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Ministry of Higher Education and Scientific Research

Eshahid Hamma Lakhdar University - El Oued



Faculty of Law and Political Science

Law Department

Lectures on public international law

Intended for second-year law students

Group A – B

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In the Name of Allah, the Most Beneficent, the Most Merciful

**“And say, My Lord, increase
me in knowledge”**

Introduction:

For second-year law students, the public international law standard is considered one of the basic standards directed at them, and it complements what was studied in the first year of the contemporary global society standard.

The standard of international law is considered extremely important. It is necessary for anyone who wants to delve deeper into and study the legal system that regulates various areas of global life. Rather, it is not limited to students and extends beyond them to everyone who wants to understand the rules that govern international relations. It is concerned with organizing various aspects and fields of international relations. On the other hand, its importance lies in the fact that it stems from all branches of international law, some of which are studied in the next semesters at the bachelor's stage, not to mention the study of some specialized standards at the master's stage.

As for the second-year programme, we find in its content a focus on two main axes: the first axis includes the principles of public international law. First, we will discuss its name as a term of international law, its definition, and its historical development. Especially by reviewing some civilizations in history, starting from the history of ancient civilizations up to our present era, and then by addressing the branches of international law in times of peace and war. An attempt is also

made to distinguish between the rules of international law and other laws that intersect with it and to research aspects of the intersection. Or similar to it, starting with the rules of private international law, then the rules of global ethics, and passing through the rules of international courtesy. The mandatory force of the rules of international law is also addressed. Some of the most important theories that address this are mentioned, especially since controversy has arisen among international law jurists in the search for the extent of the compulsory force and strength of the rules of international law, especially when compared to the regulations of national internal law.

The second axis is represented by the sources of international law, starting with the study of international treaties, then the international custom, then general principles of law, then international judicial rulings, the opinions of international law jurists, and finally, the rules of justice and fairness.

In our study, we relied on two approaches: the descriptive approach, especially since it is compatible with the narration of some historical and legal events and facts in the field of international relations, and the analytical approach, especially through the analysis of some international legal texts, especially by projecting them onto international practice.

According to what is prescribed for second-year law students, the program contains two main axes: general principles in public international law and the sources of public international law. This is what we will address successively as follows:

Principles in Public International Law

We will address some of the principles of public international law that are necessary here. Starting with the definition of international law and handling its most important characteristics, then the historical development of it through the most important stages of its time, addressing the relationship between it and some rules that resemble or intersect with it and distinguish it from them, and ending with a statement of the binding force of its regulations.

Definition and characteristics of public international law

1. Definition of public international law:

The term public international law is relatively recent, first used by the English jurist Jeremy Bentham in his book *Introduction to the Principles of Ethics and Legislation* (1789). Note that previous writers and jurists used to call it other names, including the law of nations or the law of peoples (*Droit des gens*), which is derived from the Latin term (*jus gentium*), which was used by the Romans to denote the law governing their relationship with other peoples, or foreigners belonging to peoples subject to the Roman Empire., unlike the Civil Code, which regulated the relations of the Romans with each other, applied exclusively to Roman citizens.^[1]

It is noteworthy that there are many definitions, so jurists did not agree on a unified definition; among these definitions is "the set of rules of law that regulate international relations between international legal persons in times of peace and war."

A definition of international law can be drawn as the set of legal rules that regulate relations between subjects of international law at all times.

2. Characteristics of public international law:

Public international law has several characteristics that distinguish it from other laws, the most important of which are:

- 1- Public international law comprises many subsidiary laws, including many rules governing international relations of all kinds;
- 2- Public international law regulates the relations between subjects of public international law;
- 3- International public law regulates international relations in times of peace and war;
- 4- The lack of authority to legislate its provisions, which are promulgated by consensus of the will of States, in particular through international treaties or international custom;
- 5- Those who are addressed by its provisions shall abide by its rules, expressly or implicitly;
- 6- the influence of the rules of public international law on the interests of diverse States;
- 7- Public international law evolves with the development of international relations, whether economic, commercial, financial, political, diplomatic, military, security, social, scientific, technological, environmental, health, etc;
- 8- The rules of public international law are of a universal and regional character.

Historical development of public international law

Most jurists argue that public international law is a product of modern Western civilization, and this does not mean that some international rules did not exist in previous civilizations historically, with their existence and regulation of relations between countries. Still, they were few and intermittent and developed historically through several stages of time, the most important of which are:

1. Ancient civilizations:

Looking at ancient civilizations, we find that they did not know an international legal system in the strict sense, but they knew some rules that took a religious nature in many cases, forming occasional relations of limited scope due to the isolation experienced by civilizations due to the difficulty of transportation, self-sufficiency, and the belief of each group that it is the only civilized and other groups are savages and barbarians. Still, nevertheless, it has known some international behaviour, including the obligation to abide by the treaties they conclude And resorting to arbitration as a means of resolving disputes, including a treaty in (3100 BC) between a civil state of Jaff and a civil state in ancient Iraq. A treaty concluded between the Hittites and the pharaohs in (1278 BC), a treaty of peace and alliance that included provisions for future cooperation between the two countries and the extradition of criminals or political refugees. He also revealed the law of Manu in India, which was established around 1000 BC. An advanced degree in law, including international rules on humane treatment, such as preventing the killing of a belligerent enemy if he surrenders, sleeps, or is captured, and

not interfering with and protecting diplomatic envoys, indicates a degree of progress in law.

Some studies indicate that the earliest treaty between two independent states was between the State of the city of "Lagash" in southern Iraq and the neighbouring State of "Uma," which dates back to the third millennium BC; it was about fixing the borders between the two states.^[2]

A recent study confirmed that the first treaty in history was between King "Gilgamesh," the ruler of the city of "Orak" and King "Akka," the ruler of the city of "Lagash." The reason for the treaty was to end a long military conflict between the two countries, which was won by "Gilgamesh" after besieging the city of "Lagash," which made its king "Akka" ask for peace from "Gilgamesh," so this was done. It was the first peace treaty in history between two countries held in (4000 BC).^[3]

2. Greek civilization:

This civilization contributed to the formation of the rules of international law, so it was equality between the Greek cities, which constituted what looked like states because they were of one civilizational origin, in addition to the unity of religion, language, and sex among them. Based on common interest and cooperation among them, they were linked by outstanding relations such as the exchange of diplomats, the conclusion of treaties, the acceptance of arbitration and the observance of some humanitarian rules; as for their relationship with the rest of the people, they believed that they were distinguished and better than the rest of the peoples, so they were viewed with hostility and superiority, although

some point out that there were some rules during wars with them, especially those related to prisoners of war.

3. Roman civilization:

The Romans did not have friendly international relations except with some of their allies and friends because of Rome's military tendency to control non-Roman peoples through relations based on force, so arrogance was evident in its international dealings, with the desire to expand and acquire everything it coveted. It formed the largest geographical area. However, they had some customs to observe during the war and were religiously formalized by the clergy to legitimize the war. In addition to some other international legal rules that were religious, the conventions had a religious basis, and Rome derived its reward from religion. According to international law, the Roman State did not recognize the equality of different races. However, some Roman jurists played a role in establishing some legal rules, such as justice reform and commutation of sentences, and distinguished between Roman citizens governed by civil law and other peoples governed by international law, whose foundations were incomplete.

4. Islamic Era:

Islamic law had an effective role in international relations, and Islam as legislation appeared in the early seventh century AD, where Muslims built the finest and noblest State and the widest area, and the most civilized and civilizational, distinguished from other civilizations that its basic principles and law was not the status of man, but a house of God - the creator of everything - knows what is suitable for his creation,

so Sharia - as a legislative system - represented the fairest legal systems. The Islamic State, especially at its beginning, established a just and integrated approach, whether in the system of government internally or externally and formed a model to be followed, denied only by those who do not know it or are ungrateful. Islam has a special view in international relations that differs from that taken by the current positive international law; Islam does not recognize the division of the world into entities and political borders, each of which has its legal system, as is the case now, Islam aims to unite human beings under one legal system, It is the tolerant Islamic law, which carries good for all and is directed to all people, without discrimination in religion, race, colour, sex or others. Islamic jurists divided the world into Dar Islam and Dar Harb. The Islamic State may establish relations with non-Muslim peoples, nations, and countries and may conclude agreements and covenants with them. Islamic law has established many principles in international relations, including the principle of human fraternity, the principle of good neighbourliness, The principle of fulfilling the Covenant, the principle of respect for human dignity, and others. The relationship of the Islamic State with non-Muslim countries was subject to a system aimed at defending Islam, taking into account the principles of tolerance, forgiveness and human fraternity so that non-Muslims could live under the auspices of the Islamic State in peace, security and safety. Muslims could enter into negotiations and diplomatic relations with other Muslims, Islamic jurisprudence arranged rules known as biographies, such as the book "Sharh Al-Sir Al-Kabir" by Imam

Muhammad Ibn Hassan Al-Shaibani (132-189 AH) - the first jurisprudential author in international law. It codified the rules of international relations, especially those related to the law of war and peace. Muslims defined discrimination in the treatment between combatants and non-combatants and recognized the rights that every Muslim must comply with. Islam adopted a just system, sophisticated even during the war, that included humans, animals, plants, places of worship, and everything that has nothing to do with war; Islam recommends not to touch or be exposed to them. Even after the war, including the treatment of prisoners of war, and even though the Islamic State suffered weakness, regression and divisions, the world did not discover many international legal rules in Islam. They were not heard of, and after centuries, civilized countries adopted many of these rules, including the four Geneva Conventions. Still, in Islamic countries, these rules have a great impact on the relations of Islamic countries with other countries because they are linked to the teachings of Islam. With the development of the international community, some of these rules lay the first foundations of the rules of international law for the rules of international law in their proper sense.

5. From the Middle Ages to the Treaty of Westphalia:

After the division and collapse of the Roman Empire in (476 AD), Europe entered a new phase in which fighting and conflict prevailed. Political turmoil dominated European countries, and power was distributed between kings and princes. On the other hand, the Church tried to extend its authority and influence over the system of government and

interfere in all state affairs, which led to the ruling authority. To resist the Church, the conflict finally ended with the State's victory, the emergence of the State in its modern sense, and the strengthening of its position against the Church and the clergy. As for the relationship of states with each other, the logic of power prevailed in international relations, and the strong State did not need to take permission to wage war on other countries, including its neighbours. Hence, war was a prominent feature of international relations, and there were long-term wars. Despite this, countries have known the embodiment of some rules of international law, such as the conclusion of many treaties, especially treaties of peace and friendship, military alliances, and the emergence of the system of temporary missions between European countries.

At the end of the 15th century, several jurists and thinkers such as Machiavelli, Jean Bodin, Grossius and others, and their studies and ideas had a great impact on the growth and development of public international law, so Europe began to enter a new stage, especially after the discovery of the American continent on October 12, 1492 AD, This helped the emergence of new customary rules, including those relating to the principle of freedom of navigation at seas, rules regulating maritime navigation, and some rules of diplomatic and consular law, especially when trade relations expanded and flourished, especially with the tireless movement of merchants.

6. From the Treaty of Westphalia to the beginning of the modern era:

The Treaty of Westphalia was held in (1648), thus ending a fierce war that spanned 30 years between European countries and supporters and opponents of the Church from European countries, and this treaty was considered the beginning of a new era for international relations. The first codification of the rules of public international law, as it laid many of the foundations on which traditional international law was based, and ended, on the other hand, The role of the domination of the Church and the Pope, and dwarfed the role of the emperor, which paved the way for the birth of modern European states. These states were born after the dissolution of the Germanic Empire and its fragmentation into independent states. European countries also officially recognized Switzerland and the Netherlands' independence.

Results of the Treaty of Westphalia:

The system established by the Treaty of Westphalia can be summarized in:

- The existence of an international family consisting of independent sovereign states that can enter into international relations and participate in the development of the rules of public international law, but it was initially limited to Christian European countries and then expanded to include other non-Christian and non-European countries such as China (1844), Japan (1854), Turkey (1856), followed by the remaining independent states;
- Taking the idea of the balance of power, or international balance, as a basic global factor, as a guarantee to prevent wars, maintain international peace, and an important guarantee for the independence of states, this means that

countries that try to expand at the expense of other countries cannot do so in a way, because of the approval of countries for international balance and stabilization to maintain international peace, and the idea of global balance has had its impact on society since that date;

- Establishing the principle of equality between European Catholic and Protestant Christian States, thus consolidating the concept of sovereignty and equality on which international law is based;
- The treaty helped frame the establishment of the European collective security theory;
- Replacing the system of temporary embassies with permanent embassies to form a system of permanent diplomatic representation led to closer ties between European countries, and this was embodied in the holding of many international conferences for deliberation and negotiation, especially in solving the problems of European countries;
- Adoption of the principle of non-interference in the internal affairs of European States;
- There has been an increase in the conclusion of international treaties due to their importance in international relations and the opening of the door to the stage of codification of international law.

Distinguishing the rules of public international law from other rules

If general international law regulates relations between subjects of international law, it is not unique in regulating these relations alone; different rules regulate these relations

and differ from the rules of international law in fundamental matters.

1. The distinction between the rules of public international law and the rules of private international law:

Private international law regulates those relations that contain a foreign element, examining the law applicable to this relationship, the Court having jurisdiction to adjudicate matters relating to that, the issue of conflict of laws, the regulation of nationality, its types and acquisition, the identification of nationals, the search for the status of foreigners, and so on.

The differences between the rules of public international law and the rules of private international law are:

- The subjects of public international law are states, international organizations, liberation movements, etc; private international law subjects are individuals.
- The rules of public international law are often uniform, regulating and governing all states, globally or regionally. In contrast, the rules of private international law vary from one country to another, depending on its internal legal system.
- The basis of binding force in public international law is the will of both States, while the basis of binding force of private international law is the will of the State.
- The subjects of public international law differ from those of private international law; the former regulates relations between States in times of peace and war, while the latter regulates relations between States and individuals or individuals themselves.

- Public international law is promulgated by the express will of states, in particular by international treaties or implicitly by international custom, while the legislative branch of the State promulgates private international law.
- Sovereignty is more evident in private international law, as the State is the one who enacts this law internally and embodies its sovereignty. In contrast, sovereignty in public international law is less, where the State cedes part of its sovereignty in international relations.

2. Distinction between the rules of public international law and the rules of international courtesy:

Definition of international courtesies:

They are the rules recognized by countries for the conduct of friendly international relations, which are a manifestation of friendship and respect between nations and indicate the depth of ties between countries, including:

- Exemption of senior officials of countries from residency requirements.
- Granting members of accredited foreign diplomatic missions more privileges and immunities than are prescribed in international conventions.
- Holding a lunch or dinner banquet in honour of the visiting heads of State.
- Heads of State or ministers receive their counterparts at the official entrance to the country, sometimes at the airport.
- Meet the head of the host country, the Minister of Foreign Affairs, or the concerned minister with his counterpart from the country of arrival.

The rule of courtesy may sometimes become a rule of international law, and the opposite may occur when the global legal rule loses its binding character, as is the case with the reception ceremony of warships, such as diplomatic privileges or immunities.

International comity is consistent with public international law. It is similar to it in that they regulate state relations and differ in global responsibility, so the violation of international law entails establishing international responsibility (criminal or civil). In contrast, no international responsibility arises as a result of a breach of international comity but rather results in reciprocity (i.e. the application of the principle of reciprocity) so that if it does not exist, for example, The head of the host country receives the head of the visiting State or does not hold a luncheon in his honour does not entail any international responsibility.

3. Distinction between the rules of public international law and the rules of global ethics:

The rules of international ethics are principles, ideals and human values that characterize the international community and concern international public opinion, such as providing humanitarian aid and everything that would contribute to saving the State and its citizens. It has even been said that international ethics is concerned with purposes and addressing consciences. We find the implementation of the rules of global ethics in particular in the case of natural disasters and in the case of internal and international armed conflicts.

Among the international ethics recognized between states:

- Providing humanitarian, relief and medical assistance in cases of natural disasters such as earthquakes, floods and fires, when diseases and epidemics spread, and when internal and international armed conflicts such as civil war, and international such as armed aggression, and this assistance varies between financial, medical supplies, food, mattresses, water, or humanitarian such as sending ambulance crews and civil protection, and so on.
- Open borders, receive patients and refugees, and lend them a helping hand;
- Provide condolences and sympathy in crises and sad occasions.
- Send telegrams of congratulations on national occasions.
- Wear formal clothing for visits, events and meetings.

The rules of international ethics may be transformed into binding legal rules, either by adopting them by Convention under international treaties or through international custom by virtue of development, such as rules for dealing with prisoners of war and war-wounded, which have turned into international legal norms. Also, not being exposed to international envoys began as a global moral rule and became a binding international custom.

International ethics and public international law are similar and intersect in that each contributes to the Organization of international relations. They have an international character, and they differ in international responsibility. In contrast, global responsibility entails in the event of breach or non-compliance with the rules of public international law, failure to perform the rules of international ethics only entails moral responsibility, just denunciation from world opinion, and

disapproval from the international community, and does not entail any legal responsibility. International.

Branches of public international law

There are several divisions of international law, the most important of which is its division according to times of peace and war as follows:

First: Branches of public international law in peacetime:

1. Diplomatic and Consular Law:

It is also called the law of international relations and can be divided into two branches. The first regulates diplomatic relations between countries, especially regarding diplomatic representation. We find this branch determines the concept of the diplomat who represents the State in other countries, the qualities and types of diplomat, the beginning of representation, its procedures, conditions and end, the most important principles of diplomacy, diplomatic functions, immunities enjoyed by the diplomatic mission, the headquarters of tasks, the diplomatic bag..., regulated by the Vienna Convention on Diplomatic Relations (1961), and the law also includes the system of special missions under the Convention on Special Missions (1969), and then by involving international organizations as a person of the United States and having rights, obligations and diplomatic representation. Another branch, consular law, also regulates the types of consuls, consular posts, and privileges and immunities in consular relations, regulated by the Vienna Convention on Consular Relations (1963).

2. International Law of the Sea:

This law is of great importance in the economies of countries that the seas constitute for countries and the mineral resources and natural resources they contain. It is considered one of the most important forms of international transportation, especially in transporting goods; countries have been exploiting the seas and competing with each other for influence since ancient times. It was one of the most important tools of power internationally through the State's naval fleet. The international community was alerted to the importance of the seas in international relations and held numerous conferences that resulted in the United Nations Convention on the Law of Seas (1982); this law regulates the rights and duties of coastal and landlocked states over international waters starting from the territorial sea, to the exclusive economic zone, the high seas and the continental shelf, waterways through international straits such as the Strait of Gibraltar, the Strait of Tiran, the Bosphorus, international canals such as the Suez Canal and Bab al-Mandab, the Panama Canal, and bays such as the Gulf of Aqaba and the Gulf of Mexico, and so on.

3. Law of International Treaties:

The law of treaties deals with the definition of an international treaty, its types, characteristics, elements, elements and conditions for its conclusion, the manner of conclusion, ratification, registration and accession to international treaties, their amendment and scope of application in terms of time and place, the obligations of their members and the effects of their violation, as well as the interpretation of international treaties, the cases of cessation and termination of treaties, the procedures followed in that regard, and the effects of the cessation or termination of the treaty. The provisions of treaties are regulated by the Vienna Convention (1969).

4. Settlement of international disputes:

Determines the peaceful means of settling international disputes. Such as negotiations, good offices, mediation, investigation and conciliation or judicial means by resorting to international or quasi-judicial jurisdiction through recourse to international arbitration, and the Charter of the United Nations has affirmed in Article 33 of these means,^[4] and many global and regional conventions stipulate the need to resort to these means. Negotiations are considered one of the oldest and most widespread means.

5. Law of International Organizations:

This law is considered a recent establishment, which regulates the Organization's establishment, competence, object and purpose, the powers it enjoys, the conditions for membership and accession, as well as the legal personality of the Organization, the immunities and privileges it enjoys, and the persons working in it, which represents a group of states, and sometimes as a member of international organizations. In most organizations, the Member State is required to be fully sovereign. Some international organizations specialize in a particular field, while there are other international organizations with general competence, international organizations with a global scope, and others with a regional scope.

International organizations such as the United Nations and the Organization of Islamic Cooperation may be intergovernmental, and these organizations can only be established with an international treaty. Their establishment must be permanent and have a will independent of the States that established them or Member States. International organizations may be non-governmental and held between unions, unions and private associations such as the Arab Lawyers Union, Union of Arab Jurists, Médecins Sans Frontières, Amnesty International, Human Rights Watch, etc.

It remains to be noted that the legal personality of international organizations has been and continues to be the subject of legal debate about the extent to which the Organization enjoys legal capacity at the international level and even at the internal level within the territory of States, to enable the Organization to carry out its authorized activity.^[5] This law is, therefore, newly established.

6. International human rights law:

This law is concerned with regulating the protection of human rights at the global and regional levels. Local declarations, starting with the English declarations, then the American Declaration of Independence (1776), and then the French Declaration (1789) in particular, had a profound impact on national legislation and international human rights law, establishing a set of individual and collective rights, such as the right to life, the right to self-determination, the rights of religious minorities, and other rights. Affected These declarations are the ideas of many philosophers and thinkers in Europe. The importance of examining the issue of human rights at the global level only appeared during and after the Second World War. The United Nations worked to issue many declarations and conclude international treaties in order to ensure the protection of human rights. The majority of the countries of the world acceded to these treaties. The United Nations Economic and Social Council and the Human Rights Committee decided to prepare a document on human rights. On December 10, 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights and drafted the two international covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966). With the development of human thought, industrially developed countries began to look at their citizens differently.

Despite the superiority of the value of man in European societies and the issuance of the necessary legislation to protect him, it remained exclusively for the Western citizen, so the citizens of other countries were viewed completely differently, so the countries got rid of colonialism only by force and struggle, not to mention the practice of European countries and America to enslave peoples and plunder wealth. This law includes many individual and collective rights, such as the human right to life, the right to a decent life, security and not to be arbitrarily arrested, the right to work, health and housing, the right to travel and movement, the right to religion and the practice of belief, the right to privacy, the rights of vulnerable groups, such as the rights of the child, the rights of women, the elderly, the rights of minorities, and political rights such as the right to run for office and to vote, to belong to political parties and association, the right to trade union and strike, and the right to expression. Opinion, etc.

7. International Environmental Law:

Environmental protection is a relatively recent topic, the world has woken up to risks to the environment, the most important of which is exposure to the ozone layer, and the repercussions of this on the globe with all its contents, and the protection of the environment is very important, as the environment affects the right to life, and the pollution that affects it threatens human lives, and exceeds it for animals and plants, the risks to the environment have increased with the industrial revolution, the frantic international race towards industrialization, and the consequent failure to preserve the environment of all kinds of air, sea and land, including: Dumping toxic waste and non-recycling, gas emissions, the elimination of trees, the repercussions of excessive use of weapons, especially in the two world wars, the types of bombs used by some countries in their wars such as America and the Hiroshima bombs, and the

nuclear tests carried out by many countries such as the French nuclear tests in the Algerian desert during the French colonization starting in (1957). All this and others posed a serious and real threat to the environment, producing significant damage that still has repercussions today and disturbing the ecological balance. The international community was alerted to these disasters and began to work relatively hard to reduce them, so many international conferences were held, such as the Stockholm Conference (1972) and the Rio de Janeiro Conference or the so-called Earth Summit (1992). Many treaties have also been concluded. On the regional and global levels, they need to cooperate and work together to protect the environment and marine resources. However, the industrialized countries that caused these disasters are still evading their responsibilities and have not officially recognized them, making it imperative for them to assume their responsibility and contribute effectively to preserving the environment. The international community must assume its responsibility and role towards the environment in order to ensure its protection and sustainability and the protection of the rights of future generations.

8. Air and Space Law:

It appeared since the use of aircraft in the commercial field, and regulates the nationality, rights and protection of the aircraft, how it enters the airspace of countries and their duties and aviation between countries an international organization called the Civil Aviation Organization Chicago Convention (1944) regulated the aviation rules. It is noteworthy that the first agreement that codified air navigation was the Paris Convention (1919), followed by the Chicago Convention (1944), which included four conventions, including the

Convention on International Civil Aviation, and other treaties, such as the Chicago Convention (1963).^[6]

9. World Trade Law:

The negotiations lasted seven rounds, culminating in establishing the World Trade Organization, which was established under the Marrakesh Agreement (1994) and entered into force in January (1995). It is currently the first world organization concerned with regulating international trade, and it ensures the increase of global trade activity based on applying the principle of free international trade and overcoming the difficulties and obstacles that prevent it. The Organization has tried to establish a set of basic principles in order to facilitate free trade. The Organization is also competent to adjudicate commercial disputes between its members. It is noteworthy that other commercial organizations are concerned with regulating and facilitating trade at the regional level, the most important of which is the European Economic Area, which currently constitutes the largest trade exchange area in the world.

Second - Branches of international law in the event of war:

Due to wars, international relations necessitated the establishment of their own rules that differed from the rules of public international law in peacetime.

1. International humanitarian law:

The international community paid attention to the rules adopted in war, as the effects of wars were horrific, and it was necessary to search for rules that everyone must maintain as a minimum in their international relations during wars.

Perhaps the first to write this law was Imam Muhammad Hassan al-Shaibani, and the Islamic State was the first to establish protection for enemy warriors, followed centuries

later by some thinkers and philosophers such as Grossius and others. This law has been called the law of war and the law of armed conflict, but the current term is international humanitarian law. We can define it as "the set of legal rules governing a state of war to be enforced and complied with by belligerents", which includes many aspects covering the period of the onset, during, and immediately aftermath of the outbreak of hostilities, including the protection of persons, property and objects.

Regardless of whether or not war is recognized, and without examining its causes, scope, parties, and legitimacy, all parties must implement the rules of international humanitarian law.

The images of war are numerous, the most important of which are:

- The State of the declaration of war between two states, either unilaterally or both.
- The use of armed force between two or more States, even if a state of war has not been declared, may take the form of armed aggression.
- Status of the use of force by the Security Council under Chapter VII of the Charter of the United Nations in the event of a threat to international peace and security.
- A state of civil war within a state or an internal armed conflict, such as two groups fighting within a single state.
- Status of natural disasters such as earthquakes, floods, devastating hurricanes and fires.

The Basic Rules of the Law were derived from the Hague Conventions (1899-1907), the four Geneva Conventions (1949) and their supplementary protocols (1977).^[7]

2. International Criminal Law:

It is a set of international legal rules that regulate the fight against international crime and the punishment of its perpetrators, its provisions crystallized, especially after the Second World War, which witnessed many horrific international crimes, which was followed by the establishment of specialized international criminal tribunals, starting with the Nuremberg Tribunal (1945), the Tokyo Tribunal (1946), and then the establishment of the Special Criminal Tribunal for Yugoslavia (1993), to punish war criminals for the religious cleansing practiced on Muslims in Bosnia and Herzegovina, in which horrific crimes were committed, ranging from mass murder, genocide and ethnic cleansing, not to mention rape and others, then the Special Criminal Tribunal for Rwanda (1994), because of ethnic cleansing, Then finally the permanent International Criminal Court was established through the international conference held in Rome (1998), which resulted - after many discussions, difficulties and obstacles - in the adoption of the Statute establishing the Court, which was signed by 160 countries, and in which America and Israel abstained from signing. It is headquartered in The Hague and prosecutes the crimes of genocide, crimes against humanity, war crimes, and the crime of aggression.^[8] It can thus be concluded that this law refers to the set of international treaties governing the rulings of international criminal tribunals to prosecute criminals who commit international crimes, including genocide, crimes against humanity, war crimes, and crimes of aggression.

3. Prisoners of War and Internees Law:

International humanitarian law has provided special protection to this group by granting them a set of rights, including the right of the warrior to raise the white flag and surrender without being subjected to him and killing him, in addition to the right of the prisoner to life, not to assault him physically,

not to torture or humiliate him. This law also stipulates the manner of exchange of prisoners, detainees and detainees. It distinguishes between combatants and civilians, and this law defines persons with the status of prisoners, such as members of the armed forces or volunteer units of the armed forces, organized resistance movements, or armed militias belonging to one of the parties to the conflict. It may be inside or outside their territory, as well as those accompanying the armed forces, such as civilians working in ports or media professionals. Journalists, etc.

The binding force of the rules of public international law

Part of the jurisprudence went to consider that public international law is a law in the proper sense and that its rules are not positive legal rules to which States are bound by the commitment of members of the internal community to the rules of national law and that they are nothing more than a kind of positive moral rules. To say that these conditions are not met in the rules of public international law.^[9]

In reality, however, these ideas have become obsolete in modern international law, and they deny the arguments of the proponents of the former view on the grounds that the existence of a legal rule does not depend on the fulfilment of the previous conditions. Domestic and international laws have their own characteristics that distinguish them from each other. They replied that the existence of the law is independent of the existence of the legislator, which is not linked to it. The law's existence may precede the legislator's existence, such as custom. On the other hand, the international community differs in composition and the number of its members from

internal groups, so there is no harm in changing accordingly the circumstances of the emergence of the international legal rules governing the relations within which it is based, based directly on the express or tacit consent of its persons. As for the requirement of the existence of the judicial authority, it is also irrelevant since the emergence of legal rules precedes the application of the judicial authority since the principle is that the rules of law are applied in transactions voluntarily and that resorting to the judiciary is an exception to that principle, and the judge, although he applies the law, does not create it.^[10]

The sanction problem has been raised in the rules of public international law and continues to raise many of those engaged in its study. Many international law scholars argue that the weakness or absence of a sanction does not preclude the absence of a legal rule.^[11]

However, international practice suggests that there are many forms of sanction in contemporary international law, including:^[12]

- The right of the aggressed State to respond to aggression and exercise its right to legitimate defence, per the provisions of Article 51 of the Charter of the United Nations.
- World public opinion denounces the aggression, and the international community intervenes against the aggressor by force if necessary.
- Collective military and economic measures enjoyed by some international organizations against states violate the rules of international law.

The basis of the binding force of the rules of public international law

International law scholars are unanimous in describing the binding rules of international law. Still, they differ based on this obligation on several doctrines, the most important of which are the voluntary and objective doctrines.

First: Volitional doctrine:

The proponents of this doctrine considered the will as the only source of international law. The proponents of this view proceeded from their consideration that legal rules are the product of the will, as the will is the one that creates the law and is subject to it. If internal law is subject to the will of individuals based on the consent of citizens to its provisions, international law is based on the consent of States to its rules.

Second: Objective doctrine:

The proponents of this view argued that the basis of the binding force of the rules of international law is beyond the will of states and is based on an objective basis through two famous theories: the theory of the hierarchy of legal rules and the theory of social solidarity.

Sources of public international law

Public international law has a set of sources from which it derives its rules, and scholars of public international law distinguish between material sources and formal sources because material sources are those sources from which the essence and content of the international norm are derived, i.e.

the causes, considerations and social needs leading to its emergence, while formal sources are the formal concept of the international legal rule.^[13]

Article 38/1 of the Statute of the International Court of Justice states that "the function of the Court is to adjudicate disputes submitted to it in accordance with the provisions of international law, and it shall apply in this regard: (a) general and private international agreements establishing rules expressly recognized by the conflicting States; (b) Applicable international customs considered as international law evidenced by the frequency of use. (c) General principles of law recognized by civilized nations. (d) The courts' rulings and the doctrines of the great authors of public law in various nations."^[14]

However, this arrangement of sources of international law is not unanimous among international law scholars, as stated in the article. Still, it does distinguish between the sources, namely treaties and customs, with disagreement over considering the general principles of law as sources, and the reserve or evidentiary sources, namely the judiciary and jurisprudence.^[15]

In the aftermath of the Second World War, Western jurisprudence showed great enthusiasm for considering the decisions of international organizations as a source of public international law, and this enthusiasm was relatively diminished as newly independent States became more and more members of the United Nations.^[16]

We will limit ourselves to dealing with the sources of international law on the elements that we believe are of great

importance, first by addressing international treaties. With traditional sources other than the Convention, i.e. international custom, followed by the general principles of law, as follows:

International Treaties

International treaties are the first main source of contemporary public international law and occupy this position after it was previously occupied by international custom. The first field in which states accept the codification of customary rules is war. The rules governing it, where states tried to formulate the rules of a general convention related to the Organization of war and the conduct of its operations, and the first Hague Peace Conference was in (1899) An important turning point, as he succeeded in drafting several international agreements related to war and peaceful means of settling international disputes.^[17]

Definition of the International Treaty and its types

1. Terminology used to describe international treaties:

There are many conventions used to describe an international treaty, including treaty (*traité*), constitution, Charter (*Charte*), *pacte*, order (*Statut*), Convention, *agreement* (*Accord*)., exchange of letters, exchange notes (*exchange de Notes*), protocol, *declaration or declaration* (*déclaration*), *settlement* (*arrangement*), interim settlement or interim agreement (*Modus Vivendi*). contract (*acte*), Declaration, *Avenant*.

All these expressions are synonymous and used to express a single objective fact, the international treaty, but the international practice has led international jurisprudence to note that some of these terms have special connotations in use so that the launch of one of them on the international convention document leads to a specific understanding of its content or the procedures for its conclusion.^[18]

2. Definition of an international treaty:

Article II of the Vienna Convention (1969) defines an international treaty as "an international agreement concluded between two or more States in written form and subject to international law, whether made in one or more documents and whatever name it is given."^[19]

If this definition refers only to treaties concluded between States, it is on the grounds that the Convention has limited its scope of application to treaties applicable between States.

As for international jurisprudence, some have defined it as "a written agreement between two or more subjects of public international law, whatever the name given to it, concluded in accordance with the provisions of international law to produce legal effects".^[20] Others have defined an international treaty as "a written agreement concluded between two or more States by the provisions of international law that produces certain legal consequences for signatory States."^[21]

The main elements of an international treaty (characteristics)

1. The conclusion of international treaties between two or more subjects of international law:

The parties to the treaty must be from the list of subjects of international law, such as states and international organizations. Therefore, any agreement not concluded between subjects of international law does not fall within the category of international treaties,^[22] whatever the international character such contracts may have.^[23]

Where a treaty is concluded between States in a federation that cannot be considered international treaties, it falls within the scope of constitutional law.^[24]

A province or territory may conclude a treaty or agreement with a foreign State, but in origin, these states or provinces in a federation cannot conclude international treaties.^[25] Because the capacity to conclude this type of conduct rests only with the central government, the constitutions of this type of State^[26] usually indicate the extent to which these states or provinces have the capacity to become a party to international treaties.^[27]

The same is the case when an agreement or contract is concluded between a State and a person of the domestic law of a foreign State, such as bot contracts or concession contracts. This agreement cannot be considered an international treaty even if the State concludes this agreement with a multinational company.

2. Drafting the treaty in a written document:

The Vienna Convention required that the agreement of the States parties to a treaty be written in writing, but in fact, this

condition was for the Vienna Convention to apply to the treaty in question. Thus, States were, in principle, free to choose their will and the manner of formulating the expression, and it did not have to be established in a single document.^[28]

3. Conclusion of the Treaty in accordance with the provisions of international law:

The will of the parties to an international agreement must have been directed to conclude such an agreement by the provisions of international law for such an agreement to be included in the sphere of international treaties since the will of the parties may be directed to the conclusion of a contract between two or more States under the domestic law of a State.^[29] For example, a certain State may purchase from another State a piece of land by its domestic law, which would be based on an international contract governed by the domestic law of the selling State rather than international law. Therefore, such an agreement could not be included in international treaties.

4. Creating legal effects:

To be considered an international treaty, an agreement must produce specific legal effects, i.e. the establishment of general international legal rules or the arrangement of binding international legal obligations.^[30]

States may disclose such conduct as declarations of principles, joint statements, or agreements of honour^[31] that do not fall within international treaties.^[32]

Types of international treaties

Treaties varied greatly in form or subject matter, which led international jurisprudence to attempt to divide international treaties either on a material basis or on a formal basis.

First - the physical division of international treaties:

The physical division of international treaties is that division that classifies international treaties on a material basis given the content, objectives, content of the treaty and the nature of the rules and obligations contained therein.

1. Normative and contractual treaties:

Some international jurisprudence has argued in distinguishing between international treaties; a class of treaties is concluded between several subjects of international law^[33] whose interests are initially conflicting, so the treaty comes as an achievement of the convergence of their will to a certain agreement despite the differences and contradictions between them, such treaties are more like a contract. These treaties are called *Traité-contract*. Another type of treaty arises between states whose will is compatible or identical and aims to reach the same result; such treaties are called *traité-loi*.

However, it is important to note here that there are some international treaties, both normative and doctrinal.

2. General and Special Treaties:

Some international jurisprudence considers the division between public and private international treaties to derive from the previous division since every normative treaty is a general treaty, and every contractual treaty is a private treaty.^[34]

3. Base treaties and treaties establishing international organizations:

A distinction is made between basic treaties and treaties establishing international organizations on the grounds that these two categories fall within the normative international treaties since, in view of normative treaties, a distinction can be made between treaties aimed at establishing international organizations with their own entity, and other normative treaties that fall within the normative treaties.^[35]

Second: The formal division of international treaties:

The formal division of international treaties is a division that classifies international treaties on a legal basis, that is, based on the forms and procedures that the treaty passes through or the number of States parties to it. Among the most important of these divisions:

1. International treaties in the strict sense and international agreements in simplified form:

This division is according to the procedures followed at the conclusion of the international treaty, whereby all formalities are obliged with respect to the first category. The treaty becomes effective only after its ratification by the competent internal authorities of the States parties. In contrast, the second category is all the remaining treaties that do not fall into the first category. Its conclusion does not require the adoption of certain formalities, nor is its entry into force required to be ratified by the internal authorities of the States parties. It becomes effective and binding as soon as it is signed.^[36]

2. Bilateral and collective treaties:

This division is based on the number of states parties to the treaty, if the treaty is between two countries, we are facing a bilateral treaty (Bilatéral), but if the treaty includes a large number of countries, this treaty is in the category of collective treaties (collectif). Some treaties are called multilateral, and they usually contain a limited number of members compared to collective treaties with a large number.

3. Regional treaties and treaties of a universal character:

This distinction is based on geographical scope, so that if the treaty includes parties on a regional basis, or in other words of a regional character, we call this category regional treaties, examples of which are many, including the Charter establishing the League of Arab States, or the Rio Charter of 1947 on the mutual defence of American States. Suppose the parties to the treaty are universal and not regional. In that case, we call this category treaties of a universal character, for example, the Charter of the United Nations or the Statute of the Court. International Criminal Court.

4. Treaties between States and treaties to which international organizations are parties:

Based on this division, there are treaties to which the parties are only from the circle of States, which is the first category. There are treaties between one or more States as a party and an international organization as another party. In this second category, some treaties are between exclusively international organizations; that is, there is no State party to this treaty, and this third category.

The second category is the headquarters treaties, and the third is the agreement governing relations between the

International Atomic Energy Agency and the United Nations (1957).

Stages of Concluding International Treaties

From a formal point of view, the treaty goes through successive phases, starting with negotiations until an agreement is reached between the parties. The treaty is drafted and culminates in its signature, then ratified by the custodians within the states, followed by the registration of the treaty. These stages are considered the formal conditions for the validity of the international treaty.

1. Negotiation: (*négociation*)

Negotiation means "the exchange of views between the parties wishing to conclude an international treaty on its subject matter, whatever that subject is political, social, economic, military, cultural, organizational, or other subjects of interest to the parties."^[37]

Negotiations may take place in the territory of one State party to bilateral treaties and sometimes in the region of another third State that is not a party to the treaty [38]. In contrast, collective or multilateral treaties usually take place at an international conference or the headquarters of an international organization.

A negotiating State means "a State that contributed to the drafting and adoption of the text of the treaty".^[39]

The State party is represented in the negotiations by the Head of State, the Prime Minister, the Minister for Foreign Affairs, the head of the diplomatic mission accredited to the State whose representatives are being negotiated, or the head

of the permanent mission to an international organization when the negotiation is with the Organization itself.

Full powers mean "the document issued by the competent authority of the State designating a person or persons to represent the State in the negotiation, in the adoption or authentication of the text of the treaty, in the expression of the consent of the State to be bound by it or in any other conduct relating to the treaty".^[40]

Characteristics of international negotiations:

The negotiations have important features:

❖ Confidentiality:

Negotiations are usually characterized by secrecy for several reasons: to prevent the intervention of external parties that may affect the course of negotiations, when the content of the treaty is related to the security or safety of the State, or when politicians and decision-makers believe that this timing for information inside or outside the State is inappropriate.

❖ Speed:

The negotiation phase is characterized by speed, especially if the parties sincerely intend to overcome obstacles and difficulties and remove the barriers that prevent the treaty's conclusion.

❖ Flexibility:

Negotiations are flexible, so we find countries costing people who are able to manoeuvre, negotiate and diplomacy so that negotiations succeed and countries achieve the greatest possible gains.

The negotiations end with the parties' agreement where the transition to the codification phase takes place and may end without reaching a specific agreement where they stop at this stage.

2. Codification of international treaty:

After the parties agree as a result of the negotiations, the stage of editing what has been agreed upon begins, and it is natural for the parties to edit the issues that have been agreed upon in written form so that it can be an argument among themselves.^[41]

Suppose the parties rely on one official language. In that case, it is natural that their official language is the language of writing the treaty. Still, suppose the parties rely on multiple languages. In that case, they agree on a language that serves as the original reference for the treaty. Until not long ago, French was the language of diplomacy, but it declined in front of the English language, especially after World War II.^[42]

However, the stimulus of national considerations made states want to draft treaties in their national languages, so the countries adopted the writing in a third language in bilateral treaties to be a reference in case of disagreement. Collective treaties adopted several official languages in which the treaty could be edited. The Charter of the United Nations was written in five languages of equal legal value: English, French, Russian, and Chinese. The Arabic language was attached and became one of the official languages of the United Nations.^[43]

Elements of drafting international treaties:

The treaty is divided into the following:

❖ Preamble:

The treaty begins with a preamble dealing with the subject matter of the treaty and expressing the desire, will and objectives of the treaty.

❖ Parties to the Treaty:

After the preamble, the parties to the treaty are addressed, and here we find a great diversity of States used to mention the parties to the treaty. We find in treaties the mention of the contracting States of the Treaty, as we find in other treaties that refer in the statement of the parties to the treaty to the governments of the States, and other treaties by mentioning the names of kings or heads of State as parties to the treaty. In other treaties, the peoples of the States parties to the treaty are mentioned.^[44]

❖ Treaty Provisions:

After the statement of the preamble and the parties to the treaty comes the statement of the treaty's provisions, and work is being done to formulate those provisions in the form of successive articles containing the specific rules and provisions agreed upon between the parties.^[45]

3. Signature of the Treaty:

A signature shall be considered as proof of the parties' agreement on the text of the Convention that has been drafted. No special documents are required to prove the right to sign on behalf of the State if the signatory is the Head of State, the Prime Minister or the Minister of Foreign Affairs of the State. Still, if the signature is by the head of the diplomatic mission or others, it must be accompanied by credentials proving his capacity to sign for the State he represents.^[46]

By the end of the signing phase, the parties had come to a very important stage of concluding the treaty, but it still needed binding on them, which was a general rule.^[47] In principle, signature enters an international treaty into force only in treaties of simplified form or when state parties express their consent to be bound by the treaty by their representatives' signature.

4. Ratification du traité

Ratification is not only a formality but a very important undertaking, which is intended to establish the competent internal organs of the treaty in a manner that binds the State to it at the international level.^[48] The Vienna Convention on the Law of Treaties states that ratification means "the international procedure so named, whereby a State acknowledges at the international level its consent to be bound by the treaty."^[49]

International jurisprudence provides many justifications for the ratification procedure as a necessary stage for the entry into force of the treaty vis-à-vis the State, the most important of which are:^[50]

- Give time to review the treaty and assess the appropriateness of ratification.
- Avoid any disputes that may arise about the reality of the dimensions of the mandate granted to the plenipotentiaries of the State to negotiate and sign the treaty, even if the negotiators or signatories exceed the scope of the powers vested in them, the ratification of the treaty by the holder of the treaty authority acknowledges the plenipotentiaries exceeding the limits of their competence.
- Avoid coercion that may occur to the State's representative during negotiations and signing.

- The ratification procedure allows the participation of elected assemblies in the final approval of the treaty in response to democratic considerations, with the people's representatives being involved at this stage after the executive branch has been alone in the rest of the stages.

Work is carried out to prove ratification in a written document containing or referring to the text of the treaty and signed by the head of State or its Minister for Foreign Affairs, and the two States exchange instruments of ratification in the case of bilateral treaties. Still, in the case of collective treaties, States deposit instruments of ratification with one of the States agreed upon and determined by a provision in the treaty or with the General Secretariat of an international organization. The deposit is evidenced by an official procedure by which the States Parties obtain a copy, and the depositary notifies the other States Parties of a copy of such ratification.^[51]

As for the body authorized to ratify, countries differed in that, as some constitutions granted this power to the executive authority only, while some constitutions granted this procedure to the legislative authority only, and other constitutions - which are most countries - went to divide this power between the executive and legislative branches.

This is the third category, including Algeria, where the Algerian Constitution 1996 entrusted ratification power between the executive and legislative branches.

- Article 102 of the current Constitution (2020) states that the President of the Republic signs armistice agreements and peace treaties. The President of the Republic seeks the opinion of the Constitutional Court on the conventions relating to them. The President of the Republic shall

immediately submit such agreements to each Chamber of Parliament for express approval.^[52]

- Article 153 of the Constitution establishes that: "Armistice agreements, peace treaties, alliance and union, treaties relating to the borders of the State and treaties relating to the law of persons, treaties involving expenditures not included in the State budget, and bilateral or multilateral agreements relating to free trade and partnership areas and economic integration shall be ratified by the President of the Republic, after being expressly approved by each Chamber of Parliament."
- As for the role of the Constitutional Court with regard to treaties, the Algerian Constitution stipulates that "in addition to the powers expressly conferred on it by other provisions of the Constitution, the Constitutional Court shall rule by decision on the constitutionality of treaties, laws and regulations. The Constitutional Court may be notified of the constitutionality of treaties before ratification..."^[53]

Reservations:

The Vienna Convention on the Law of Treaties defines a reservation as "a unilateral declaration, however, phrased or named, made by a State when it signs, ratifies, accepts, approves or accedes to a treaty, purports to exclude or alter the legal effect of certain provisions of the treaty as they apply to that State".^[54]

Suppose a reservation to a treaty occurs at various stages. In that case, it may occur at the time of signature, ratification

or accession, but the predominant forms of the reservation are at the time of ratification.

It is noteworthy that bilateral treaties are not expected to have reservations because if a party makes a reservation, the other party is supposed to recognize it until the treaty enters into force.^[55]

In collective treaties, a State may, in principle, formulate a reservation to the treaty, as recognized in Article 19 of the Vienna Convention, which provides that "a State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation, unless:

- (a) The Treaty prohibited such a reservation;
- (b) The Treaty provided that only specific reservations could be formulated, not including the reservation in question;
- (c) The reservation, other than those provided for in subparagraphs (a) and (b), is incompatible with the object and purpose of the treaty."

Thus, it can be said that collective international treaties, including multilateral ones, permit in principle a reservation as recognized by the Vienna Convention^[56] however, we may find some treaties that do not allow reservations where the State wishing to regulate the treaty must accept it as it is if it wishes to accede to it.^[57]

5. Registration of the Treaty:

In order to eliminate secret treaties and to replace secret diplomacy in international relations, the Covenant of the League of Nations stipulates in its eighteenth article that international treaties must be registered and published at the earliest opportunity with the General Secretariat of the

League. Otherwise, these treaties and conventions will not be binding.^[58]

Article 102 of the Charter of the United Nations stipulates that "every treaty and international agreement concluded by any Member of the United Nations after the entry into force of the present Charter shall be registered in the Secretariat of the Organization and published as soon as possible." by that treaty or agreement before any branch of the United Nations."

At the same time, the Charter of the League of Arab States stipulates that a copy of the treaties or agreements concluded by the Arab States must be deposited with the League's secretariat.^[59]

Conditions for the validity of international treaties in terms of subject matter

The validity of an international treaty shall be conditional on the issuance of the person competent to conclude it, that a sound will issue it and that its subject matter is legitimate, and if one or some of these conditions fails, the treaty shall be either null and void or voidable.^[60]

Therefore, the conditions for the validity of an international treaty can be determined in terms of the subject matter of international legal capacity, the legitimacy of the subject matter of the international treaty, and the fact that the treaty is free from any defect of will. We will review the following:

First: Eligibility to contract:

When we presented the definition of a treaty, we previously pointed out that it is an agreement between two or more persons of international law, so the person who concluded the treaty must be a person of international law. On the other hand, a completely or permanently neutral country, such as Switzerland, is not permitted to conclude alliance treaties.

Since we have previously discussed this element in the elements of an international treaty, we have explained who has the capacity to conclude the treaty so that we will suffice with that.

Second - Legality of the subject matter of the treaty:

For a treaty to be valid and productive, its object must be legitimate^[61] and treaties concluded in contravention of the rules prohibiting the slave trade, or treaties relating to war criminalized by international law, are unlawful.

However, the international community's endorsement of the jus cogens theory under general international law has led to the determination that an international treaty whose subject matter is contrary to a peremptory norm is invalid, ^[62] which was adopted by the Vienna Convention, which determined that a treaty is invalid if, at the time of its conclusion, it conflicts with a peremptory norm of general international law accepted and recognized by the international community as a norm that may not be violated and cannot be modified, except by a subsequent rule. of the general rules of international law have the same character.^[63]

Indeed, the Vienna Convention affirmed in Article 64 that if a new peremptory norm of general international law emerged, any treaty in force that conflicted with it would be null and void.

International jus cogens rules are very much related to the idea of international public order. Still, these peremptory norms are all of the international public order - and the source of this type of rules are the sources of the international norm itself; that is, its source is the same source of public international law, so some believe that international jus cogens are those rules that are developed for the international community. It is necessary to ensure the minimum conduct necessary to ensure international relations.

Therefore, the legality of the treaty's object is a prerequisite for it to be valid and produce its effects.

Third - Integrity of consent to the treaty:

1. The position of international jurisprudence:^[64]

The integrity of the parties' consent to the treaty occupied a large part of the attention of international jurisprudence, so international jurisprudence expressed its interest in the absence of defects of the parties to the treaty that could lead to an impact on its validity.

- Can the provisions on defects of consent apply to international treaties?

The answer to this question has sparked a great debate among jurists, and we can focus on the different trends in this regard in three directions:

- **First direction:**

It is, therefore, that if the consent of one of the parties to the international treaty is marred by a defect of consent known under the contract theory (error, fraud, coercion), the consent of that party is corrupt and does not have legal effects, regardless of whether the defect tainted the will of the member representing the State, or whether the defect occurred on the State itself.

Proponents of this trend justify their view on two arguments:

- First, provisions on defects of consent are general principles of law recognized by civilized nations. Therefore, their introduction within the framework of international law is a derivation of rules from one of its sources unless they conflict with a customary rule or Convention contrary to it.
- Second, International treaties are similar to contracts concluded between individuals, and the reality proves that there is a disparity in the contractual positions of the treaty, as there are strong and weak countries, developed and underdeveloped countries, which require the protection of the weak party that may be subjected to error or fraud.

This jurisprudential trend was criticized on the grounds that it ignored the clear difference between domestic legal systems and the international legal system, which measured the treaty against the contract erroneous since the role of the treaty exceeded the role of the agreement in the legislation of the treaty for its parties or others. There are also differences between the nature of the international and internal legal systems, which makes the adoption of rules on defects of consent as recognized in domestic legal systems in the field of

international law a disregard for the situations prevailing in international law.

- **Second direction:**

According to this view, applying rules on defects of consent established under domestic legal systems to international treaties is impossible.

Proponents of this trend justify their opinion on two arguments:

- First, the State is not identical as a legal person to the ordinary contractor who concludes the contract under private law, since the application of the rules on defects of consent is aimed at protecting the ordinary contractor from conduct concluded under the illusion of error, fraud or penalty of coercion. Still, this representation needs to be more consistent with international treaties concluded between persons of equal sovereignty. If coercion affects the will of the contracting party in the contract, there is no way to undermine the integrity of the will of States; even if the coercion falls on the representative of the State, the State may refrain from ratifying.
- Second, the stages of the conclusion of the treaty, the lengthy procedures that the treaty goes through, and the involvement of many personalities and agencies in the process of concluding the treaty minimize the possibility of influencing the will of the State through defects of will known in the domestic law circle.

This trend has been criticized on the basis that it is based on the idea of State perfection since, on the one hand, international practice reflects numerous instances in which a State has consented to the treaty under coercion, whether it

affects the State or affects its representatives. On the other hand, the State, a legal person, acts by natural persons who may be subject to the fraud, error or corruption of the will that other natural persons may do.

- **Third direction:**

He considers that the rules on defects of consent established under domestic legal systems should apply to international treaties, but to the extent that they are commensurate with the conditions prevailing under international law.

Proponents of this trend distinguished between the State and the person representing it. If the defect of will mars the will of the representative of the State, the treaty is null and void, as the case may be, but if the defect of will mars the will of the State as a subject of international law, there is no way to apply those rules or to say that the treaty is null and void because the only defect of the will that is perceived to occur on the State itself is coercion. In their case, it does not corrupt its will.

This trend was criticized on the grounds that, when distinguishing between the will of the representative of the State and the State itself, the proponents of this view aimed at giving the legitimate international legal character of peace treaties concluded after wars and in which the victors imposed their conditions on the vanquished.

Position of the Vienna Convention on the Law of Treaties:

The Vienna Convention is subject to the provisions of defects of will as follows:

1. Mistake:

Article 48 of the Vienna Convention provides that: "1. A State may invoke a mistake in the treaty as a ground for nullifying its consent to be bound by it if the mistake relates to a fact or situation that the State believed existed at the time of the conclusion of the treaty and was a fundamental reason for its consent to be bound by it. Paragraph (1) does not apply if the State concerned contributed by its conduct to the mistake, or the circumstances made that State aware of the possibility of such a mistake. 3. An error relating only to the words of the treaty shall not affect its validity. In this case, the provisions of article 79 shall apply."

What follows from the text of article 48 is^[65] that the Vienna Convention distinguishes between error as a defect of consent and material error that may occur during the drafting of the treaty and excludes it from the possibility of affecting the treaty in the third paragraph, referring to article 79 of the Convention.

As for the error, which is considered a defect of consent, it depends on the fulfilment of the following conditions:

- 1- The error is based on facts, i.e. related to a status or fact, as an error in law is not a defect of consent in accordance with the provisions of the Vienna Convention.
- 9- The fact that the mistake was mentioned is essential in forming the will of the State to consent to the treaty.
- 10- A State may not plead the defect of the fault if it has contributed to its conduct in its existence, or it could have

remedied it after the fact, or if it has been alerted to the possibility of its occurrence.

2. Fraud (fraud):

Article 49 of the Vienna Convention provides that a State that has concluded the treaty by fraudulent conduct of another negotiating State may invoke fraud as grounds for nullifying its consent to be bound by the treaty.

3. Corruption of the will of the State Representative:

Article 50 of the Vienna Convention recognized that if a State's expression of consent to be bound by the treaty was achieved by the corruption of its representative directly or indirectly by another negotiating State, that State may invoke corruption as a ground for invalidating its consent to be bound by the treaty. The will of a representative of a State is corrupted by inducing him to consent and express consent attributable to his State. It has multiple methods to influence the representative's will to conclude the treaty.

4. Coercion:

The Vienna Convention distinguishes between coercion to which a State representative can be subjected and that directed at the State itself.

- **Coercion of a State Representative:** Article 51 of the Convention recognizes that the expression of consent by a State to be bound by a treaty has no legal effect if it is reached under the coercion of its representative by acts or threats directed against him. An example of this case was Germany in (1939) before the Second World War, under the coercion of the President of the Czechoslovak Republic "Has" who, despite his old age and illness, was subjected to pressure and coercion inside a special room, and finally

found himself obliged to conclude the Treaty with Germany.

- **Coercion against the State:** Article 52 of the Vienna Convention states that a treaty is void if it is concluded by threat or use of force contrary to the principles of international law enshrined in the Charter of the United Nations.

Invalidity and nullity of the treaty

If an international treaty is defective, it is either void or voidable (relative invalidity)^[66]

- **Absolute nullity means that the treaty is tainted by a defect related to the essence of the treaty and cannot be remedied, so the defect remains stuck in the treaty. The invalidity is a penalty for it, and the parties cannot correct and authorize it, and the invalidity is returned to the treaty as a whole.** The invalidity can be pleaded by any State even if it is not a party to the treaty. The invalidity of the treaty can be determined before any party before which the application of the treaty is raised judicially or as an organ of an international organization. It is achieved in the event of coercion, whether done on the person who represents the State or the State itself or if the subject matter of the treaty contravenes a peremptory norm of international law.
- **Relative nullity** means that the treaty is tainted by a defect that can be approved by the parties to the treaty and is claimed only by the State that was a victim of the defect that marred its consent. Among the mistakes is fraud or corruption of the will of the State's representative.

Entry into force of international treaties and their effects

If the treaty meets the conditions and formal stages of its conclusion and is objectively valid, it shall become a force that must be respected in the mutual relations of its parties.

Interpretation of international treaties

While in some cases the provisions of the treaty appear to be so clear that they refer to the provision of certain facts in such a way that there is no need for interpretation of any kind, there are many cases in which interpretation becomes necessary. They surround the treaty with all the details, clarity and decisiveness in which interpretation is unnecessary.^[67] It was, therefore, important to examine this point, starting with the knowledge of the competent authority to interpret treaties and then the rules of interpretation.

First: Competence to Interpret International Treaties

1. Internally:

The problem of interpreting an international treaty at the domestic level arises in those cases where the treaty has an impact on the individual within the State, where there is a need to interpret a provision of the treaty in connection with its application within the framework of the internal law of the State, where the internal authorities of the State may issue an interpretation of that provision.^[68]

However, legislation differed on who was entrusted with interpreting the treaty, so States went to grant this competence to the executive branch because it alone is most able to

interpret a text or texts of a treaty that they participated in establishing. In contrast, some states entrusted this jurisdiction to the internal judiciary, considering the treaty had become internal legislation and part of the internal legal system. At the same time, some States took another direction, distinguishing between the fact that the treaty deals with a subject of public law where it is the competence of the executive branch, or Private law is the competence of the judiciary to interpret it, so in this type of treaty, it can express its opinion on every text that needs interpretation.

2. At the international level:

Suppose one of the provisions of an international treaty needs to be interpreted, and each State party provides a different interpretation. In that case, considerations of the principle of sovereignty do not allow one interpretation to prevail over the other. Therefore, it is necessary to seek a formula allowing States to agree on an interpretation they like, either directly or by resorting to an international judicial body or Organization. Which we will detail below:

A- Official explanation:

The parties to the Treaty may resolve the dispute between them regarding the interpretation of the Treaty's provisions, which they have already concluded so that the Agreement issued by them in the interpretation of the Treaty's provisions is a formal interpretation binding on all. Such an agreement may be issued in several forms, including:

- The adoption of the Treaty may be accompanied by the initiation by the parties of an interpretative declaration on a matter relating to the Treaty;

- An interpretative agreement may take the form of a subsequent additional agreement concluded between all States parties, usually in the form of an international agreement in simplified form;
- Such formal interpretation may take the form of a unilateral declaration by a party concerning the interpretation of a text or texts of the Treaty, expressly or implicitly endorsed by States;
- A formal interpretation may take the form of an agreement between some States parties to the Treaty only, and the other States may only expressly or implicitly endorse it and abide by it or not endorse it, and that interpretation remains binding only on the person who declared or approved it.

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B- International Judicial Interpretation:

Suppose the parties' Agreement to the Treaty is necessary for some kind of formal interpretation to be reached. In that case, their failure to agree on an interpretation of the Treaty opens the door to the search for a solution to the settlement of that dispute. Since the dispute over interpretation is a legal question, the international judiciary, in its various forms, is authorized to adjudicate that dispute by declaring an interpretation of the text or texts whose interpretation is disputed.

Judicial interpretation may be by resorting to international arbitration. Recourse may be based on a previous provision of the Treaty that includes recourse to international arbitration in the event of a dispute in the interpretation of one or more provisions of the Treaty, or it may be based on the willingness

and consent of the parties to comply with arbitral awards, even if the Treaty does not contain a provision to that effect.

Judicial interpretation may also be by resorting to the International Court of Justice, where article 36/2 of the Statute of the International Court of Justice makes it within the jurisdiction of the Court to adjudicate disputes concerning the interpretation of international treaties. Therefore, States parties to the Treaty can accept the International Court of Justice's compulsory jurisdiction in interpreting the disputed text or texts.^[69]

States can resort to a regional international court in disputes of a territorial nature, such as the European Court of Justice, which is competent to apply the interpretation of treaties concluded between European member states of the European Union.^[70]

C- Interpretation of international treaties by international organizations:^[71]

In general, it can be said that international organizations have a role in interpreting treaty texts, and we distinguish between two cases:

- **The first case** is if the interpretation relates to a Charter of the Organization provision.

If the Charter gives the Organization competence to interpret the provisions of the Charter, the Organization's interpretation of any dispute that may arise over the interpretation of a provision of the Charter shall be binding on all Members.

Suppose the Charter does not give the Organization competence to interpret the provisions of the Charter. In that

case, international practice is that each organ of the Organization interprets the texts falling within its competence. Some jurisprudence has held that the interpretation that may be given by the Organization or one of its organs of a dispute that may arise in this way is not binding on its members.

- **The second case** is if the interpretation relates to a provision of another treaty (other than the Charter).

The international Organization or one of its competent organs shall consider the interpretation of the texts of international treaties raised before it; this interpretation, by virtue of the participation of the conflicting States in its drafting, discussion and voting on it, is called political interpretation.

Second - Rules of interpretation

The treaty interpretation process requires various rules and technical methods relied upon by treaty interpreters, including general rules, complementary means that can be used to interpret treaties, and special rules on the interpretation of treaties written in more than one official language.

1. General rules in the interpretation of international treaties:

Article 31 of the Vienna Convention on the Law of Treaties contains the general rules of interpretation that interpreters must take into account, namely:

Principle of good faith:

The interpreter must interpret the Treaty based on the good faith of its parties, i.e. the interpretation must be carried out on the basis that the contracting parties were in perfect

good faith when entering into the Convention and intended to carry out their mutual undertakings in good faith.

The principle of interpretation according to the ordinary meaning of the words:

That is, the interpretation is carried out by adopting the usual or natural meaning of the text and preferring it over other purposes that the words bear.

- Consideration of the context of the text:

When interpreting the text, the context and circumstances surrounding the Treaty when it was concluded and intended must be taken into account; from the primary rules, the text to be interpreted cannot be separated from the texts of the Treaty but must be seen as part of the more general Treaty, as an interpretation that comes contrary to the content of the Treaty or in opposition to the provisions of the Treaty is cancelled and cannot be counted.

The object and purpose of the Treaty must be taken into account in interpretation:

The content and extent of the Treaty are determined when addressing its interpretation in the light and purpose of the Treaty. Therefore, if the terms used by the parties to the Treaty contain ambiguities or gaps and, as a result, there may be different interpretations, the best ones must be chosen to reach the main purposes intended by the contracting parties to the Treaty.

- **Obligation to interpret in the light of the rules of international law applicable to the relationship of the parties:**
- The following shall be taken into account, in addition to the context:
- Any subsequent agreement between the parties concerning the Treaty's interpretation or its provisions' applicability.
- Any subsequent dealings in the application of the Treaty involving the Agreement of the Parties to interpret it.
- Any appropriate rule of international law applies to the parties' relations.

1. **Complementary means of interpreting international treaties:**^[72]

Complementary means of interpreting international treaties are both travaux préparatoires and circumstances.

- **Preparatory work:**

The travaux préparatoires shall be consulted whenever there is justification for reference. They shall include exchanged correspondence, notifications, mutual memoranda, declarations and minutes of meetings made in the period before the signing of the Treaty or the adoption of its texts.

- **Circumstances:**

A treaty is a social phenomenon that emerges as a result of a combination of factors and causes, and there is no doubt that knowing the circumstances by identifying the importance, nature and extent of the problems that the parties to the Treaty wanted to settle by concluding the Treaty is useful in the field of their interpretation.

2. **General rules for the interpretation of international treaties drawn up in more than one language:**

The Vienna Convention^[73] refers to some rules in the interpretation of international treaties written in more than one language:

- If the Treaty is authenticated in two or more languages, its text in any of these languages shall have the same force unless the Treaty provides or the parties agree that in case of disagreement, a particular provision shall prevail;
- A text of a treaty drafted in a language other than the languages in which the Treaty has been authenticated shall not be considered formal unless the Treaty so provides or the parties so agree;
- It is assumed that words have the same meaning in every official text.
- In cases where a particular text does not prevail if a comparison of official texts shows a difference in meaning, it shall be taken in such a sense as is consistent with the object and purpose of the Treaty and shall attempt to reconcile as much as possible the different texts.

Scope of application of an international treaty

The scope of application of a treaty means the Treaty's entry into force, which requires knowledge of the scope of the Treaty's operation in time and location.

First- Temporal validity of the Treaty:

The study of the temporal validity of the Treaty requires answering the possibility that the legal rules contained in the Treaty may affect the past, that is, before the entry into force of the Treaty, and knowing when the Treaty ceases to produce its legal effects [74]. In this section, we will address the

impact of the legal rules contained in the Treaty in the past only since we will devote a separate element to the cessation and expiration of the Treaty.

The principle of non-retroactivity of treaties:

This means that the provisions of the Treaty become operative from the time of its entry into force and do not extend to the past.

This principle is recognized in general international law so that if an international treaty is strictly speaking, it enters into force from the time of mutual ratification or the deposit of the necessary number of ratifications in collective treaties. Still, if it is an international agreement in simplified form, it enters into force from the date of its signature.^[75]

This principle has some exceptions, so States parties to the Treaty can derogate from this principle explicitly or implicitly, and the effect of the Treaty extends to facts that occurred before it entered into force.

The Vienna Convention affirmed this in Article 28. It determined that, unless a contrary intention arose from the Treaty or otherwise proved, the provisions of the Treaty did not bind a party to it in respect of any conduct or fact that had occurred or in any situation that ceased to exist prior to the date of entry into force of the Treaty for that party.

Second- Territorial applicability of the Treaty

Article 29 of the Vienna Convention defined the territorial scope of treaties. It determined that unless a treaty manifested a contrary intention or otherwise proved otherwise, the Treaty's provisions bind each party to it for its entire territory.

Suppose the territory is meant to be land, sea, and air. In that case, there is a reluctance to apply it to other dependencies of the region, such as the continental shelf and the exclusive economic zone, and it gives rise to a debate regarding territories in a special situation with the State.^[76]

It is a general rule established in international practice that treaties blame States that have concluded them within the limits of their territory and extend to their property only if expressly provided for in the Treaty.^[77]

Effects of treaties on third parties

First- The principle of proportionality of the impact of treaties:

This principle means that international treaties are binding only vis-à-vis their parties, as those who acquire the rights they establish bear the obligations arising from there.^[78]

Reference is made to the Roman principle, which means that the effects of a legal act are limited to the persons who concluded it.^[79]

Article 26 of the Vienna Convention states that any treaty in force is binding on its parties, and they must implement it in good faith.

Article II defined a "third party" as a State that was not a party to the Treaty, and a State party to the Treaty was a State that had consented to a treaty and for which the Treaty was in force.

Thus, in principle, a "third State" means a State that has not yet fulfilled the necessary procedures to become a party to the Treaty, even if it participated in the conference that led to

its adoption or participated in negotiations, editing and signature, but refused to ratify it, or had the right to accede to the Treaty but did not accede.

Second- Exceptions:

International practice has highlighted the existence of exceptions to the principle of the proportionality of the effects of treaties, where the impact of a treaty can extend to others, gaining them some rights or placing some obligations on them.

1. Accession to the Treaty:

The accession of a "third party" to a treaty to which it was not a party and to which it had not previously been a co-signatory would result in its becoming a party to the Treaty. Thus, the rights and obligations arising from the Treaty would be in force, but they would apply to the State only when the State became a party to the Treaty.

Essentially, accession should be optional for a "third party" state that may assess the appropriateness of its accession to the Treaty. This is consistent with the principle of sovereignty and equality of States.^[80]

However, international practice reveals that accession to certain treaties was imposed on some countries, such as the Treaty of Versailles (1919) imposed on Germany and peace treaties after World War II.^[81]

2. Most Favored Nation Clause:

A treaty may produce effects for third parties based on an agreement provision contained in a treaty that is the most-

favoured-nation clause, under which all or some of the States Parties enjoy any better terms or treatment that one State Party may grant in the future to a "non-State" under a new treaty between them.

This requirement was confirmed by the International Court of Justice in the Anglo-Iranian Oil Company case, in which it held that the Treaty between England and Iran constituted a legal basis for England's enjoyment of the rights established in the Iran-Denmark treaty on the grounds that the former Treaty contained a most-favoured-nation clause.^[82]

3. Stipulation for the benefit of others:

A right of a "third State" arises from a provision of the Treaty if the parties to the Treaty intend the text to grant such right either to the "third party" or to a group of States to which it belongs or to all States, and the "third party" agrees to this. Consent is presumed as long as the "third party" has not shown the opposite unless the Treaty provides otherwise. The State exercising this right must comply with the conditions for its exercise provided for in or in accordance with the Treaty.^[83]

At the same time, when a right of a "third party" arises, it may not be revoked or modified by the parties to the Treaty if it is proved that it is intended that it is intended to be revocable or subject to modification only with the consent and consent of the "third party".^[84]

4. Placing an obligation on a State as a result of a treaty to which it is not a party:

In general, a State may not be bound by an obligation as a result of a treaty to which it is not a party, but any State may

expressly accept an obligation that the Treaty incurs while it is not a party to it. The Vienna Convention confirms that an obligation on a third State may arise from a provision in an international treaty if the parties intend that provision be a means of creating the obligation and the latter State expressly and in writing accepts it.^[85]

France wanted to terminate by the Treaty of Versailles (1919) Switzerland's rights over the free zones granted to it by the Treaty of Vienna (1815), even though Switzerland was not a party to the Treaty of Versailles, which the Permanent Court of International Justice refused, on the grounds that the provisions of article 435 of the Treaty of Versailles applied vis-à-vis Switzerland, to which it was a party only to the extent that it voluntarily accepted.^[86]

5. Treaties that affect "third parties" because of their special nature:^[87]

Some treaties extend the effect of the Treaty to "third parties" because of the nature of the special Treaty, the most prominent of which is the case of the Treaty in which some of the rules contained therein are transformed into customary laws, treaties establishing substantive centres, treaties on international routes, and treaties establishing new international entities.

(a) Rules contained in a treaty and their effect extends to third parties as custom. For example, permanent Swiss neutrality was established in the Vienna Treaties in 1815 and then became a rule of customary international law, which is not limited to the invocation of States parties to the Vienna Convention but extends to all States worldwide.

(b) Treaty establishing substantive centres: any establishment of permanent international situations established for the benefit of the international community in general, such as the Vienna Treaties of 1815, which placed Switzerland in permanent neutrality, the Treaty of London in 1831, which established the State of Belgium and placed it in permanent neutrality, and the Treaty of Antarctica, signed by 12 States in 1959; It decided, among other things, to disarm that continent.

C- Treaties related to international communication routes: These are the treaties being developed to regulate the passage of international waterways, such as the Constantinople Convention of 1888 on the Suez Canal and the treaties on the Panama Canal. Treaty of Mannheim (1868) on the Rhine River.

(d) Treaties establishing new international entities or limiting the jurisdiction of an existing State, such as treaties relating to the establishment of Belgium in accordance with the Treaty of London (1831).

Amendment of the International Treaty

The rules of law must keep pace with the development of society, and therefore, amending those rules from time to time is necessary. International treaties, as a major source of law, do not escape the requirements of this fact, and in many cases, the Treaty is faced with a situation where it must be amended.^[88]

The cases of amendment of the international Treaty will be discussed, and then the rules for amending collective treaties will be addressed as follows:

1. Cases of amendment of an international treaty:

Article 39 of the Vienna Convention set out the general rule on modifying treaties, which determined that a treaty may be amended by the Agreement of its parties, which may be expressed or implied.

- **Explicit Agreement to amend the Treaty:**

The parties to an international treaty that have concluded it may subsequently agree to amend one or some of its texts, and their new Agreement takes the form of an international treaty, both in the strict sense and in the simplified form, and this is the general rule for bilateral, collective or multilateral treaties.

- **A tacit agreement to amend the Treaty:^[89]**

- Modifying a treaty in the light of subsequent conduct may consist of an implicit agreement to the amendment, which is recognized by many jurisprudence, although the Vienna Convention needs to be established.
- An implicit modification of a treaty may also result from the development of public international law, and a text or provisions in an existing treaty may be the result of the emergence of a new customary rule of general international law.

2. Rules for the amendment of collective treaties:

- **First case:** when the proposed amendment to the Treaty concerns all States parties

In this case, all Parties to the Treaty shall have the right to participate in the negotiation and conclusion of the amendment of the Treaty and the conclusion of the Agreement relating to that, and even States that are not parties to the

Treaty to be amended but have the right to become Parties to that Treaty may participate in the negotiation of the amendment and the conclusion of the new Agreement, but all such States, Parties and those that have not yet become Parties are not obliged to agree to the new Agreement but may accept or reject it.^[90]

This is recognized by the Vienna Convention, article 40 of which provides as follows:

"1. Unless the Treaty otherwise provides, the following paragraphs shall apply to the amendment of collective treaties.

2. All Contracting States shall be notified of any proposal for the modification of the collective Treaty between all the Parties, each of which shall participate in:

(a) The decision on action to be taken on this proposal;

(b) Negotiation and conclusion of any agreement to amend the Treaty.

3. Every State entitled to become a party to the Treaty shall become a party to the Treaty as amended.

The amended Agreement does not bind any State that is a party to the Treaty and does not become a party to the amended Agreement, and Article 30 (4) (b) shall apply to that State.

5. Unless it expresses a contrary intention, a State that becomes a party to the Treaty after the entry into force of the amended Agreement shall:

(a) A party to the Treaty as amended;

(b) is a party to the unamended Treaty vis-à-vis any party to the Treaty that the amended Agreement has not bound."

- **Second case:** when the proposed amendment concerns only a limited number of treaty parties

In this case, such a number may conclude an agreement on modification in their mutual relations if the Treaty whose provisions are to be amended does not prohibit such change or expressly provides for its possibility, provided that such modification does not affect the enjoyment by the other parties to the original Treaty of their rights under its provisions, or the performance of their obligations arising from there, and provided that the amendment does not address a provision whose prejudice could prejudice the effective implementation of the Treaty or Unless the Treaty provides for their exemption from this obligation, parties wishing to amend must promptly inform the other parties to the Treaty of the intention to conclude an agreement to amend them.^[91]

The Vienna Convention recognizes this, and Article 41 of the Vienna Convention provides as follows:

"1. Two or more parties to a collective treaty may conclude an agreement to modify the Treaty only between themselves by:

(a) The possibility of such modification is provided for in the Treaty;

(b) The Treaty does not prohibit such amendment and is:

(i) does not affect the enjoyment by other parties of their rights or the performance of their obligation under the Treaty;

(ii) It does not relate to a provision the breach of which is inconsistent with the effective implementation of the object and purpose of the Treaty as a whole.

2. Unless otherwise provided by the Treaty in the case subject to paragraph 1 (a), the parties concerned shall notify the other parties of their intention to conclude the Agreement and the amendment provided for in this Agreement."

2- Rules for amending the charters of international organizations:^[92]

Extrapolating the different positions of the charters of international organizations, we find two types of charters; some charters require the unanimity of members to make the amendment (which is known as the principle of consent), for example, Article 236/3 of the Treaty of Rome, which established the European Common Market. Some conventions allow amendments to be made by the majority (known as the legislative principle), which is the predominant view in international law.

It is important to note that this type of Charter (which allows for amendment by majority) raises some practical problems for States that reject such amendments or those that have not ratified it even though they agreed to it when voting. We find some charters that decide to allow such countries to withdraw from the membership of the Organization, such as the former League of Nations or the Charter of the League of Arab States (Article 19). Some conventions go so far as to oblige a State that does not agree to amendments to the Charter to withdraw from membership in the Organization.

Expiry and suspension of the Treaty

The expiry of international treaties means the termination of their provisions and, consequently, their disappearance from the international legal order, whatever the reason that led to that termination.^[93]

The Vienna Convention, referring to the general rule of termination and suspension of treaties, determined that a treaty may not be terminated, abrogated, withdrawn or suspended by a party except in application of the Treaty's provisions or the provisions of this Convention only.^[94]

The difference between the expiration of a treaty and the suspension of the Treaty lies in the fact that the expiration of the Treaty entails the exemption of the parties from the obligation to continue the implementation of the Treaty. The termination covers the whole of the Treaty, while the suspension results in the exemption of the parties from the obligation to implement the Treaty in their mutual relations only during the period of suspension and may include all or only part of the Treaty.

The grounds for terminating a treaty are numerous: the termination or suspension of a treaty may be based on a provision in the Treaty, it may be based on an agreement between its parties, and it may be the result of other circumstances not provided for in the Treaty and not agreed upon between its parties.

Accordingly, we will address the issue of the expiration of the Treaty and the suspension of its work, dividing it into two parts as follows:

First- Expiry or suspension of the Treaty by Agreement of the Parties to that:

1. Termination of the Treaty upon Agreement of its Parties:

The Vienna Convention^[95] recognized that termination or withdrawal from a treaty may take place:

- According to the provisions of the Treaty.
- Or at any time with the consent of all its Parties after consultation with the other Contracting States.

Thus, the termination of the Treaty is based on a provision established in the Treaty itself and may be based on the consent of the parties to the Treaty at any later time, the most prominent of which are:

A- Overall implementation:

Many treaties end with their full implementation, where the Treaty decides its expiry by its full implementation, which means that the parties to the Treaty must comply with its provisions and implement what it has decided in full, that is, comprehensively and when so, the Treaty expires.

The applications of this situation are particularly evident in bilateral and contractual treaties, such as agreements to purchase or transport a particular commodity, extradition treaties, exchange of prisoners or remains of known persons, etc.

B- Term Solutions:

A treaty may contain a provision specifying a date for its expiry where the Treaty is concluded for a certain period. After the Treaty enters into force and once the term has expired, the Treaty expires.

Egypt has already concluded an agreement with Britain under which Britain will undertake the works of the Suez Canal and take care of this, provided that Britain benefits from the percentage of ship traffic revenues for 100 years.

C- Fulfilment of the repudiation condition (condition résolutoire):

An international treaty may contain a resolute clause. If this condition is fulfilled, this is a reason for the termination of the Treaty. The resolute clause is an unrealized future matter whose occurrence entails the disappearance of the Treaty.^[96]

D- Subsequent Agreement between the parties:

The parties may agree to terminate a treaty in force between them, and such Agreement shall be express or implied.

- **Express Agreement:** It occurs when the parties to an international treaty agree to conclude a subsequent agreement among themselves that is considered as an agreement terminating the Treaty, and the express Agreement comes in the form of a subsequent agreement to the original Treaty that clarifies and specifies the conditions for its expiry and the procedures followed in that, or it comes in the form of a new treaty in which the will of its parties goes to the termination of the first Treaty and the adoption of the second Treaty, where we find a text or texts that provide for the termination of the validity of the first Treaty and the application of the second Treaty. It is important to point out that the next Treaty must first address the same subject matter. An

example^[97] is the status of the Danube, which the 1921 Convention regulated, and after World War II, the Belgrade Convention was drawn up in 1948, establishing a new river regime.

- **Tacit Agreement:** An agreement by the parties to an international treaty to cancel it can take the form of an implicit agreement, as in the case of treaties to which States parties are routinely not applying, without that Agreement taking the written form, but in an implicit agreement of non-application.^[98] The parties to an international treaty may also conclude a second treaty dealing with the same subject, in which there is no express provision for the termination of the first (original) Treaty, but the will of the contracting states is to apply the content of the second Treaty and abandon the first Treaty, which is considered as an implicit agreement to terminate the first Treaty.

E- Multilateral treaties:

Multilateral treaties usually contain provisions establishing the right of parties to withdraw from the Treaty and the controls of this right.^[99] The procedure is regulated, and the State or States that denounced the Treaty shall be deemed to have lapsed from the date of denunciation.

It is important to point out that some treaties require a certain quorum of Member States for their entry into force, and if they reach it, they enter into force.

Originally, the Treaty remains in force even if the number of members is less than the number necessary for its entry into force, but if the Treaty contains a minimum requirement for its

continued validity or the members agree to do so, the Treaty may lapse if several States withdraw from which the Treaty is a member of the Treaty below the minimum.

2. Suspension of the Treaty based on a condition contained therein or by Agreement of the parties to the Treaty or some of them:

Article 57 of the Vienna Convention provides that a treaty may be suspended in respect of all its parties or a designated party in accordance with the Treaty's provisions or at any time with the consent of all the parties and after consultation with the other contracting States.

However, if the suspension of the Treaty is by Agreement of some parties only, according to article 58/1 of the Vienna Convention, two or more parties to a collective treaty may conclude an agreement to suspend the provisions of the Treaty only temporarily, and only between themselves:

- If such suspension is possible in the Treaty.
- Or if the Treaty does not prohibit such suspension, provided that:

(i) It does not affect the enjoyment of their rights by other parties or the fulfilment of their obligations under the Treaty.

(2) It is not incompatible with the object and purpose of the Treaty.

Second- Termination or suspension of the Treaty without the Agreement of the Parties to that:

There are several cases involving the expiration of the Treaty or the suspension of its operation without the Agreement of its parties, the most important of which are:

1. Unilateral cancellation or withdrawal from the Treaty:

International practice demonstrates many cases in which one or more states withdraw from an international treaty without regard to the will of the member states refusing to withdraw or the Treaty's provisions that do not contain this right. This problem had already been raised when Russia declared in 1970 that it was not bound by the provisions of the Treaty of Paris (1856). This angered several States that held a conference in London to decide that no State has the right to derogate from its obligations under an international treaty or to amend its texts except upon the consent of the contracting parties.^[100] International practice has expressed this in many other cases after that, and the Vienna Convention on the Law of Treaties has recognized this trend, deciding^[101] that a treaty without a provision for its expiry, denunciation or withdrawal is subject to expiry or withdrawal unless:

- If it is proved that the parties' intention has been directed towards establishing the possibility of revocation or withdrawal.
- Or if the veto or withdrawal is implicit in the nature of the Treaty.

(The START Treaty is a strategic agreement between Russia and the United States of America in which a unilateral withdrawal was made.)

2. Impossibility of implementing the Treaty:

Some treaties have a new situation in which it is impossible to implement them. This impossibility may be temporary, which makes the Treaty's parties suspend the Treaty's operation, and the impossibility may be absolute and permanent when the Treaty expires. The Vienna

Convention^[102] recognized this by determining that the emergence of a situation that made implementation impossible allowed a party to the Treaty to invoke the impossibility of its implementation as a ground for its termination or withdrawal from it if the impossibility resulted from the demise or destruction of something indispensable for its implementation. If the impossibility is temporary, it is permissible to Invoke it only as a basis for suspending the Treaty's operation.

However, a party to a treaty may not invoke the impossibility of implementation as a ground for its termination or withdrawal from it if the impossibility results from that party's breach of its obligations under the Treaty or any other international obligation it has vis-à-vis any other party to the Treaty.

3. Violation du traité:

A treaty may lapse or be suspended as a result of a breach of its provisions. [103] A fundamental breach of a bilateral treaty by one party entitles the other party to invoke it as a ground for its termination or its suspension in whole or in part. As for a collective treaty, a fundamental breach by one of the parties of its provisions entitles the parties by collective Agreement among themselves to suspend the operation of the Treaty in whole or in part or to terminate it, either in the relations between them and the breaching State or between all the parties.

In particular, the party affected by such a breach is empowered to invoke it as a ground for suspending the Treaty in whole or in part in its relations with the breaching State.

Any party other than the breaching State may also invoke the breach as a ground for suspending the Treaty in whole or in part if the nature of the Treaty requires that the fundamental breach of its provisions by one of its parties radically alters the status of each party to the Treaty with regard to the performance of its obligations under the Treaty.

4. Fundamental change of circumstances: (*rebus sic stantibus*)

A fundamental change of circumstances means the solution of unforeseen circumstances that are wholly contrary to the circumstances in which and based on which the Treaty was concluded, making the parties to the Treaty obliged to suspend or terminate the Treaty.

In general, an unforeseen substantial change in the circumstances prevailing at the time of the conclusion of the Treaty may be invoked as a basis for its termination, withdrawal or suspension if the following conditions are met:

- The existence of such circumstances was a major reason for the consent of the parties to be bound by the Treaty;
- A change in circumstances would radically alter the extent of obligations that remained to be performed under the Treaty.

An exception to this is the invocation of a substantial change in circumstances as a basis for the expiry, withdrawal or suspension of the Treaty in one of the following cases:^[104]

- If the Treaty establishes borders.
- If the material change in circumstances results from a breach by the party invoking it either of an obligation under the Treaty or of any other international obligation owed to another party to the Treaty.

5. The emergence of a new international norm (jus cogens):

It is established that if a new peremptory norm of general international law emerges, any treaty in force that conflicts with it becomes null and void.

Procedure for termination or suspension of the Treaty and its implications

The Vienna Convention on the Law of Treaties established the process for termination or suspension of a treaty, as well as the implications;

First- Procedures for termination or suspension of the Treaty:

Article 65 of the Vienna Convention establishes the procedure to be followed in cases of nullity, expiry, withdrawal or suspension of the operation of a treaty:

- A Party that invokes, by a defect in its consent to be bound by the Treaty or by reason of challenging the validity or termination of the Treaty, withdrawing from it or suspending its operation under the provisions of this Convention shall notify the other Parties of its claim. It must indicate the action proposed to be taken in relation to the Treaty and its reasons.
- If, except in cases of special necessity, a period of at least **three months** has elapsed after receiving the notification without objection from any other party, the party that sent the notification may take the action it proposed.
- If any other party makes an objection, the parties shall seek a settlement by the means set forth in Article 33 of the Charter of the United Nations.

Second- Consequences of termination or suspension of the Treaty:

1. Implications of termination of the Treaty:

The ending of the Treaty shall entail the following:

- Exemption of the parties from any obligation to continue with the international Treaty.
- No right, obligation or legal status of the parties arising in implementing the Treaty prior to its termination shall be affected.
- If a State denounces or withdraws from a collective treaty, the relations between that State and the other States Parties to the Treaty shall have the foregoing effects from the effective date of such denunciation or withdrawal.

2. Effects of its discontinuation:

The suspension of the Treaty shall entail the following:

- The Parties to which the Treaty has been suspended shall be relieved of the obligation to implement it in their relations during the suspension period.
- The suspension of a treaty does not affect the legal relations established by the Treaty between the parties prior to the suspension.

International custom

We will address international custom through some points that we believe are important in this regard by clarifying its definition and importance, then identifying its elements or elements, addressing some of its advantages and disadvantages, and researching the basis of its binding force,

then by explaining the relationship between it and the international Treaty, then by proving international custom, and finally by the expiration of international custom.

Definition of international custom and its importance

First- Definition of international custom:

Article 38.1 of the Statute of the International Court of Justice refers to customary international rules as "international customs regarded as international law evidenced by the frequency of use".

It is generally agreed in international jurisprudence that a customary rule is a custom used by subjects of international law in their conduct in their international relations, coupled with their belief that it has the status of a binding international legal norm.^[105]

Second- Importance of international custom:

International custom is the oldest historical source of domestic laws and international law, and it is one of the most important sources of international law, so it is considered the second direct source and the main source for finding most international legal rules. For example, until 1815, diplomatic law had almost all its rules governing diplomatic relations derived from international custom.^[106]

Elements of international custom (its elements)

From the previous definition, it is clear that international custom is based only on the availability of two basic elements: the material element and the moral element.

First: Material Element:

The material element or element of international custom is the repetition of the conduct of subjects of international law in a certain way. This behaviour is called habit or precedent.

In order for custom or precedent to constitute a material element of the customary norm, it must be multiple, frequent, and general.

- What is meant **by multiplicity** here is that the behaviour is repeated more than once, so if this behaviour is not multiplied and not repeated, it does not constitute a customary rule.
- Frequency or persistence means that such conduct is carried out by subjects of international law repeatedly, consecutively and without long interruption.
- **Generality means that conduct does not remain exclusive to the perpetrator but extends to many subjects of international law, and such conduct is repeated among subjects of international law and is accepted.** Generality is not intended to be carried out or unanimously accepted by all States. Still, it is sufficient for it to be carried out by some subjects of international law and approved and accepted by the subjects of international law who have been affected by it. It should be noted, however, that every State has the right to object to the emergence of a customary norm and, therefore, to object to it. It prevents the

description of generality, thus preventing the emergence of the customary rule.^[107]

Second: The moral element:

The moral element means that the person who adopts the conduct constituting the material element of custom is a belief that the conduct of such conduct has become a legal obligation.^[108] That is, the practice of this behaviour is accompanied by the belief that it is obligatory.

Advantages and disadvantages of international custom

International custom has many advantages and disadvantages^[109], which can be summarized as follows:

1. Advantages of international custom:

International custom has many advantages, the most important of which are:

- Flexibility, scalability.
- The sincerity of expressing the reality of the international community and its adaptation to the needs of the international community.
- Complements the existing deficiency in international legislation.
- It is excluded that there are defects of will in it, which may marred some international treaties.

2. Disadvantages of international custom:

International custom also has advantages, the most important of which are:

- Slow formation.

- Slow lapse.
- Its rules are not always clear, shrouded in ambiguity and indefinity.
- It raises numerous problems in its application.
- The difficulty of proving it before international justice.

The basis of the binding force of custom

In its research based on the binding force of custom, international jurisprudence is divided between two directions:^[110]

1. International custom is an implicit agreement:

Proponents of the positivist school have taken this trend, arguing that the basis of the binding force of custom lies in the tacit Agreement of those who created it, for international custom is an implicit treaty where the will of States met and agreed to establish the customary rule. Instead of expressing it explicitly in treaties, it was implicitly expressed in the frequency of State conduct.

It is a view rejected by dominant jurisprudence and rejected by international practice.

2. International custom is an expression of the general legal conscience of the international community:

Proponents of this view believe that international custom derives the basis of its binding force from the general legal conscience of the international community; that is, the basis of commitment to international custom derives from the international community's conscience in international life.

Most contemporary jurisprudence holds this view, and international practice suggests this trend is being taken.

International Customs and Treaty

International customs and international treaties agree to consider them as basic sources of public international law. Their rules are binding, but there are differences between them, as the custom is more general than the Treaty in terms of those addressed by their provisions. It is slower in formation, more rooted in the international community, and more expressive of the international community's conscience. On the other hand, the Treaty is faster in formation than custom and clearer and more accurate than it is. We do not deal with many problems in application, as is the case in customs, and the Treaty's expiration and termination are faster than in international customs.

As for the relationship between international custom and the normative collective Treaty, we distinguish between two cases:

1. When international custom is earlier than the normative collective international Treaty:

The relationship lies in the fact that the normative collective international Treaty detects and declares international custom; that is, it involves the codification of an international custom that precedes it and may go beyond that by modifying custom through its crystallization and revision and examples of treaties that are in fact codify a previous custom, such as the Vienna Convention on Diplomatic Relations (1961), under which diplomatic law was codified, and the Vienna Convention on the Law of Treaties (1969). A

normative international treaty can also abrogate an international custom that preceded it if that international custom became unacceptable, for example, the abolition of the slave trade by the Vienna Declaration (1815).

2. When a normative collective international treaty precedes international custom:

In this case, the relationship is embodied in the fact that some collective international treaties cause the emergence of international custom, as many members of the international community regulate some collective international treaties. The application of their provisions is widespread in the international community to the extent that the belief that they are binding by all States, including States that have not joined this Treaty, as a result of this is the emergence of a new international custom. Case in point^[111] is the United Nations Convention on the Law of the Sea (1982). It contained a series of new provisions, some of which acquired the description of customary rules, such as the exclusive economic zone regime and Protocol I Additional to the Geneva Conventions (1949), which established new customary rules in the field of international humanitarian law.

Proof of international custom

When subjects of international law do not agree on the existence of international custom and a dispute arises in which one of the parties invokes the existence of such international custom before a judicial authority, the burden of proving such international custom falls on the party claiming its existence.

Those who claim the existence of international custom sometimes need help to prove it, as the judge is obliged to investigate the existence of the customary rule or not.

Expiry of international custom

Without the intervention of an international treaty in custom, a customary rule loses its character when subjects of international law condone it for a long time, and a customary rule may be extinguished by adopting a new customary rule that repeals and replaces it.

General principles of law^[112]

Article 38 of the Statute of the International Court of Justice provides this source with "... principles of law recognized by civilized nations."

What are the general principles of law?

In defining what is meant by the general principles of law, jurisprudence is divided into several opinions, which are summarized as follows:

1. General principles of law General principles of international law mean:

Part of international jurisprudence has held that general principles of law mean nothing more than the general principles of international law, which derive from international practice. The expression refers to general rules derived from the essence of international law, which finds its basis in the conduct of States and the expression of their will in their mutual relations.

This premise of looking at general principles of law allowed its proponents to regard general principles of law as part of international custom.

2. The general principles of law are the principles of coexistence between states with different political systems:

Another trend of jurisprudence is that the general principles of law go beyond the general principles of international law. These general principles of law have been proclaimed in several international treaties that express the reasons for the philosophy on which international relations are based. These principles have become famous in international treaties concluded between countries belonging to the bloc of socialist countries and other countries that follow different political systems. Then, they were developed and detailed until they reached ten principles.

3. General principles of law Common principles derived from domestic legal systems that can be applied in international relations mean:

The majority of international jurisprudence views the general principles of law as those derived from domestic legal systems. This trend is rooted in the jurist Grossius, who introduced international law to the idea of common law, the principles recognized by various legal systems.

This concept of general law principles has been established since it was contained in the Statute of the International Court of Justice.

For the general principle to be considered a source of international law, it does not have to be recognized by all

countries of the world, but it is sufficient that it be recognized in the main legal systems of the world: the Latin system, the Anglo-Saxon system, the Marxist system and Islamic law.

However, this principle cannot be invoked against a State that does not recognize it in its domestic legal order.

It should also be noted that a principle of general principles of law agreed upon in the principal legal systems may not be adopted when it conflicts with a customary norm.

The legal nature of the general principles of law and their placement among the sources of public international law

In determining the legal nature of the general principles of law and placing them among the sources of public international law, international jurisprudence has differed in divergent directions as follows:

1. General principles of law as a backup source of public international law:

The tendency in jurisprudence is to consider the general principles of law as a backup and complementary source of public international law. Therefore, according to this view, the general principles of law can be resorted to only where there is no international agreement or custom.

2. General principles of law as a means of interpretation:

Part of the jurisprudence denies that the general principles of law are considered a backup source and views them as one of the means used to interpret the rules of public international law derived from international treaties and international customs.

3. General principles of law as one of the sources of public international law:

Another aspect of jurisprudence is that the general principles of law should be seen as one of the sources of public international law, thus standing on an equal footing with international treaties and international custom while respecting the order adopted by article 38 of the Statute of the International Court of Justice in enumerating the sources of international law;

Some applications of the general principles of law

In many cases, international jurisprudence has witnessed the use of general principles of law as one of the sources of international law, whether they relate to international arbitration tribunals or in the judgments and advisory opinions issued by the Permanent Court of International Justice and then the International Court of Justice. For example, the Permanent Court of Justice has applied the principle of respect for rights acquired in Poland's Upper Silesia, the principle that a person cannot be both a judge and a judge in the Mosul case, and the principle of non-abuse of the right in the free zone case. The International Court of Justice has also been subjected to the application of many principles, including the application of some principles derived from the principle of good faith, such as the principle of the inadmissibility of allegations contrary to previous conduct in several disputes submitted to it.

Done thank God

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[1] Dr. Muhammad Aziz Shukri, Public International Law, a study published in the Arabic Encyclopedia, Vol. XV, p. 172, available on the encyclopedia website via the link:

<https://arab-ency.com.sy/ency/details/5850/15>

[2] See in detail: Dr. Sahib Obaid Al-Fatlawi, History of Law, Dar Al-Thaqafa Library for Publishing and Distribution, Amman, 1998, pp. 73-74.

[3] The treaty was written in Sumerian and cuneiform script; see in detail: Dr. Najm Al-Anbari, Ancient International Treaties, Journal of Arab Scientific Heritage, Fourth Issue, 2015, Center for the Revival of Arab Scientific Heritage, University of Baghdad, Iraq, p. 93.

[4] The Charter of the United Nations, promulgated in San Francisco on June 26, 1945, entered into force on October 24, 1945.

[5] For more information on the recognition of international organizations in the domestic legal system, see:

Pierre-Marie Dupuy, Yann Kerbrat: Droit International Public, Dalloz, 11th edition, Paris, 2012, p p 199-200.

[6] Dr. Essam Hanafi Mahmoud, International Trade Law, Faculty of Law, Benha University, D.D.N., Egypt, D.S.N., p. 68.

[7] For more on the origins of international humanitarian law, see:

Daniel Lagot, Le droit international et la guerre: Evolution et problèmes actuels, Editions L'Harmattan, (New edition), Paris, 2011, p p 19-28.

[8] Article 5 of the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on establishing an International Criminal Court, on July 17, 1998, entry into force: June 1, 2001.

- [9] See: Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, Dar Al-Nahda Al-Arabiya, Cairo, 2007, p. 102.
- [10] See Dr. Salah al-Din Amer, Introduction to the Study of Public International Law, previous reference, pp. 103-104.
- [11] See Dr. Salah al-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 104.
- [12] See Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 104.
- [13] See: Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, Dar Al-Nahda Al-Arabiya, Cairo, 2007, p. 176.
- [14] Refer to the Statute of the International Court of Justice.
- [15] See Dr. Salah al-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 178.
- [16] See Dr. Salah al-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 178.
- [17] See Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 180.
- [18] See Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, pp. 181-182.
- [19] Article 2-a of the Vienna Convention on the Law of Treaties, adopted by the United Nations Conference on the Law of Treaties in Vienna on May 22, 1969, entered into force on January 27, 1980.
- [20] See Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 183.
- [21] Dr. Smouhi Extraordinary: Modern Diplomacy, Dar Al-Awakening Arab for Authorship, Translation and Publishing, 1st Edition, DPN, 1973 A.H. / 1973 A.D., p. 456.
- [22] See Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 184.
- [23] Dr. Mohamed Sami Abdel Hamid, Dr. Mohamed Al-Saeed Al-Dakkak, Dr. Ibrahim Ahmed Khalifa: Public International Law, Knowledge Foundation, Alexandria, 2004, p. 11.

[24] See Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 184.

[25] Dr. Muhammad Al-Saeed Al-Dakkak, International Law, Sources - Persons, University House for Printing and Publishing, Beirut, 1992, p. 48.

[26] Article X of the Constitution of the United States prohibits the states of the Federal Union from concluding international treaties, provided that this does not prevent them from concluding some agreements provided that the U.S. Congress agrees to do so. The Swiss Constitution stipulates the same provision with the Swiss provinces. At the same time, the former Soviet Union granted its constitution to two provinces only the right to conclude international agreements in their name and on their behalf with other countries, namely Ukraine and Belarus. See that d. Mohamed Sami Abdel Hamid, Dr. Muhammad Al-Saeed Al-Dakkak, Dr. Ibrahim Ahmed Khalifa: Public International Law, previous reference, p.13.

[27] Dr. Mohamed Sami Abdel Hamid, Dr. Muhammad Al-Saeed Al-Dakkak, Dr. Ibrahim Ahmed Khalifa: Public International Law, previous reference, pp. 12, 13.

[28] Dr. Muhammad Al-Saeed Al-Dakkak, International Law, Sources - Persons, University House for Printing and Publishing, Beirut, 1992, p. 55.

[29] See Dr. Salah al-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 191.

[30] See Dr. Salah al-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 192.

[31] The agreement of the honorable (Goltman) means what the politicians of the different countries agree on in a friendly and personal manner without their will to bind their countries to the content of such agreements. Hence, these agreements have no binding value as all that guarantees their implementation is the word of honor that the politicians gave the parties to the agreement from them to the other. Their countries are not responsible if their politicians fail to

implement what they conclude from the honorable deal. See Dr. Omar Ismail Saadallah: Dictionary of Contemporary International Law, University Press, Algeria, 2007, p. 21.

[32] Dr. Mohamed Sami Abdel Hamid, Dr. Muhammad Al-Saeed Al-Dakkak, Dr. Ibrahim Ahmed Khalifa: Public International Law, previous reference, p. 20.

[33] See Dr. Salah al-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 195.

[34] See Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 198.

[35] See in detail: Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, pp. 198-199.

[36] See Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 200.

[37] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 206.

[38] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 206.

[39] Article 2-e of the 1969 Vienna Convention on the Law of Treaties.

[40] Article 2-c of the 1969 Vienna Convention on the Law of Treaties.

[41] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 212.

[42] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 213.

[43] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 213.

[44] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, pp. 214-215.

[45] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 215.

[46] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 216.

[47] Patrick Daillier, Mathias Forteau, Alain Pellet: *Droit International Public*, Lextenso éditions, 8th edition, Paris, 2009, p 149.

[48] Dr. Salah El-Din Amer, *Introduction to the Study of Public International Law*, previous reference, p. 219.

[49] Article 2-b of the 1969 Vienna Convention on the Law of Treaties.

[50] A, B, and D see Dr. Salah El-Din Amer, *Introduction to the Study of Public International Law*, previous reference, p. 222.

[51] Dr. Salah al-Din Amer, *Introduction to the Study of Public International Law*, previous reference, pp. 222-223.

[52] Constitution of the People's Democratic Republic of Algeria of 1996, amended and supplemented by Presidential Decree No. 20-442 of December 30, 2020, G.R.G.G., No. 82, issued on December 30, 2020.

[53] Article 190 of the 2020 Algerian Constitution.

[54] See Article II, paragraph d, of the Vienna Convention on the Law of Treaties.

[55] Dr. Salah El-Din Amer, *Introduction to the Study of Public International Law*, previous reference, p. 233.

[56] For more on reservations to multilateral treaties, see:

Pierre-Marie Dupuy, Yann Kerbrat: *Droit International Public*, Dalloz, 11th edition, Paris, 2012 , p p 118-122.

[57] See, for example, Article I, Paragraph A, of the League of Nations Charter.

[58] Dr. Muhammad Al-Saeed Al-Dakkak, *International Law, Sources - Persons*, University House for Printing and Publishing, Beirut, 1992, p. 71.

[59] See Article 17 of the Arab League Charter.

[60] Dr. Muhammad Al-Saeed Al-Dakkak, *International Law, Sources - Persons*, University House for Printing and Publishing, Beirut, 1992, pp. 82-83.

[61] Dr. Muhammad Al-Saeed Al-Dakkak, *International Law, Sources - Persons*, University House for Printing and Publishing, Beirut, 1992, p. 104.

[62] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 247.

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[67] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 265.

[68] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 266.

[69] Interpretation is not the sole jurisdiction of the Court. It is one of its competences. Refer to Article 36 of the Statute of the International Court of Justice.

[70] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 272.

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- [82] Quoted in: Dr. Muhammad Al-Saeed Al-Dakkak, International Law, Sources - Persons, previous reference, pp. 134-135.
- [83] See Article 36 of the Vienna Convention.
- [84] See Article 37/2 of the Vienna Convention.
- [85] See Article 35 of the Vienna Convention.
- [86] Dr. Muhammad Al-Saeed Al-Dakkak, International Law, Sources - Persons, previous reference, p. 133.
- [87] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, pp. 305 and beyond.
- [88] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 311.
- [89] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, pp. 312-313.
- [90] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 314.
- [91] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 315.
- [92] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 316.

[93] Dr. Muhammad Al-Saeed Al-Dakkak, International Law, Sources - Persons, previous reference, p. 141.

[94] See Article 42/2 of the Vienna Convention on the Law of Treaties.

[95] See Article 54 of the Vienna Convention on the Law of Treaties.

[96] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 289.

[97] See in this example Dr. Salah al-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 323.

[98] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 323.

[99] Dr. Salah al-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 324.

[100] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, pp. 326-327.

[101] See Article 56 of the Vienna Convention on the Law of Treaties.

[102] See Article 61 of the Vienna Convention on the Law of Treaties.

[103] See Article 60 of the Vienna Convention on the Law of Treaties.

[104] See Art. 62/2 of the Vienna Convention on the Law of Treaties.

[105] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 349.

[106] Patrick Daillier, Mathias Forteau, Alain Pellet: Droit International Public, Op.Cit, p 825.

[107] Dr. Salah al-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 356.

[108] Dr. Muhammad Al-Saeed Al-Dakkak, International Law, Sources - Persons, previous reference, p. 200.

[109] Just as custom has advantages and disadvantages, a treaty has advantages and disadvantages: its advantages include speed in formation, ease of proof before the courts, clarity, and accuracy, does not raise many problems in application compared to custom, and ease of termination and abandonment. Its shortcomings are rigidity, inflexibility, lack of scalability, lack of reflectivity and expressions of the international community's conscience, very incompatible with the circumstances,

realities, and needs of the international community, and more prone than custom to defects of will.

^[110] Dr. Salah al-Din Amer, Introduction to the Study of Public International Law, previous reference, pp. 359-361.

^[111] Dr. Salah El-Din Amer, Introduction to the Study of Public International Law, previous reference, p. 372.

^[112] Dr. Salah al-Din Amer, Introduction to the Study of Public International Law, previous reference, pp. 374-384.

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