Analytical study on the stages of drafting international treaties as legal Document

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Abstract:

International treaties are among the most important legal norms adopted by the majority of states as binding legal norm after signing and ratification between the states parties. They are also among the most important legal documents due to their precision and rigour in their formulation and their clear and correct language with meaningful and targeted legal terminology.

Keywords: *international treaties; legal drafting methodology; legal document.*

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Introduction:

International treaties, like many legal documents, undergo a systematic drafting process. They are written and legally binding documents between two or more states that establish rules, obligations and rights in a specific area, such as human rights, trade or the environment.

They are fundamental sources of public international law and are considered 'domestic laws' that states adopt in accordance with the hierarchy of their legal norms. Based on the above, the following issue can be raised:

What is the content of international treaties as binding legaldocuments?

To answer the above issue, the following plan was followed:

First: A conceptual introduction to: legal documents and the drafting of legal documents.

Second: Defining international treaties as legal instruments.

Third: The stages of concluding international treaties.

First: A conceptual introduction to legal documents and the drafting of legal documents.

1-Definition of a legal documents:

Legal documents are considered one of the most important sources of knowledge due to their role in scientific and historical research since peoples began documenting their national history. They have focused on establishing national institutions concerned with collecting, indexing, classifying and maintaining these documents, and developing laws and legislation to regulate their use.(Kouidri Rabhi, 2009, p. 111)

This interest has become an indicator of a country's progress, awareness, and cultural advancement, prompting various countries to establish national documentation and archiving centres and equip them with the latest technologies and scientific methods for preservation and other processes, keeping pace with rapid technological developments in the fields of library science, information science, documentation, and electronic publishing.

From this perspective, the study of documents has become an established science that deals with all the processes and procedures related to their collection, storage, analysis and retrieval at the appropriate

time for use in uncovering the truth or supporting a right in a particular case.

2-*Definition of drafting legal* documents*:*

This refers to the process of writing, formulating and creating a legal text, whether it is a legislative text, a treaty, an agreement or a contract, using a formal style that follows specific rules and standards to ensure effective communication and proof, preserve rights and provide unambiguous information in order to achieve specific objectives.

The importance of drafting legal documents lies in their role as a means of communication and documentation that connects different administrations and bodies and individuals by documenting decisions in order to preserve rights as a permanent reference that can be referred to when needed.(Bouda, 2018, p. 41)

The general principles of legal drafting:

· Accuracy and clarity: This is achieved through the use of correct and eloquent language and accurate legal and administrative terminology to avoid misunderstandings.

· Professionalism: Submitting documents with a professional form and content that reflects the competence of the writer and the administration they represent.

· Effectiveness: The legal instrument achieves its effectiveness in the shortest time and at the lowest cost.

· Unity of subject (objectivity): The editor focuses on a single subject to ensure the reader's focus and understanding of the content.

· Conciseness: Concise presentation of provisions. (Bouda, 2018)

Second: Definition of international treaties as legal documents:

1-*Definition of international treaties:*

International treaties are one of the most important sources of international law, if not the primary source, as stipulated in Article 38 of the Statute of the International Court of Justice. Their importance has emerged as a means of formulating the rules governing international relations in a legal form. Until 1969, customary rules governed matters relating to international treaties. They are also defined as: ‘agreements concluded in writing between states for the purpose of regulating international legal relations and determining the rules governing those relations.’ They are also: ‘agreements concluded by states for the purpose of creating, modifying or terminating international legal relations.’ (Al-Bayati, 2020, p. 18)In addition to the two previous approaches, there is a

formalistic approach, which defines them as: "a written agreement between two persons under public international law, whatever name it may be given, concluded in accordance with the provisions of international law with the aim of producing legal effects. It is also defined as: 'an agreement concluded in writing between two or more persons of public international law with the aim of producing legal effects or specific legal situations subject to the rules of international law.'(Al-Bayati, 2020)

To delve deeper into the concept of international treaties, it is necessary to address two important definitions, namely:

A. The customary definition of international treaties:

Customary law preceded the definition of international treaties and established four essential conditions without which an international treaty agreement cannot be conceived. It has been established that a treaty, in the broad sense, is an agreement between two or more persons under public international law, and the purpose of this agreement is to create legal effects between the contracting parties. This agreement is also subject to international law(Belahssen, 2023, p. 921)

. We can therefore conclude that a treaty must meet the following conditions:

- A treaty can only be conceived of as the meeting of at least two wills, not a single will, in order for an agreement to be reached.

- The parties to the treaty must be persons under public international law, and these persons are states, which is why it is called an international treaty because it is between states.

-Legal effects, as each treaty results in binding legal obligations, i.e. the parties to the treaty have rights and duties.

-Submission to public international law, as the legal framework governing every international treaty is public international law itself. (Belahssen, 2023)

B. Legal definition of international treaties:

The Vienna Convention on the Law of Treaties of 1969, in its second article, paragraph (a), defines a treaty as follows:

'A treaty means an international agreement concluded in writing between States and governed by international law, whether embodied in a single instrument or in two or more related instruments, whatever its particular name.' (Saadi, 2020, p. 55)

From this definition, four conditions can be identified that must be met for a treaty to be considered valid, namely:

First: The treaty must be concluded between two or more subjects of international law:

For any international legal instrument to be considered an international treaty, its parties must be persons of public international law as defined by international law. Persons of international law are sovereign states and international organisations, as well as liberation and resistance movements, such as the agreements concluded by the National Liberation Front with France, represented by the Evian Agreement, which is considered an international treaty. This means that any treaty concluded between persons other than these does not fall within the scope of international treaties.

Second: The treaty must be in written form:

This means that the treaty is subject to specific procedures in the process of its conclusion, such as signing, ratification and registration. The aforementioned Article 2 specifies such procedures with the requirement of written form, whether in a single document or in several documents, as confirmed by Article 102 of the Charter of the United Nations, which states the following: (Belahssen, 2023, p. 930)

-Any treaty or international agreement concluded by any member of the United Nations after the entry into force of this Charter shall be registered with the Secretariat of the Organisation and published by it without delay.

-No party to a treaty or international agreement that has not been registered in accordance with the first paragraph of this article may invoke that treaty or agreement before any organ of the United Nations.

Third*: Conclusion of treaties in accordance with the provisions of public international law:*

As the agreement is an international treaty, it must be subject to the provisions of public international law, meaning that the parties to the international treaty are subject to the rules of international law, whether in terms of its subject matter, its purposes, or the legal effects that may result from it.

Third: Stages of concluding international treaties:

(Stages of drafting a legal documents)

The process of drafting international agreements and treaties, as legal documents, goes through several systematic stages, which are as follows:

First: The communication stage:

The communication stage is a very important and fundamental stage before the conclusion of any treaty or agreement. It involves communication between two or more states to reach a preliminary agreement on the subject of the treaty and the procedures necessary for its conclusion.

Second: The Negotiation stage:

This is a stage in which the states participating in the treaty exchange views with the aim of reaching an international agreement between them.

The Vienna Convention on the Law of Treaties of 1969 did not specify a specific form for negotiations. Negotiations usually begin with contact between two states (as mentioned above) and with one state extending an invitation to another state through diplomatic channels. Sometimes the invitation is accompanied by a preliminary draft of the treaty .(Saadi, 2020, p. 61)There is no specification of the persons entitled to negotiate, and as a general rule, the following are competent to negotiate: the head of state or foreign minister, heads of government, ambassadors, and other official representatives of the states parties to the treaty. Persons who do not enjoy this legal status must obtain a letter of authorisation from their state in order to be allowed to conduct negotiations. They then proceed with negotiations aimed at establishing international treaties.

Negotiations are conducted through diplomatic channels for bilateral treaties, while multilateral treaties are negotiated in the form of international conferences. If the negotiating delegations reach agreement, they proceed directly to the second stage.

Third: Drafting the treaty:

Once the negotiations are complete, the next stage is to draft the international treaty, agreeing on its final form and wording, and putting it into practice in terms of its format, text and language, by drafting it as a legal document and signing it. (Belahssen, 2023, p. 144)

The various issues covered by the international treaty that were agreed upon during the negotiations are drafted in the form of clauses without addressing issues not mentioned by the negotiating parties. In general, the drafting of an international treaty consists of three sections, as follows:

Ø **Section I**:

This section includes the preamble or introduction, stating the reasons and motives that led to the conclusion of the treaty.

Ø **Section II**:

This section includes a statement of the parties to the treaty, mentioning only the names of the states.

Ø **Section Three**:

This section contains the provisions of the treaty in the form of separate articles that form the core of the treaty. It is usually divided into sections and chapters, which may be followed by appendices.(Belahssen, 2023)

The treaty is then drafted in the form of a written document in two or more languages to give it official and legal status.

IV: Signature and ratification:

Signature is an act performed by a person of international law, as a party to the international treaty, whereby he expresses his acceptance of the provisions of the treaty. In other words, the signature formalises the text of the treaty that was agreed upon during the negotiation phase. Signature is a necessary condition for the validity of the treaty, but it does not acquire legal force unless it is ratified, which is considered the most important stage in the conclusion of the treaty and the basis for its existence and entry into force. (AL-Kabouli, 2011, p. 31)This is "the legal act intended to obtain the approval of the competent authorities within the state that are legally authorised to ratify the signed treaty, which is represented by the head of state alone, either jointly with the legislative authority or the legislative authority alone. Each state has its own national procedures for ratifying treaties, as stipulated in Article ½ of the Vienna Convention on the Law of Treaties of 1969, which states that ratification is 'acceptance', "approval" and 'accession'.

After a treaty has been negotiated, drafted and signed, states must ratify it in order to become parties to it. The act of ratification represents the approval of the relevant national authorities. In most cases, the ratification process involves the head of state, often with the authorisation of parliament or the senate. Ratification binds the state internationally to its obligations because it reflects its agreement to be bound by the treaty in question. Most agreements come into force after a certain number of states—specified in the agreement itself—that have signed it have ratified it. (Belahssen, 2023, p. 165)

Even after an agreement enters into force, it does not always have a direct impact on the internal system. At the time of ratification, states undertake to incorporate the provisions of the treaty into their domestic legislation or to amend their laws to bring them into line with the

obligations contracted through ratification, unless their laws are already in conformity with their obligations under the treaty.

Some treaties, such as the Geneva Conventions, are gradually incorporated into customary law and are therefore binding even on states that have not ratified them.

Accordingly, a treaty cannot enter into force until the ratifications have been exchanged between the signatory states.

Conclusion:

In conclusion, it can be said that international treaties are written, legally binding documents between two or more states that establish rules and obligations that are binding on the states parties, in a written form with legal terminology, precise language and systematic stages.

From the above, the following conclusions can be drawn:

- The methodology of drafting legal documents is the process of writing, formulating and creating a legal text, whether it is a legislative text, a treaty, an agreement or a contract, using a formal style that follows specific rules and standards.

-The drafting of international treaties as legal documents goes through precise methodological stages and is formulated in sound and precise language.

-The most important stages in the conclusion of international treaties are the negotiation stage and the drafting and formulation stage.

- Once ratified, international treaties enter into force and become applicable.

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