania

Saulius Katuoka, “Tarptautinės sutartys ir Lietuvos valstybė”, *Jurisprudencija*, 2002, t. 30(22), 115–122.

Dainius Žalimas, “National Constitutional Paradigm and the Principles and Norms of International and EU Law”, *Journal of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions* (BBCJ 2nd Congress: the Role of Constitutional Courts in Interpreting the Provisions of National Constitutions in the Context of the Generally Recognized Principles and Norms of International Law and EU Law, Judgments of International Courts), Kyiv, Конституційний Суд України, 2017, No. 1, 34-52.

Dainius Žalimas, “Lietuvos Respublikos užsienio politikos konstituciniai pagrindai”, *Lietuvos konstitucinė teisė* (antroji laida), Vilnius: VĮ Registrų centras, 2017, 755-799.

Luxembourg

Marc Besch, *Normes et légistique en droit public luxembourgeois* (Windhof: Larcier, 1st edition 2019)

Morocco

Abdelkhaleq Berramdane, *La ratification des traités internationaux, une perspective de droit compare – Maroc*, Service de recherche du Parlament européen, Étude, Décembre 2018

The Netherlands

Jan Klabbers, “The New Dutch Law on the Approval of Treaties“, 44 *Int’l and Comparative Law Quarterly* (1995), 629-643

C.A.J.M. Kortmann et al., Constitutioneel recht (Wolters Kluwer, 2021), p. 194-201.

C.B. Modderman, *Verdragenrecht. Het internationale en Nederlandse recht betreffende de totstandkoming, werking en beëindiging van verdragen* (Wolters Kluwer, 2019), p. 59-93, 118-119.

N.J. Schrijver, *Internationaal Publiekrecht* (Boom, 2020), pp. 73-82.

Draft-restricted

North Macedonia
Blerton Sinani & Sami Mehmeti, "The Legal Position of International Treaties in the Constitutional Order of the Republic of Macedonia". 2014 *Acta Universitatis Danubius Juridica*, 37-50

Aneta Stokanovska-Stefanova & Drasko Atanasoski, "International Relations as Constitutional Matter in Republic of Macedonia" *[sic!]*, 12 *US-China Law Review* (2015), 1015-1025

Russian Federation
William E. Butler, "Russia", in: Duncan B. Hollis, Merrit R. Blakeslee & L. Benjamin Ederington (eds.), *National Treaty Law and Practice* (Leiden/Boston: Nijhoff Publishers 2005), 537-580

Измалков, А. В., Некоторые особенности законодательных процедур, связанных с ратификацией и денонсацией международных договоров. № 1. *Пробелы в российском законодательстве* (2008) 149-150.

Switzerland
Nina Blum, Vera Naegeli & Anne Peters, "Die verfassungsmäßigen Beteiligungsrechte der Bundesversammlung und des Stimmvolkes an der Kündigung völkerrechtlicher Verträge, Schweizerisches Zentralblatt für Staats- und Verwaltungsrecht" 114 (2013), 527-562

Elisabeth Chiariello, *Kündigung von völkerrechtlichen Verträgen*, 31 LeGes (2020), 2-6

Raffaela Kunz & Anne Peters, "Constitutionalisation and Democratisation of Foreign Affairs: The Case of Switzerland", in: Anneli Albi and Samo Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law* (The Hague: Asser Press 2019; Berlin/Heidelberg Springer 2019)

Turkey
Başak Çali, "Withdrawal from the Istanbul Convention by Turkey: A Testing Problem for the Council of Europe", *EJIL Talk*, 22 March 2021 - https://www.ejiltalk.org/withdrawal-from-the-istanbul-convention-by-turkey-a-testing-problem-for-the-council-of-europe/

İlayda Eskitaşçıoğlu, "Turkey's Withdrawal from the Istanbul Convention: A Sudden Presidential Decision in the Dead of the Night and an Alarming Setback", *Völkerrechtsblog*, 27 March 2021 - https://voelkerrechtsblog.org/de/turkeys-withdrawal-from-the-istanbul-convention/#

Ukraine
ВАЩЕНКО, Валерій Артурович, Процедура денонсації міжнародних договорів за законодавством України: проблеми і шляхи вдосконалення, № 33 *Юриспруденція* (2018), 150-152.

United Kingdom
Mario Mendez, Neglecting the Treaty-Making Power in the UK: The Case for Change, 136 *Law Quarterly Review* (2020), 630-657

Gavin Phillipson and Alison L Young, "Would use of the prerogative to denounce the ECHR 'frustrate' the Human Rights Act? Lessons from Miller", Public Law 2017, 150

Ian Sinclair, Susan J. Dickson & Graham Maciver, "United Kingdom", in: Duncan B. Hollis, Merrit R. Blakeslee & L. Benjamin Ederington (eds.), *National Treaty Law and Practice* (Leiden/Boston: Nijhoff Publishers 2005), 727-764

Draft restricted

USA
Stephen P. Mulligan, "Withdrawal from International Agreements: Legal Framework, the Paris Agreement, and the Iran Nuclear Agreement", *US Congressional Research Service Report* 4 May 2018

Ved P. Nanda, "Conclusion and Implementation of Treaties and Other International Agreements in the United States", 38 *American Journal of Comparative Law* (1990), 369-387

David C. Scott, "Presidential Power to ""Un-sign" Treaties", 69 *Chicago Law Review* (2002) 1447-1477

Draft- restricted