Exploring the Validity and Applicability of Oral Treaties in International Law

Doi: 10.23918/ilic9.61

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Abstract

There are divergent perspectives among the jurisprudences regarding the conclusion or non-conclusion of the international oral treaty. The formal aspect of the conclusion of the treaties considers the necessary condition that must be achieved in order to be abided by the parties. Meanwhile, another opinion suggests that it is possible to conclude an international treaty without obligating parties to formal aspects, also considering a valid and capable of defining the obligation for parties. Hence the following question arises: is it possible to conclude international treaties orally without affecting the validity of their conclusion or parties' commitments? The research seeks to answer that question by analyzing and considering the stances of jurisprudence and judiciary, as well as the stance of the International Law Commission and international legislations, including the Charter of the United Nations and the provisions of the Vienna Convention on the Law of Treaties in 1969.

Keywords: oral treaties, formality in treaties is the legal relationship between parties', treaties concluding.

Introduction

First: problem statement and research question

The research covers the legal value of oral treaties and invocability. The oral treaty is an international treaty done without resorting to repeated written form during the process of concluding treaties. The topic constitutes a challenge for international law. The study asks a question about the power of oral treaties to be legally binding and invocable before the legal authorities.

The study shed light on the legal legitimacy of this type of treaty, it determines whether these treaties are enforceable and officially recognized, or whether they can be recognized before the international court and national legal committees. Additionally, the research covers the extent of invocability of these treaties and accepts it as legal evidence before the legal authority. And harmonize with the legal and constitutional principles of the state concerned.

The Vienna Convention on the Law of Treaties was promulgated in 1969, which played a key role in codifying customary rules relating to treaty conclusions. Despite the attempts of the members of the International Law Commission to cover everything related to treaties, many topics, including the problem of oral treaties, were not covered. The Convention, which define an international treaty is an international agreement concluded in writing between states, the intention here was to establish the written act of codification required in international relations between states seeking to establish Legal tie aims to achieve the idea of cooperation to achieve its interests, but sometimes countries are forced to speed up the conclusion of international treaties do not wait for writing to achieve this, therefore exchange wills orally without the need for written documentation, the following questions arise:

1. Is it valid to conclude international treaties orally?
2. What is the legal value of these treaties?
3. Can these treaties be invocable in front of international bodies?

Second: Research objectives

1- Clarify the international oral treaty and define the concept
2- Making the distinction between the international oral treaty and the international normal treaty.

3- Shed light on the importance of these treaties in the current international circumstance.
4- Mention all of the rules that govern the affairs of the international oral treaties, international custom rules, and the Vienna Convention on the Law of Treaties such as examples.

Third: Research methodology

In the research, we rely on the analysis study, including legal context, as well as expose the jurisprudence idea and disclose our opinion at the end of the research, therefore, we will depend on the analytical theory.

Fourth: Significance of the research

The subject of the legal value of an oral treaty and its invocability has great importance in the context of international law and international relation for several reasons, including:

1- International law determines obligations between states in front of each other. And it may be possible to determine the obligations through an oral treaty rather than a lengthy written procedure.
2- The possibility of concluding oral treaties allows for more flexibility in states negotiation procedure, and it may be an active factor for treatment in urgent and critical cases.
3- With the development of international relations, resorting to oral treaties has become increasingly important in keeping up with the rapid transformation in international accidents and technological development in this era. Importance of international oral treaties appears in difficult circumstances, particularly in war, therefore states resort to international oral treaties because of the rapidity and secrecy, for example, the oral treaty between Norway and Sweden.
4- The theme reflects the challenges and opportunities to the development system of international treaties, as well as adaptations to the development of recent international relations.

Fourth: Research structure

In response to the previously mentioned questions, in the first chapter, we will discuss the concept of the oral convention and the problems that arise from it. Next, we discuss jurisprudence and judicial positions. In the second chapter, we will discuss the position of the international law committee in the Vienna Convention on the Laws of Treaties 1969, as well as international legislation represented in the United Nations Charter and the Vienna Convention on the Laws of Treaties 1969. Finally, we will mention the conclusions from the research.

1. Concept of the International Oral Treaty

Generally, jurisprudential discussion occurs during treaties, particularly oral treaties. In 1.1., broadly define the international treaties. Next, in the second 1.2, clarify the definition of oral treaties and the problems raised.

1.1. Definition of international treaties

The subchapter divides into sections, in the first section defines international treaties, in the second section, defines the oral convention.

1.1.1. Jurisprudential definition of international treaties

The Public International Law contained many definitions of international treaties. On the jurisprudence level, the definition was divided into two different directions, the first direction took the narrow concept of international treaties, while the second direction took the broad concept, and therefore the study will disclose the definition of both directions:

A- Narrow direction: In the past, especially in the eighteenth and nineteenth centuries, international jurisprudence restricted the definition of treaties to a narrow scope, describing treaties as obligations between states only[(1)].

For a long period of time, the idea that the state is the only person in international jurisprudence has prevailed. The jurists of the traditional doctrine unanimously agreed that international relations are linked to states exclusively without other entities that exist at the time in the international community, and there are many jurists who adopted this concept of international treaties, including Geneina, who he defined the treaties as ((agreement or a contract concluded between two or more States, as a person under public international law, regulated by the rules of such law and resulting in its effects.[(2)]

Based on the available sources, the presented definition is the oldest, it is assumed that treaties cannot be concluded only between states, they organize rights and obligations only between states, it is clear for us to conclude conventions between states and international organizations outside their scope. Or between the

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(1) Muhammad al-Majzoub, Mediator in Public International Law, University House for Printing and Publishing, Beirut, 1999, p. 483.
(2) Mahmoud Sami Geneina, Public International Law, 2nd Edition, without Publishing House, Cairo, 1938, p. 408.

state and the rest persons of the international law. In addition, the treaties exceed the scope concluded between the state and one internal region of the federal union.

The international treaty contract narrows its scope to the political aspect without considering other various aspects. Among them, Sultan defines the treaties (is an agreement to regulate related subjects with political aspects))[1]). As well, Ammar who adopted the formal written requirement of the international treaties defines: (written agreement between two individuals under public international law, whatever term called, concluded according to provisions of international law with the aim of having legal effects))[2].

It is evident from the above definitions that some of them narrow the scope of the conclusion in specific aspects. Others only allow states to conclude international treaties. This is normal, according to the traditional doctrine of public international law, which consider the state as the only individual in international law.[3]However, the narrow concept is not acceptable in the present time and is incompatible with the recent concept of international law because of the lasting development in the international community, international treaties are becoming increasingly important in all areas, and arise other persons recognized by the international law as the international legal personality.

B- The broad direction: Critics direct the supporters of the narrow direction and encourage the jurists of international law to find other definitions for international treaties in order to keep up with the progress that has occurred in the international community. Al-Ghunaimi defines it as "it is familiar by nature of treaties between individuals of the international law aim to make right and obligation without available any condition - for these legal effects to occur - formulate in specific form[4]", In addition, Dr. Ahmed Abu Wafaa defines the international convention "as an international agreement concluded between two or more persons of international law, whether it is formulated in one document or two or more, and under what name or title." [5]

It is also defined as "private and public international treaties concluded between two or more individuals of the public international law seek to regulate international relations through making and amending the rules that govern the relations)).[6]

Note that in the earlier definition, the framework of international treaties did not just shorten based on the agreement between states, but also encompass other agreement concluded between other individuals that his international legal personality recognized under international law. As well as it does not depend on the written formality and not be limited to a particular aspect of international relation. This is consistent with the current international situation and the ongoing development of public international law.

We tend to adopt the broad concept of international treaties, the international treaties do not exclude from (international agreement, regardless of the number of related documents or the name that is titled, concluded between two or more persons under public international law, governed by international law, and aimed to make certain legal effects).

1.1.2. Legislative definition for international treaties

Distribute the definition of the international treaties based on the legislative level in two paragraphs:

A- definition of the treaties in international legislation: Article (1/A) in the Vienna Convention on the Law of the Treaties in 1969 defines international treaties (international agreement concluded among states in a written manner and regulating international law, whether including one document, two connected documents, or more, and whatever specific name)

It is noted that the definition relies on the narrow concept of international treaties. It only mentions the conventions between the states. The first article of the Vienna Convention emphasizes this approach and shortens the implementation framework of the agreement in the treaties that was concluded among states.[7], Therefore, it does not apply to the treaties concluded between states and other individuals under public

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[1] Hamid Sultan, International Law in Time of Peace, 2nd Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1965, p. 211.

[2] Salah al-Din Amer, op. cit., p. 183.

[3] Essam Attia, op. cit., p. 7.

[4] Mohamed Talaat Al-Ghunaimi, General Provisions in the Peace Law - Peace Law, Knowledge Foundation: Alexandria, 1970, pp. 400-401.

[5] Ahmed Abu Al-Wafa, The Book of Media with the Rules of International Law and International Relations in the Sharia of Islam, vol. 1, 1st edition, Dar Al-Nahda Al-Arabiya, Cairo, 2001, p. 105.

[6] Hasan Chalabi, op. cit., p. 54.

[7] Article 1 of the 1969 Vienna Convention on the Law of Treaties stipulates the following: This Convention shall apply to treaties between States.

international law. Furthermore, the definition shortens the provision that regulates the written treaties without the oral treaties.
Article two paragraph (1/A) in the Vienna Convention on the Law of the Treaties among States and International Organization or among International Organization in 1986 for the international treaties as (international agreement governed by international law and concluded in written form: 1- between one state or more and between international organizations or more 2- between international organizations, whether the agreement embodied in a single instrument or in two or more related instruments, whatever its particular designation).
Note that the definition is consistent with the Vienna Convention on the Law of Treaties. Additionally, the convention provided a legal framework for the international organization to participate in the conventions to which it is a party. The Vienna Convention on the Law of Treaties between States and International Organization or between International Organizations reiterates a copy of the Vienna Conventions on the Law of Treaties. The International Law Commission made some modifications to the formulation and content in order to be in line with international systems[(1)].
B- definition of the Treaties in the National Legislation: The majority of national legislation does not include any definition regarding international treaties. But left the jurisprudence to the scholars of international law. Or it was satisfied by the definition provided in the Vienna Convention for the Law of Treaties in 1969, and the Vienna Convention in 1986 added the same definition as indicated in the first convention.
It is realized that the Iraqi legislator mentioned the definition of the convention in the repealed Treaty Conclusion Law No. 111 of 1979 and the Treaty Conclusion law No. 35 of 2015 in force. The First Law in Paragraph 2 of Article 1 defines the convention as follows: **(**Compatibility of wills in a written form between two or more of the individuals of international law, mentioned in paragraph 1 of this article, for the purpose of having legal effect subject to the provisions of international law, irrespective of the instrument name or number of instruments registered for the provisions compatibility such as an agreement, protocol, memorandum, letter or exchange letter, or any other designations are registered as long as the conditions mentioned in this paragraph are met therein**)**
Observe that the definition followed the same approach as the Vienna Convention for the Law of Treaties of 1969, which referred to the writing requirement in the international convention, as well as the non-distinction between various designations that apply to the agreement as long as the mentioned conditions in the definition of convention are available therein.
In light of the Treaty Conclusion Law No. 35 of 2015 in enforce, the convention is defined in the first article of the first paragraph, thereof as ((Conformity of written wills, between the republic of Iraq or its government and between a state or other states or their government or an international organization or any personality of the international law recognized by the Republic of Iraq for the purpose of creating legal effect subject to the provisions of international law, regardless of the name of the document or the number of documents in which the provisions of compatibility are written such as treaty, agreement, compact or protocol, charter , covenant, joint record, memoranda, letters, exchanged books or other names and referred to in this law as treaty))
It should be noted that this definition is a repetitive version of the old law text, except that it has increased the repetition of the reference to the issue of not paying attention to the designation of the convention without considering the fact that the definition does not favor repetition.
The Iraqi legislator made commendable effort by mentioning a definition of international conventions, although the mention of definitions in laws is not recommended, because Iraq did not accede to the Vienna Convention on the Law of Treaties of 1969 in the seventies and at the time of writing the lines.
1.2. Definition of oral treaties and raised problems
Jurisprudence Reluctance to seek the conclusion international treaties orally. The reason behind the lack of definitions of the topic is that it encourages us to search for the concept of the international oral convention and enforcement framework in section one, subsequently highlighting the numerous issues it may raise, like the international oral convention in Subchapter two.
1.2.1. Definition of oral treaties

(1) Reda Hamisi, The Authority of the International Organization in Concluding International Treaties, 1st Edition, Dar Al-Hamid for Publishing and Distribution, Amman, 2013, p. 77.

Despite the lack of definitions in the topic of international conventions, this may be the reason jurists of international law engaged in jurisprudence difference about the definition of the international convention. The distribution of this definition fell into two groups. One of them is the narrow framework of convention, and the other is the broad framework, which was mentioned before. Some jurists from both sides have mentioned the definition of oral treaties either directly or indirectly. According to Dr. Salahaddin Ammar as" an agreement is created orally between representatives of the two persons of international law at least, for the purpose of taking place of international legal effects". Note that the definition explicitly mentions the oral convention, and considers a broad direction for the international convention, despite mentioning the term (oral) explicitly. The international convention originated in writing. Also, Dr. Salahaddin Ammar provides a general definition of convention and oral convention, in addition, this definition refers to persons of international law absolutely.

Charles Rousseau defines convention as: (The convention, whatever it's called, is an agreement between persons of international law allocated to the occurrence of specific legal consequences." [1] Observe that the definition does not explicitly mention the oral convention until this type of convention is recognized and take into consideration that the definition supports a broad direction.

Dr. Mahmoud Sami Geneina defined a convention as (an agreement or contract concluded between two states or more, as a person of public international law, regulates the rules of this law and arranges its effects." [2]We note that this definition is a has a narrow tendency to include oral conventions, even though their fact that their persons are restricted as state.

International oral treaties can be defined as agreements or understandings made through oral or informal communication, without formal written documentation, in order to produce legal effects.

1.2.2. Framework for implementation of oral treaties

There is no specific international agreement that completely governs the subject matter of international oral treaties between persons under international law. Typically, negotiation under the international treaties and agreement conducted through formal written and signed documents. However, in certain cases negotiation or communication may take place by phone or in oral meetings. Also, communication between government officials or diplomats is necessary for discussing specific details or exchanging points of view about international issues.

Usually, the states resort to oral convention within the framework of the following topics [3]:

1. Political framework: It indicates that the oral treaties take place within a political context, that is, they may be the result of conversations or understandings about political affairs between states.

2- Confidential framework: it explains that these treaties may be confidential, that this negotiation and agreement conclude in secret and private manner, and that the details may not be disclosed to the audience.

3. Topics of little importance: This indicates that the content that is negotiated in these oral conventions may be of an exceptional nature or relate to issues of little strategic or political importance.

4. pre-concluded agreement: indicates that the agreement may have been known in earlier, that is an agreement has been concluded in advance, and the oral treaties is considered its implementation.

These oral treaties can be a means of facilitating diplomatic communication and achieving quick understandings in some cases, but states must adhere to formal procedures to confirm documentation understandings and international agreements.

1.2.3. Problems raised by the International Oral treaties

In fact, there are many problems with International oral treaties in the case of disputes over oral texts, as well as the difficulty of proving them because they are rare at the international level[4]. Which raises many problems, including:

First: In the case of international judicial disputes: This happens when a state claims that it has an oral treaty with a second state, and if the second state recognize this and recognizes this convention, this produces full legal effects on the shoulders of both contracting states, so later no any kind of problem is raised, which, as some say, is an exceptional imposition in international life[5].

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[1] Charles Rousseau, Public International Law, translated by Shukrallah Khalifa and Abdel Mohsen Saad, Al-Ahlia for Publishing and Distribution, Beirut, 1987, p. 34. Essam Attia, op. cit., p. 55. and Muhammad al-Majzoub, op. cit., pp. 483-484.

[2] Mahmoud Sami Geneina, op. cit., p. 408.

[3] Ahmed Abu Al-Wafa, Mediator in Public International Law, Dar Al-Nahda Al-Arabiya, Cairo, 2010, p. 95.

[4] Ibid., p. 94.

[5] Salah al-Din Amer, previous source, p. 190.

Second: The case of evidence of the existence of the International Oral Convention: This is through a document referring to this oral international treaty. Here, the issue is more obvious because of the problem of establishing precise boundaries between international oral treaties and international written treaties. The last treaties are written for the primary purpose of its codification. While in some cases this is about the boundaries between international oral treaties in its abstract form and the international written convention its accurate concept, as happens when the president of the two countries gather to discuss and consider one of the topics of interest to them with the joint record of the concerned meeting, which is a proven event and exchange of views, and the two presidents reach certain results, such as an agreement between them(1).

2. Validity of the conclusion of international oral treaties

The topic of oral treaties is one of the most controversial topics among international law scholars, some of them support this type of treaty and some of them are against considering it as an actual and valid treaty. We will indicate the position of the judiciary and international committees on this subject with an indication of the position of the texts of international documents concerning it. Therefore, we divided this chapter into two requirements, in 2.1, we will present jurisprudential opinions on the issue of oral treaties, and in 2.2, we will present the provisions of international institutions and international documents about this subject.

2.1. Jurisprudence position on International oral treaties

International jurisprudence is divergent on the question of whether international conventions can be concluded orally or not, some of them supported the idea of authorizing them, we will explain this view in the first section, and some of them rejected the whole idea that it is not accepted in international treaties, which we will refer to in the second section.

2.1.1. Jurisprudential position encourages the conclusion of international oral treaties

Some international jurisprudence believes that an agreement is considered an international treaty, whether oral or written(2). Although the Vienna Convention on the Law of Treaties of 1969 did not include oral conventions in its provisions and did not stipulate but emphasized writing in the conclusion of international conventions in Article (2/1) thereof, which was regretted by some international jurisprudence when the Vienna Convention on the Law of Treaties of 1969 excluded international oral conventions from the scope of application of their rules(3). The Vienna Conference implicitly asserted that rules related to oral conventions were generally not certain, is it necessary to allow it to codify them(4).

Traditional international jurisprudence believes in the possibility of concluding international conventions orally or even by sign, as happens when one of the warring parties raises a white flag and responds to it by raising the same flag from the other party and considering this a convention. This occurred as treaty between Peter the tsar of Russia, and third Frederick in Pilao(5).

Accordingly, other proponents of concluding international oral conventions believe that there is nothing to prevent the conclusion of an international treaty orally, they resort to the same example of flag-raising during war as evidence of a ceasefire agreement and military operations temporarily (6).

Therefore, they assert that international conventions were concluded in writing. At the same time, no one can confirm that international law requires concluding in writing, because there is nothing in international law that precluded that complementary oral conventions between representatives of states were binding for both parties(7).

Even some of the jurisprudences are proponents of writing in the conclusion of international treaties should the agreement be registered in writing in a document or document signed by the representatives of the contracting states, and it is obligatory for it to conclude international conventions in writing. They added, does not preclude the conclusion of international treaties orally, because an agreement made orally between

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(1) Ibid., p. 190. The question is: are we facing an oral or written agreement? Some argue that it is possible to have both answers, oral and written, see ibid., p. 191.

(2) Ahmad Abu al-Wafa, op. cit., p. 94.

(3) Salah al-Din Amer, previous source, p. 191.

(4) Nguyen Quoc Dinh et Autres, Droit international public, Editions LGDJ, 6° édition, Paris, 1999, p. 120.

(5) Tarek Ezzat Prosperity of Public International Law in Peace and War, Dar Al-Nahda Al-Arabiya, Cairo, 2006, p. 69.

(6) Abdel Aziz Ramadan Al-Khattabi, The Foundations of Contemporary International Law: A Study in the Light of the Theory of Jurisdiction, Dar Al-Fikr Al-Jamia, Alexandria, 2014, p. 112.

(7) In the same vein, he added that such oral treaties were flawed by the difficulty of proof. See: Omar Hassan Adas, Principles of Contemporary Public International Law, National Center for Legal Publications, Cairo, 2007, p. 502.

representatives of states with the power to conclude international treaties and to bind their States to them is binding and must be respected[1].

Because the will alone is not sufficient for the appearance of international conventions unless they are expressed until they appear to the world, whereas only the will is expressed, international convention arises without certain additional formalities. However, international conventions are usually concluded in writing, although there is nothing legally precluding them from being concluded orally."[2]

Of course, this does not preclude the oral international conventions from continuing to the rule of customary international law, which see them as international conventions binding to States parties, as long as there is no problem with their proof[3].

The jurisprudence deduced concludes the international conventions as provided in Article 3 of the Vienna Convention on the Law of Treaties of 1969, as some of them thought that the binding character was not linked to a particular form. The oral international agreement has a legal value no less valuable than a written agreement according to the above-mentioned article[4].

The French jurist Dinh asserts that third article of the Vienna Convention on the Law of Treaties of 1969 does not neglect, undoubtedly, international treaties that have not been concluded in writing that are considered oral treaties and therefore do not deny their legal value[5].

This perspective holds that, despite some jurisprudence stating that an unwritten treaty cannot be registered with the United Nations, this does not negate its validity or enforceability. Therefore, this does not preclude the conclusion of the international oral treaty[6].

The Belgian jurist Verhoeven believes the oral treaties still considered fully valid even though the Vienna Convention on the Law of Treaties of 1969 does not apply to oral treaties, this does not lose its validity, but is considered fully valid, as implicitly confirmed by Article three, which is fully in accord with the non-formal nature of the law of nations when the agreement is not written. This does not mean that there is no imprint codified such as communications and others. Without it, it would be difficult to prove the existence of such an agreement. Accordingly, it is naturally difficult to distinguish in such a hypothesis between written as an instrument of agreement and written as a character of proof of purely oral negotiation. Uncertainty exists in a fictitious way because of this difficulty, and it is advisable to believe in what exists and not in what is law[7].

Hence, international jurisprudence believes the conclusion of international oral treaties produces all their legal effects even though they have not been written as stipulated in article 2/1 of the Vienna Convention on the Law of Treaties of 1969. If the latter has not denied its legal force and consequences, in the next article immediately for this mentioned article, represented in article three thereof. Accordingly, Treaties may conclude orally.

2.1.2 The jurisprudential position rejects the conclusion of international oral treaties

Others in international jurisprudence say that oral international treaties fall outside the scope of international treaties because international law only consider treaties will be written, conclude by the text of article 1/2 of the 1969 Vienna Convention on the Law of Treaties[8]. The 1969 Vienna Convention on the Law of Treaties required that an international treaty be in writing, whether it was a single document or several documents and whatever the name call to such a written agreement[9]. Article two, the first paragraph, decided non- applicability that international treaties which do not take written form, which although this

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(1) Although he went to accept the conclusion of international treaties orally, he adds that States do not resort to such a method in concluding international treaties, which is oral in conclusion, because of the difficulties involved in implementation and proof of what was agreed upon and determined precisely, which leads to many disputes and disputes between the contracting States orally. See: Ahmed Mohamed Refaat, Public International Law, Dar Al-Nahda Al-Arabiya, Cairo, without publication date. pp. 542-541.

(2) Muhammad Yusuf Alwan, Public International Law: Introduction and Sources, 3rd Edition, Dar Wael Publishing, Amman, 2003, p. 114.

(3) Salah al-Din Amer, previous source, p. 191.

(4) Sherif Abdel Hamid Hassan Ramadan, Sources of Public International Law, Dar Al-Nahda Al-Arabiya, Cairo, 2013, pp. 25-24.

(5) Nguyen Quoc Dinh et Autres, Ibid, p.120.

(6) Omar Hassan Adas, op. cit., pp. 502-503.

(7) Joe verhoeven Droit international public, Editions Larcier, Brucellas, 2000, p.276/277.

(8) Ali Khalil Ismail Al-Hadithi, Public International Law: Principles and Fundamentals, Part 1, Dar Al-Nahda Al-Arabiya, Cairo, 2010, p. 34.

(9) Montaser Said Hammouda, Contemporary International Law, Dar Al-Fikr Al-Jamia, Alexandria, 2009, p. 83.

does not affect the legal force of such international oral treaties, and the provisions of the Vienna Convention on the Law of Treaties of 1969 will not apply to them. However, the draft of international treaties in a written document has become necessary to achieve stability in international relations. This is also achieving the issue of registering international treaties at the level of the United Nations as stipulated in the Charter of the United Nations in Article 102 so that the parties can invocate their provisions before international committees when an outbreak arises about it[1].

This is the tendency of many jurists who require writing in the conclusion of international treaties, based, as above, on the text of Article 102 of the Charter of the United Nations, which requires the registration of international treaties concluded between Members of the United Nations published by the Secretary-General[2], arranged on that oral treaties do not meet the conditions of the treaties intended by the Charter of the United Nations, in addition to the fact that the second paragraph of Article 102 stipulates that not allowed invocation of international treaties which not registered at the level of United nations and before the International Court of Justice, which is consider one of the organs of the United Nations under Article 92 of the Charter, in the case of a dispute between the parties concerning the concerned treaty[3]. Accordingly, they add, nowadays writing has become a traditional condition the frequency emphasized by international custom, the purpose behind that demonstrate in the case of proof of the agreement that interrupt the dispute regarding its existence or non-existence, its object and the content of its texts[4].

Some support the idea of the writing element in international treaties by mentioning the case of the registration and publication of treaties, as we have experienced, which requires registration and publication, which requires that the international treaty be in writing, as required by article two in its first paragraph of the Vienna Convention on the Law of Treaties of 1969. In addition, this helps to stabilize international transactions and avoid potential disputes that may arise between future contracting parties regarding the proof of the existence of such international treaties[5].

Therefore, an international treaty is required to be in the form of a written document, although this does not preclude the conclusion of an agreement between the parties concerned orally or by reference, as in the example of the raising of the white flag between belligerents. However, these agreements are not considered treaties according to accurate sense of word [6].

Hence, they affirm the need to conclude international treaties in writing, because they are considered a formality that can only be done in writing, and it is the culmination of successful negotiations that conclude with the drafting of a written text containing what has been agreed upon, so that it is valid for the completion of the rest of the stages of the proposed treaty, with consent of all States participating in its drafting[7].

Therefore, they consider the international treaties were concluded orally, it was proclaimed by Vienna Convention on the Law of Treaties of 1969 that rules do not apply to oral treaties, even though at the same time they will be subject to the same rules and not to different rules, it loses all their meaning when intended sign on it for example. Consequently, that is why we do not apply the rules governing written treaties and it is possible to repeal[8].

The jurist George Sealy has shown that the conclusion of international treaties follows a special procedure or is considered a formal contract registered in the present era in a written document that has completely neutralized form the oral treaties that were often used in bygone times altogether today[9].

The Muslim jurists who urged considering writing which are the top 30 for the purpose of documentation and precaution[10].

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(1) Ahmad Muhammad Rifaat, op. cit., p. 542.

(2) Of course, all countries are members of the United Nations, which reached 193 countries with the accession of South Sudan in 2011.

(3) Omar Hassan Adas, op. cit., p. 502.

(4) Abdel Karim Alwan, Public International Law, Knowledge Foundation, Alexandria, 2007, p. 206.

(5) Ahmed Belkacem, Public International Law: Concept and Sources, Dar Houma for Publishing and Distribution, Algeria, 2005,p.54.

(6) Ibid., p. 53.

(7) Muhammad Al-Saeed Al-Dakkak and Ibrahim Ahmed Khalifa, Public International Law, University Press, Alexandria, 2009, p.75.

(8) Joe verhoeven, Ibid, p. 377

(9) Charles Rousseau, Public International Law, translated by Shukrallah Khalifa Abdel Mohsen Saad, Dar Al-Ahlia for Publishing and Distribution, Beirut, 1987, p. 38.

(10) Ahmad Abu al-Wafa, op. cit., p. 94.

Hence, they believe that writing in international treaties is a necessity for several reasons, including:[1]

1. A presumption of proof of the agreement concluded between the party's is conclusive proof that fills all disputes about existence of this agreement or not, consequently, staying away from the controversy about its subjects or contents.
2. It is a condition for the fulfillment of other conditions required by the Vienna Convention on the Law of Treaties of 1969 and the Charter of the United Nations regarding the registration of international treaties at the United Nations, which can only be achieved if the international treaty is in writing
3. The issue of ratification inside the state in accordance with their basic law (constitution) can only be done if the international treaty is in writing.
4. The practical necessity that emerges from many international treaties and multiplicity and different topics and the issue of familiarity with their content requires that the international treaty be in writing.

2.2. The position of international bodies and legislation regarding international oral treaties

International bodies also had a position on the issue of the conclusion of international oral treaties, as evidenced by the position of international justice and the International Law Commission (section one). The international legislation had a position on the issues of concluding international oral treaties, as provided in the Charter of the United Nations and the Vienna Convention on the Law of Treaties of 1969 (section two).

2.2.1. **The position of international bodies regarding oral international treaties**

First: The position of the international judiciary regarding international oral treaties: In 1933, in the case of Eastern Greenland between Norway and Denmark, the International Court of Justice recognized that the statement made by Norwegian Foreign Minister Ihlen in response to the Danish Foreign Minister's inquiry about the latter's sovereignty over the eastern island of Greenland as an oral agreement binding on the grounds that the Minister of Foreign Affairs had the power to bind his State in the field of international relations and that the Norwegian Government had recognized this statement made by its Minister of Foreign Affairs [2]. Thus, the International Court of Justice, as an international judicial, has decided to recognize the international oral treaty and its effects between the party's oral treaties.

Second: Position of the International Law Commission: The position of the International Law Commission is deduced from the discussions that took place at the 14th session of 1962 on the draft law of international treaties submitted in 1959, which discussed the issue of the writing element for the conclusion of international treaties, which was mentioned in article two, first paragraph of the draft. The members of the Commission agreed that international treaties should be in writing[3]. Some said it was sense to mention that the rules of the treaty applied only to agreements that were in the form of written agreements[4]. Some even believe that international written treaties could not be equated with other international oral treaties[5]. It is the explicit position of the members of the Commission on the writing element of the conclusion of international treaties, a condition that must be provided in its contract, which was agreed upon when they drafted the provisions of the Vienna Convention on the Law of Treaties, without challenging its legal force. The majority of them agreed that the failure to write an international treaty does not negate the status of an international treaty[6]. The Special Rapporteur of the Commission, Sir Humphrey Waldock, confirmed that the term "agreement" applied to all agreements between States in whatever form[7].

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[1] Tariq Ezzat Rakha, op. cit., p. 69.

[2] Salah al-Din Amer, op. cit., p. 191. For more information, see: Sherif Abdel Hamid Hassan Ramadan, previous source, p. 25. Ahmad Abu al-Wafa, op. cit., p. 94. Tariq Ezzat Rakhaa, op. cit., p. 69.

[3] Article 18 of the League Covenant states: "Any treaty or international obligation concluded by any member of the League of Nations shall be immediately registered in the Secretariat which shall publish it as soon as possible, and any treaty or international obligation shall not be deemed binding until after its registration."

[4] Ahmad Muhammad Rifaat, op. cit., p. 542.

However, this does not lose its legal force, and the international treaty remains valid and binding on its parties, creating its legal effects. They can invoke it before the arbitral tribunals they establish in the event of a dispute over it. See: Gamal Abdel Nasser Manea, Public International Law: Introduction and Sources, Dar Al-Uloom for Publishing and Distribution, Algeria, 2005, p. 102.

[5] Mohamed Sami Abdel Hamid, The Origins of Public International Law: The International Rule, Knowledge Foundation, Alexandria, without year of publication, p. 200.

[6] Ghazi Hassan Sabarini, Al-Wajeez fi Principles of Public International Law, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2007, p. 55.

[7] Gamal Abdel Nasser Manea, op. cit., p. 101. This is in response to the revolt of world public opinion against secret diplomacy after the First World War, which brought woes to humanity, as the Covenant of the League of Nations stipulated in its article 18 that international treaties must be registered and published.

2.2.2. The position of international legislation regarding international oral treaties

First: The position of the Charter of the United Nations regarding international oral treaties: Article 102 of the Charter of the United Nations of 1945 state:

1. All treaties and international agreements concluded by any Member of the United Nations after the entry into force shall be registered with the Secretariat of the Organization and published as soon as possible.
2. No party to an international treaty or agreement not registered in accordance with the first paragraph of this article shall adhere to the treaty or agreement before any branch of the United Nations.

This is repeated in Article 8/1 of the Vienna Convention on the Law of Treaties of 1969, when it stipulates that "the treaties shall be transmitted after their entry into force, to the Secretariat of the United Nations for registration, reservation it according to each case separately and published."

It is obvious from the text of Article 102 of the Charter of the United Nations and the text of Article 8/1 of the Vienna Convention on the Law of Treaties of 1969 that an international treaty that is not in writing cannot be registered, in the sense of an oral treaty, as the Charter stipulates that international treaties must be registered, which of course will only be in writing in the official form, otherwise, the parties will lose their invocability before any branch of the United Nations, especially the International Court of Justice, as we have already mentioned.

Registration in this manner intended to publicly in international relations, stipulated the state parties in international treaties provide a copy of it to a competent organ so that it can record them in a special register prepared for that purpose and then publish it in periodicals that contain all international treaties provided to the United Nations(1).

The wisdom of registering written international treaties is to combat secret diplomacy and substitute it with open diplomacy.

This demonstrates the United Nations Charters position that international treaties must be written, otherwise, its organs, particularly the International Court of Justice, will not consider them when a dispute arises between its contracting parties.

Second: The position of the Vienna Convention on the Law of Treaties of 1969 on international oral treaties:

The Vienna Convention on the Law of Treaties of 1969 excluded international oral treaties from the scope of application of their rules. Its rules only applied to written treaties, and the word "treaty" signified that.

the first paragraph of the second article, stipulates that the term treaty intends to mean " an international agreement concluded between States in writing and subject to international law, whether it is proven in one, two, or more interrelated documents, and whatever its particular designation". Therefore, the Vienna Convention on the Law of Treaties of 1969 insisted that an international treaty could only be written so that its provisions could be applied to it. This form was recognized by the Vienna Convention on the Law of Treaties, which stipulated written form in order to exist(2).

The provisions of an international treaty are inapplicable to oral treaties because the rules of those international treaties are insufficiently certain. Because it is difficult to prove what is stated, and the writing of international treaties has become an inevitable issue because of the duty to register them at the level of the United Nations, as we have already mentioned(3).

All of this, however, does not affect the legal value of the oral treaties, as Article three provides that the non-applicability of their provisions to unwritten international treaties will affect neither "the legal force for those treaties" nor "the applicability of any rule of international law irrespective of this treaty". This is the same provision as the Vienna Convention on the Law of Treaties of 1986. Related to the relationship of International Organizations and States and between several international organizations(4).

Conclusion:

A- Results:

According to Article Three of the Vienna Convention, on the Law of Treaties of 1969, as explained above, the issue of writing in international treaties does not invalidate an international oral treaty or erase its effects or diminish its legal force. However, the writing requirement indicated in article 1/2 of the Vienna

(1) Ghazi Hassan Sabarini, op. cit., p. 56.
(2) Gamal Mohieldin, Public International Law, New University House, Alexandria, 2009, p. 62.
(3) Muhammad Yusuf Alwan, op. cit., p. 114.
(4) Salah al-Din Amer, op. cit., p. 191. For more information, see: Abdul Karim Alwan, previous source, p. 266. and Muhammad Yusuf Alwan, previous source, p. 114.

Convention on the Law of Treaties of 1969 consider a warranty that the contracting states can resort to at any time, whether to invoke it, implement it, or claim their stipulated rights within its provisions or clarify its obligations under the treaty concluded between the parties, which is evidence and material presumption that does not need any other manner to prove its existence and the existence of its content[(1)].

Therefore, it is better and more secure that the international treaty is in writing in order to complete its formal condition detailed in the Vienna Convention on the Law of Treaties of 1969, because the writing or formality of the conclusion of international treaties as stipulated in the Vienna Convention on the Law of Treaties of 1969 in the first paragraph of Article two leads to the following conclusions:

1. Ensure the stability relations of international treaties.
2. Establishing a correct international transaction based on clarity and clear commitment.
3. Continuity of international relations through documentation of any international treaty conduct.
4. Strengthening trust between international parties when dealing with each other.

B- Recommendations:

1- Establish a mechanism for embedding international oral treaties, for example, register orally in one of the United Nation agencies or any international organization.

2- Determine the criteria that create international treaties to use such as proof point, resort to witness or any field.

3- demand reading for the oral convention that was done before to be able to establish legal regulation for the international oral treaties

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