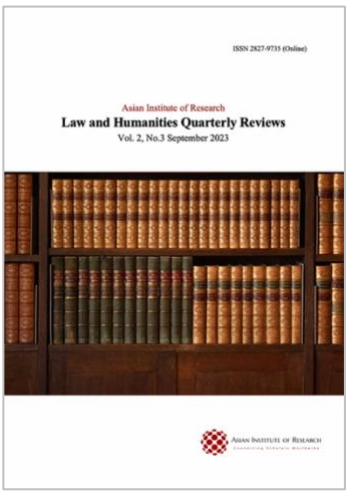

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Methods of Attracting International Treaties in the Judicial System of Afghanistan

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Abstract
International treaties are one of the major needs of governments in the contemporary world. Therefore, according to the necessity of international life and the preservation of national interests and international values, every government turns to attracting international treaties. The government of Afghanistan has joined many international treaties. As the United Nations "Treaty Collection" shows, this country has 155 signatures, ratifications and accessions. According to this article, the main question of this article is that, considering the internationalist and state-oriented methods in the field of attracting international treaties, which method has the Afghan government chosen? The research method of this article is a descriptive-analytical method based on library data, which after collecting information and using the existing laws, the topic and problem are analyzed. The findings indicate that the practical procedure of the Afghan government towards attracting international treaties is not exactly according to any of the theories. Simultaneously, the process in the Afghan government in attracting international treaties is an internationalist vision, which has acted as a state-centered way in determining the status of treaties and their implementation. However, in many cases no procedure can be determined.

Keywords: Methods, Treaty Attraction, Judicial System, Internationalist, State-Oriented, Afghanistan

1. Introduction

Attraction of international treaties since ancient times is one of the primary concerns of the relationship among international law and domestic law. Although the primary and main authority to attract treaties is left to the internal laws of the governments to act upon the treaty or refuse to accept it if necessary; But practically, the attraction and implementation of international treaties is an objective and urgent need of all governments, and this need is increased every day; Therefore, although the methods of attracting treaties are different, the principle of acceptance and attraction is the immediate necessity of governments.

From a historical perspective, during the latter half of the 20th century, domestic systems gradually accepted international values and governments became more interested in following international law. Although each government is free to determine the mechanism of implementation of international rules, even a brief review of national judicial systems shows two basic methods in this field: the first method is the spontaneous synthesis [1]of international rules.

Such consolidation occurs when the national constitution or a normal rule (in the case of rights based on judicial procedure, judicial decisions) state that all government officials, as well as nationals of the state and other persons residing within the borders of that state, are obliged to apply certain They are among the current and future rules of international law. One outcome of this mechanism is that it empowers the domestic judicial system to adjust itself regularly and automatically with international rules. With the formation of an international rule, a corresponding law is created in the national judicial system.

The second method is the special legislative combination of international rules. In the framework of this system, international rules can be invoked and implemented within the judicial framework of the country only if the parliamentary authorities of that country approve specific executive regulations. This resolution could take one of the following two primary forms: firstly, this resolution may include the action of the parliament overseeing the conversion of various provisions of the contract into national resolutions, in which the numerous obligations, powers and rights resulting from those international regulations, (The judicial synthesis of international rules is determined) (Casse 319: 2017). The second form is that in the resolution of the parliament, only the ability to automatically apply[2] international law within the realm of the domestic judicial system may be mentioned, without re-regulating the rule specifically (spontaneous special integration of international law).

Thus, the performance of this mechanism is basically similar to the previous mechanism; That is, the mechanism of spontaneous integration of international rules (the only difference is that this integration comes to the fore individually or for each specific case). In this context, both government officials and all related parties are required to follow the international regulations mentioned in the parliament resolution. The aforementioned resolution consists of one or two articles, where it is indicated that everyone must follow the contract in question. The law includes the treaty text as an annex. Courts, government officials and individuals should be aware of the various provisions that should be used at the national level through conversion in the judicial system of the country (Casse: 2017, 320-319).

Governments are seeking to regulate the national integration of international rules based on two different needs, which are the motivations for choosing the unification system. First, they have to choose between a state-oriented approach (nationalist[3]) and an internationalist approach[4]. Second, they should consider the interaction between the legislative and executive branches of the government, thereby establishing a mechanism for the enforcement of international law. For two reasons, governments may choose a state-oriented or nationalistic approach:
1. to accept specific accession to international rules by the legislature;
2. To place international rules at the level of domestic national approvals.
Contrary to governments that have an international approach:
1. Spontaneous annexation (specifically or current procedure) of international rules;
2 They choose to place international rules at a higher level than national approvals.

Governments often pay attention to the second requirement, which is aimed at the general issue of granting legislative authority to the legislative branch, this pertains exclusively to this branch and is unrelated to the executive branch (Casse 322: 2017). Now, the query that this article aims to address is, considering the internationalist and state-oriented methods in the field of attracting international treaties, which method has the Afghan government chosen?

[1] Integration
[2] Ipso facto
[3] Statist
[4] Internationalist

The hypothesis posited in this article is that the Afghan government's approach to securing international treaties lacks consistency and uniformity, but sometimes it uses the internationalist method, in other cases it uses the state-centered method, and sometimes it has no procedure at all. To prove its hypothesis, the article talks about the general methods of attracting international treaties in the opening paragraph. Subsequently, in the second paragraph, it examines the method and conditions of attracting international treaties in Afghanistan's judicial system. In the third paragraph, it examines the procedures of ratifying treaties and finally concludes with a conclusion.

2. General methods of attracting international treaties

With the passage of several centuries of international law, governments are still the immediate agents of the implementation of international law regulations and the leaders of their relatively independent foreign policies. Therefore, governments are not only the authors and subordinates of international law, but also the guarantors of the survival and implementation of their provisions, and thus have full control over the levers of the executive system of international law (Falsafi, 2017: 547).

The process of attracting international treaties also gains momentum under the shadow of this supreme power; Therefore, in this article, considering the heavy shadow of the governments' will to attract international treaties, how to attract treaties in Afghanistan's judicial system is discussed.

In principle, international law provisions, especially treaty provisions, are not directly applicable within governments unless they are formalized as internal regulations. In the same way, usually the internal organizations and authorities of the governments do not consider themselves directly subject to international law and only obey the internal laws, without paying attention to its conformity or contradiction with the international rules and obligations.

This procedure is especially inferred from the rulings of domestic courts (Dhul-Ain, 2009:567). However, in the practice of the 20th and 21st centuries, many governments have given privileges to the stipulations of international law in their domestic laws, and even in the constitutions of some countries, international law, especially treaty law, explicitly takes precedence over domestic law known[5] .

In addition, in some important international treaties, governments have committed to adhere to the requirements of international law in some issues related to their internal jurisdiction[6], and this is in fact a limitation on their independence and freedom in the field of law. Internally, they have accepted (Dhul-Ain, 2009: 567). As deduced from government practices, the general assimilation of international regulations into the relationship between international law and domestic law can be achieved through four main methods. There are two ways, which are transfer[7] and collection[8]. The two ways, which are transfer and collection, are the main ones, and like a bridge, they connect two separate realms of rights, and the other two ways are conflict[9] and completion[10], possible and secondary, because they may arise following the two main ways.

[5] In paragraph 2 of Article (6) of the 1776 Constitution of the United States of America, it is stated: "This Constitution and the laws of the United States that may be added to it and all agreements (treaties) concluded by the authorities of the United States or that may be made in the future concluded by the authorities of the United States, it is considered the supreme law of the country and the judges of each of the states are subject to it, and the laws of each of the states or the basic laws of those states that are contrary to it are invalid. Article (26) of the French Constitution of 1946 states: "Diplomatic treaties that have been confirmed and officially published according to the regulations have the force of law, even if they are contrary to the internal laws of France", the German Constitution of 1949 in this regard stipulates: "The provisions of international law are considered to be a supplement to federal law and have superiority over laws and directly create rights and duties on the residents of the German territory", in the revision of the Dutch Constitution in 1958, in the article (65) It stipulates: "Domestic regulations that are contrary to the contents of international contracts (treaties) are suspended," Article (145) of the Constitution of 1369 of Afghanistan stipulated, "If the international treaties or covenants which the Republic of Afghanistan has concluded or annexed to it and is contrary to the provisions of the laws of the Republic of Afghanistan, international treaties and covenants will be given priority."
[6] Article (103) of the United Nations Charter
[7] Renvoi
[8] Reception
[9] Conflict
[10] Complement

In the following, each of the methods of attracting international regulations into the internal laws of countries will be explained in general and the attraction of international treaties based on the above methods into the internal laws of Afghanistan in particular.

2.1 Referral

Referral is when a judicial system hands over a matter that is related to its territory to another judicial system[11]. In the discourse on the correlation between international law and domestic law, in most cases the reference is given from international law to domestic law, for example, the issue of organizing international conferences, even though it falls within the domain of international law, but these rights are in the way of choosing the representatives who are in this Conferences participate, it does not interfere and this issue is left to the internal laws of the governments participating in the conference (Zholain, 1388: 571), also the issue of concluding international agreements, although it is related to international law, but this is the internal law of each country. which determines the competent authority to conclude treaties (paragraph 17 of Article (64) of the Constitution[12]).

Finally, heads of state and other people who are representatives of states in international affairs and have direct contact with international law are determined by the internal laws of countries (paragraph 14 of article 64 of the Constitution[13]), or the issue of nationality, which is basically a related issue. It is according to the international law, presently, its regulations are governed by the internal laws of the respective governments.

2.2 Collection

Collection is that one judicial system changes the form and nature of a subject that belongs to another judicial system and makes it into its own rules (transformation theory[14]). In this case, domestic law often receives issues from international law, for example, an international treaty that is concluded, governments make the contents of the treaty in the form of laws and ratifications in order to enforce it in their territory. They change the nature of regulations that are originally related to international law into domestic regulations.

Three results are obtained from collection, one aspect is the transfer of the value of rules from one legal system to another, as in the example of a treaty whose validity is derived from international law, it is also accepted in domestic law; Second, the persons of one judicial system become the successors of the persons of another judicial system, for instance, if governments (persons of international law[15]) conclude a treaty and accept obligations, due to the implementation of that treaty by domestic laws, persons (persons of domestic law[16]) are also required to comply with those obligations; And thirdly, as a result of collection, the scope of validity of judicial regulations expands, if the regulations that are originally part of the scope of international law expands as a consequence of its incorporation into domestic laws, their scope of validity also expands within the countries (Dhul-Ain, 2009: 572). The number of collection cases in the new era is very high.

This receipt, whether complete or incomplete, is considered part of the cases of adoption or adaptation. Most of these receipts have occurred in new countries, countries that are suddenly faced with new life issues and their judicial rules are not able to solve them. Examples are several South American countries and Japan, which were inspired by the set of French civil laws in the 19th century, and the Turkish government, which modeled Swiss legislation, and recently, the situation in Egypt, China, Abyssinia, and especially Afghanistan has been like this (Brull, 2019: 130).

[11] The issue of referral in private international law is one of the main issues of conflict resolution.
[12] Article (64), which states the authority of the president, states in paragraph 17 of this article: "Granting credentials for the purpose of concluding treaties between countries in accordance with the provisions of the law" is one of the powers of the president.
[13] This paragraph stipulates: "Appointing the heads of Afghan political delegations to foreign countries and international institutions" is one of the powers of the president.
[14] Transformation Theory
[15] Subjects of International law
[16] Subjects of Municipal law

2.3 Completion

Completion is when a judicial system establishes regulations for the implementation of rules that belong to another judicial system, or in other words completes it. For example, even if several governments accept commitments that require spending or agree with each other to prevent piracy or drug trafficking, etc., in order to implement these international commitments, each of the governments has to pass the necessary laws and letters. to establish. In this scenario, it is asserted that the regulations established by domestic laws are to ensure the implementation or completion of international obligations. The act of completion is mostly done by domestic laws because usually in international obligations, governments only deal with generalities and principles and leave minor and minor issues to domestic laws. One of the effects of completion is that, like collection, it transfers the value of the rules from one judicial system to another judicial system, changes its persons, and causes the development of the realm of judicial rules, and in addition, it causes them to be more accurate and clear (Dhul-Ain, 2009: 572).

2.4 Conflict

Conflict arises when there is a divergence between two judicial systems (here, international law and domestic law[17]). For example, despite the rules regarding the freedom of the oceans in international law, if the internal government authorities establish regulations that conflict with the aforementioned freedom, in this case, there will be a conflict between the regulations of international law and domestic law. Now we have to see what is the solution in such cases and which of the two fields of law should be considered superior. Despite the fact that the principle of the supremacy of international law over domestic law is a foundational tenet of international law and has been acknowledged and referenced numerous times in the decisions of the International Court of Justice, but all in all, neither in doctrine nor in practice, it is a definitive solution and There is no logic yet.

In the usual practice, the provisions of both fields of law remain valid regardless of the conflict that exists between them; Hence, it can be observed that in such instances, international courts vote in favor of international law and condemn the domestic law that conflicts with it, while it is treated against it inside the countries and the domestic courts follow the laws of their respective governments and They ignore the international regulations that are against it; However, in the doctrine of the extreme proponents of the school of unity[18] of law with the precedence of international law, it is believed that domestic laws conflicting with the provisions of international law are automatically deemed invalid and incomplete, while most of the law writers have not considered the conflict of rules in law to be invalid. Rather, they only consider the responsibility of the government that has enacted regulations contrary to international law. In order to avoid the conflict among the two fields of law as much as possible, the usual judicial writers recommend to the courts, especially the domestic courts, to consistently interpret the laws in a manner that aligns with international obligations (Dhul-Ain, 2009: 574).

Oppenheim[19] has mentioned two assumptions in order to resolve the judicial gap in the relationship among international law and domestic law: The first assumption is that in case of a discrepancy among domestic law and international law, it should always be assumed that there is no such discrepancy and that the domestic legislators did not intend to and, in these cases, the basis of the interpretation is that international law is a product of the collective will of multiple states, and domestic law is the outcome of the will of an individual state, so there should not be any contradiction between them; The second hypothesis is that if the domestic law is silent in the cases where the principles of international law are present, the domestic courts should assume that the silence of the domestic law serves as the mechanism through which the provisions of international law are implemented.have been accepted in the domestic law (Dhul-Ain, 2009: 575).

[17] Here, we mean the conflict between the rules of international law and domestic law, not the conflict that is discussed in private international law, and in fact, it is a conflict between two domestic legal systems.
[18] Monism
[19] Oppenheim

3. Attraction of international treaties in the judicial system of Afghanistan

The term "Treaty" in English has been translated into Farsi as "Ahadnameh" (Mouszadeh, 2010:41). In general, Claude Alber Calliar holds the view that the meaning of treaty is more limited than "covenant[20]" (Calliar, 1989, 447) in the narrow sense, "treaty is a word that has been used a lot and often indicates important issues" (Falsafi, 159 :2017) Despite this, regardless of the many definitions that thinkers and judicial scholars have provided of the treaty, paragraph 1 of Article (2) of the 1969 Vienna[21] Convention on the Law of Treaties provides the following definition: "A treaty is an agreement between states, which is concluded in writing, is subject to international law, regardless of its specific title and regardless of whether it is reflected in a single document or in two or more interconnected documents " (treaties.un.org with However, the 1969 Vienna Convention uses the title of treaty in a general way, while the basic laws or procedures of some governments have a classification of treaties, such as inter-governmental[22], inter-governmental[23], inter-ministerial[24] or administrative treaties; But the convention does not recognize this classification. Also, treaties can be described as "global[25]" or "regional[26]", which in itself has no judicial significance; In addition, the treaty can be divided bilaterally[27], between two states, multilaterally[28], between several states limited to a specific issue, and comprehensively between three or more (Aust, 2007: 17).

The Law[29] of Treaties and International Covenants of Afghanistan[30] (from now on the Law of Treaties), which is considered one of the contemporary domestic laws within the realm of international law, defines the treaty in paragraph 1 of Article (3) as follows:
"Treaty: It is a written agreement of the government of the Islamic Republic of Afghanistan with foreign countries, international institutions or intergovernmental organizations, which is concluded according to the provisions of this law." This definition aligns with the provisions of the 1969 Vienna Convention on the Law of Treaties.

The only thing that distinguishes these two can be summed up in two points: the first is the treaties concluded with international organizations. Afghanistan's Treaty Law also includes international treaties and covenants concluded with international organizations, while the 1969 Convention governs only treaties concluded between governments and those treaties that are between governments and international organizations or among two or more. The international organization is established in the 1986 Vienna[31] Convention. Of course, this is not contradictory to the 1969 Convention, but domestic legislative policies require that both types of treaties be prepared and approved based on a single law.

The second is the difference among a treaty and an international agreement. The convention has not differentiated among these two titles, while the Afghan treaty law considers these two titles to be different from each other. According to paragraph 6 of article (3) of the law on the procedure for the publication and enforcement of judicial documents of Afghanistan[32]: "Treaty: is an agreement concluded in writing between governments in the political and military fields and encompasses the principles of international law ".

[20] Convention
[21] This fifty-year treaty was ratified on May 23, 1969 and entered into force on January 27, 1980. So far (August 2019), 116 countries have ratified and 45 countries have signed this treaty.
[22] Inter- State Treaties
[23] Inter- government
[24] Inter- ministerial or administrative
[25] Universal
[26] Regional
[27] Bilateral
[28] Multilateral
[29] According to the first paragraph of Article (94) of the 1382 Constitution of Afghanistan: "The law consists of the approval of both the National Councils that have been approved by the President"; Also, Article (3) of the Law on the Procedures for Publishing and Enforcing Legal Citations of Afghanistan: "Law: a collection of general legal rules, and it is binding to be established and approved by the competent authority in order to regulate public affairs in accordance with the provisions of Article (94) of the Constitution of Afghanistan." and it has gone through the steps".
[30] This law was passed on November 18, 2016. The official gazette has been published in the number of "Messlem" (1236).
[31] Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986.
[32] This law was promulgated on 16 September 2018. It has been published in the official gazette with serial number (1313).

The Covenant is an official international document that is used a lot. Although this title is not defined separately in the Vienna Convention on the Law of Treaties, it is used as the founding document of international organizations.

The synonym of covenant in English is Pact. This word is translated as "Mithaq" or "Covenant" in Persian language (Mousazadeh 2010: 43), (Brian Kellogg's Pact) but some translators consider covenant (piman) to be equivalent to Covenant (Kaliyar, 1989: 447). This term was used for the statute of the League of Nations, established after the First World War and had a ceremonial aspect (Falsafi, 2017: 159). This term can have other uses as well (Ziyai Begdali, 2008: 15) as the Afghan Treaty Law considers a covenant as equivalent to a convention. and has referred to the documents that contain international basic rules. The Law of Treaties stipulates in Article (3) paragraph 4: "A treaty (convention) is an official document that includes international basic rules and the common will of the member states on certain issues It is also stated in paragraph 8 of Article (3) of the Law on Procedures for Publishing and Enforcing Judicial Documents of Afghanistan: "An international agreement (convention) is an international judicial document that is arranged by international organizations and contains basic rules. be international law".

Although some people believe that there is no distinction among a treaty and a covenant, rather they consider the treaty to be general and the covenant to be specific. Sarwar Danesh holds the view that that there is no difference between these two words, but the meaning of both expressions is the same; Because the international treaty includes any type of international agreement. He, who took part in formulating the constitution in the year 1382, adds: "During the drafting of the constitution[33], I also raised this opinion (the lack of difference between a treaty and a covenant), but no one heard and there was no satisfactory reason to prove the difference between these Two were not provided.

Of course, it can be asserted that the treaty is more general than the covenant. Therefore, the mention of a covenant after a treaty is like a special mention after a general one" (Danesh, 2010: 111) That's why the treaty is also recognized by different names, such as convention, covenant, declaration, constitution, charter, agreement. international agreement, protocol, memorandum of understanding, memorandum of understanding, etc., but in this article attention has been paid to what is essentially called a treaty, not as such, as paragraph 1 of article (2) of the 1969 convention is not considered as such. However, in the judicial system, Afghanistan is not a specific institution that handles all matters related to treaties, but the authority to accept and how to attract treaties in this judicial system is divided between different government forces, each of them having its distinct role in attracting and implementing international treaties. Galland, 2011: 38 (Therefore, according to this article, how to attract and implement international treaties will be examined.

3.1 Admitting or acceding to treaties

Acceptance[34] is the declaration of commitment to a treaty through the issuance of a document that expresses the country's definitive commitment to the provisions of a treaty. This document is usually issued by the executive branch and even the minister of foreign affairs (in some countries such as France). Acceptance is a method that has become common among governments after the decrease in the importance of ratifying treaties. These methods, which were diligently followed by the United States of America and some European countries following the Second World War, were noted in the founding documents of international organizations, for example, the UNESCO Statute (1945) made the "acceptance" method one of the mandatory methods. The formation of governments knows it[35].

[33] According to Clause 31, Article (3) of the Law on Procedures for Publishing and Enforcing Legal Documents of Afghanistan, "Swid is: Compilation, writing, organization and arrangement of the initial draft of a legal document by the relevant department". In the international law system, this term can be referred to as a draft

[34] Acceptance

[35] Article (15) of the UNESCO Statute

This approach is also anticipated in the statutes of the International Monetary Fund[36] and the International Bank for Development (Mousazadeh, 2010: 87). Article (11) of the 1969 Vienna Treaty also stipulates: "A nation's agreement to be bound by a treaty can be conveyed through the act of signing, exchanging the documents constituting the treaty (ratification documents), ratifying, accepting, ratifying or acceding to any other method that is agreed upon." be expressed". According to Clause 9 of Article (3) of the Law of Treaties: "Acceptance: preliminary announcement of the treaty is through the issuance of a document in which the signatory expresses his country's commitment to the stipulations of the treaty or covenant after going through its judicial procedures."

Accession[37] is an arrangement by which a country that has not participated in the drafting of an international treaty, officially becomes its member and accepts the provisions contained therein. Accession is done through the issuance of a document of accession, and this document is a single and unilateral document that conveys the intention of the acceding state to the treaty or to the trustee country (the holder of the documents and usually the Secretary General of the United Nations). In the document of accession, the acceding government explicitly declares its definitive commitment to the treaty to other contracting parties (Mousazadeh, 2010: 81).

Article (19) of the 1969 Vienna Treaty on accession stipulates: "The country's consent to the treaty through accession is manifested when:
(a) The treaty stipulates that this consent can be given by that country through accession;
C) All parties have agreed later that such consent can be declared by that country through accession.
According to Clause 10, Article (3) of the Law of Treaties: "Accession: It involves the government of the Islamic Republic of Afghanistan becoming a party to an international agreement or treaty that explicitly declares its commitment to its provisions and provisions by issuing an official document."

3.2 Competent authority to review the need to attract treaties

In the judicial system of Afghanistan, there is no specific authority to propose the assimilation of treaties, but depending on the case, this authority has been given to many government bodies, including the three forces, ministries and independent directorates, to make their proposal for assimilation if necessary. or accept the relevant treaty, submit it to the government (cabinet[38]) through the Foreign Ministry.

According to Clause 1 of Article (6) of the Law on Treaties: "Proposals for the conclusion of treaties, agreements, contracts, protocols and memorandums of understanding are submitted to the Ministerial Cabinet by the Foreign Ministry[39]." Also, based on paragraph 2 of the same article, other government ministries and departments, after obtaining the permission of the relevant institutions, submit the proposal to conclude treaties to the Foreign Ministry of Afghanistan.

The Foreign Ministry of Afghanistan is obliged to review the articles of that treaty based on paragraph 3 of article (6) in order to express an opinion on their compatibility with the constitution and other judicial documents of the country, before proposing a contract or joining a treaty. Ministry of Justice to provide. Then the Ministry of Justice presents its judicial opinion on the annexation or conclusion of the said document. Although the judicial opinion of the Ministry of Justice of Afghanistan is not mandatory, it is considered as an introduction and a guide to create conditional rights.

3.3 Competent authority to attend negotiations and sign treaties

[36] Article (51) of the Statute of the International Monetary Fund
[37] Accession
[38] Govenement
[39] It is stated in the amendment plan of this paragraph: "The proposal of the treaty plan mentioned in paragraph (1) of article (9) of this law shall be submitted to the government for approval before being signed by the Ministry of Foreign Affairs."

In the international law of treaties, negotiation is the preliminary stage of concluding international treaties. Every simple conversation cannot be called "negotiation[40]" in the specific sense of the word, because nowadays negotiation has become a "fan" and even an "art" (Ziyai Bigdali, 2008: 26). In the judicial system of Afghanistan, negotiation has been taken into consideration, paragraph 1 of Article (4) of the Law of Treaties stipulates: "The President shall conclude treaties directly or give the letter of credit to his representative for the purpose of negotiations or the conclusion of treaties referred to in Article (9) of this law."

According to Clause 2 of Article (3) of the Law of Treaties: "Certificate: It is an official document, which the President of the Islamic Republic of Afghanistan delegates to his representative for the purpose of conducting negotiations and signing the treaties mentioned in Clause (1) (Article) (9) of this law". Paragraph 17 of Article (64) of the Constitution also stipulates: "Granting credentials for the purpose of concluding treaties among nations in conformity with the stipulations of legal regulations" is the authority of the President, and this credentials is used before negotiations or signing a treaty between the representative of the President and the other party[41]. But the letter of authority is different from the letter of credit, and in terms of value, the letter of authority is a lower grade than the letter of credit. Clause 3 of Article (3) of the Law of Treaties stipulates: "Letter of Authority: is an official document by which the Minister of Foreign Affairs authorizes a person to negotiate and sign agreements, protocols and treaties, with the exception of the ruling contained in Paragraph 1 (Article 9) introduce this law or participate in international meetings representing the government of the Islamic Republic of Afghanistan[42].

According to the Law on Treaties: the Minister of Foreign Affairs can sign treaties[43], agreements, contracts, protocols, and memorandums of understanding, except for the treaties listed in paragraph (1) of Article (9) of this law; or based on Paragraph 4 of the same Article, the Minister of Foreign Affairs can grant a letter of authority to its representative to sign the above-mentioned cases, and this letter of authority is negotiated between the representative of the Minister of Foreign Affairs of Afghanistan and the other party before the start of negotiations or signing[44].

Therefore, the competent authorities in the negotiation and signing of treaties are divided into two categories: First, the negotiators regarding the treaties of the first paragraph of Article (1) of the Law on Treaties[45], which are negotiated and It is signed. Second, negotiators regarding other treaties, agreements, contracts. Clause 2 of Article (9) of the law is the treaties[46] that are negotiated and signed by the Minister of Foreign Affairs of Afghanistan or by granting a "letter of authority" to his representative. The precise distinction among the two relies on the specific characteristics of the negotiated treaty.

3.4 Competent authorities to establish the right of condition on treaties

The right of reservation (reservation[47]) is: the declaration of intent by any government to restrict the extent of the clauses within a treaty. In the judicial system of Afghanistan, it is the responsibility of the Foreign Ministry to create a condition for international covenants (conventions) during accession. Article (11) The Law of Treaties

[40] Negotiation
[41] Paragraph 2 of Article (4) of the Law on International Treaties and Covenants
[42] The clauses related to credentials and letters of authority were amended in a decree in Thor 2016 and were published in the official issue of 1257 of the newspaper, and this article was written based on the amended items.
[43] Clause 3, Article (4) of the Law on International Treaties and Covenants
[44] Clause 5, Article (4) of the Law of International Treaties and Covenants
[45] Clause 1, Article (9) of the Law of Treaties stipulates: "International treaties and covenants in the following fields shall be enforced after the approval of the Council of Ministers, the confirmation of the National Council and the approval of the President of the Republic: Armistice Treaty (end of war); the agreement on the determination and stabilization of borders; Treaty establishing international relations, friendship and cooperation; the treaty establishing the international organization; A treaty that requires the amendment of the law in force; Treaty on the status of citizens' rights; the agreement to grant or obtain a loan or to grant tax exemptions and customs products; Treaty on the extradition of accused and convicted persons and judicial cooperation; International covenants (conventions) and its annexed protocols; treaties and security agreements; economic treaties and agreements; and other treaties that, according to their content and nature, require the approval of the National Council"
[46] Clause 2, Article (9) of the Law on Treaties stipulates that treaties other than the above: "memorandums of understanding, agreements and simple and enforceable contracts which, according to the Ministry of Foreign Affairs, do not require the approval of the National Council, are approved and put into effect by the Council of Ministers." "It will be."
[47] Reservation

stipulates: "The Foreign Ministry of Afghanistan is obliged, when joining the government of the Islamic Republic of Afghanistan to international treaties, to adhere to the regulations outlined in Islamic Sharia and the Constitution of Afghanistan and to exclude the contradictory cases". The condition does not mention other international treaties, but it is certain that the above rule governs the treaties that Afghanistan joins or concludes, and the Foreign Ministry of Afghanistan has the authority to create the condition. However, while the condition usually takes place during signing, ratification, acceptance, approval, or accession, it seems that in the judicial system of Afghanistan, it is possible to create the right of condition after the ratification of the treaties; Because Article (1) of the Constitution stipulates: "Reviewing the alignment of laws, legislative decrees, interstate treaties, and international covenants with the Constitution, and interpreting them upon the government's or the courts' request, in accordance with legal provisions, is the competence of the Supreme Court".

This competence indicates that if the Supreme Court finds inconsistency in the treaties and covenants with the constitution and the rulings of the sacred teachings of Islam, this institution considers itself competent to terminate the annexation and create a new conditional right. In other words, this article of the Constitution preserves and makes possible the right of subsequent interpretation and the possibility of creating conditional rights after signing, ratifying or annexing, even during implementation.

3.5 Competent authority to sign treaties

After the end of the negotiations and the writing of the treaty, the signing[48] stage comes, which is done by the fully elected representatives[49] of the countries who have the right to sign (Mousazadeh, 2010: 69). However, international documents are signed in three ways: First, it is signed by a competent person, whether he is the president, prime minister, or minister of foreign affairs, or he is a plenipotentiary representative, which is called a normal signature first type).

Signing at the same time as obtaining the assignment is another type (the second type); and the third is the abbreviated signature or initial, and this is in the case that the individual signing lacks the authority to do so definitively. In accordance with the stipulations of the Vienna Convention regarding treaties: " The language of the treaty is formalized in the following ways: And it is determined: a) according to the same convention as stipulated in the language of the treaty or agreed upon by the countries that participated in its preparation and regulation; or b) In the event of the absence of such a convention, through signature, signature subject to approval. Pending signature (or initialing of the text[50] by the representatives of the mentioned countries or through the final document of the conference that includes the text of the treaty[51].

"According to the laws of Afghanistan: "Signing: is the signing of a treaty, covenant, agreement, contract, protocol and memorandum of understanding, which takes place after the end of negotiations and approval by the competent authorities or their authorized representatives, in order to formalize its text.[52]" In the conclusion of treaties, initialing is considered a step before the final signing, and it takes place when the representative of a government lacks the authority to sign the treaty or harbors uncertainties about certain provisions. By initialing, the representative of the government declares the agreement of the respective government to the language of the treaty without obliging his government to sign the treaty definitively.

Although initials allow governments to think and make decisions, in some cases it has the same value as a signature (Mousazadeh, 2010: 70) as the 1969 Vienna Treaty stipulates about the position of initials: "The initialing of the text is considered to be the signing of the treaty." that the negotiating countries have agreed on

[48] Signature
[49] According to letter (c), paragraph 1, article (2) of the 1969 Vienna Convention: "the term (power of attorney-full powers) means a document that is issued by the competent national authority and according to which a person or persons represent that country to negotiate, accept, or Confirmation of the validity of the text of the treaty is determined either for consenting to the obligation to the treaty or for any other legal act related to the treaty.
[50] Initialling
[51] Article (10) of the 1969 Vienna Convention
[52] Clause 11, Article (3) of the Law of International Treaties and Covenants

this matter[53]. Also in the laws of Afghanistan: "Abbreviated signature (initial): is the temporary approval of a treaty or agreement by a representative of the government who the authorization to sign it, without obliging the government to sign the treaty definitively, by initialing its temporary agreement to the text declares a treaty or covenant[54]"; And the authority to initial the treaties, in accordance with treaty law, it is the authority of the Foreign Ministry. This law stipulates: "Drafts of treaties, agreements, contracts, protocols and memorandums of understanding shall be initialed by the Foreign Ministry before signing and after the agreement of the parties.[55]" Therefore, signature has three judicial positions: signature as a way to formalize and confirm the text of the treaty, signature as a condition of ratifying or ratifying the treaty, and signing as ratifying or ratifying the treaty. Of course, it is possible for the initial signature to occupy the place of the second and even third signatures, although their works are different (Ziyai Bigdali, 2008:40).

3.6 Competent authority to recognize the need for internal ratification of treaties

In the judicial system of Afghanistan, the approval of international treaties has been identified as a need. The competent authority of Ahzaz needs to be ratified by the Foreign Ministry. The Law of Treaties stipulates: "Memorandums of understanding, agreements and simple and enforceable contracts which, based on the Foreign Ministry, do not require the ratification of the National Assembly shall be approved and enforced by the Ministerial Cabinet[56]".

3.7 Competent authority declaring consent to commit or ratify treaties

The treaty is concluded and enforced based on the rules of international treaty law[57], but international law has transferred the method of approval and execution of treaties in the internal system of the contracting countries to the regulations of those countries. If the treaty ratification process has not been completed according to the internal regulations of a country, the ratification has been incomplete or irregular (Khalaf Rezaei, 2016: 131). It has no judicial value. Such treaties are binding when they are ratified. Therefore, international law has deemed ratification procedures necessary for treaties, in the precise or literal sense of the term; Although he did not predict the form and type of these ceremonies and entrusted it to the prudence of the governments and their internal regulations (Kaliyar, 1989:454).

The signing of the treaty only shows the content of the will of the governments and does not make the rules resulting from the treaty binding. Each "rule[58]" is then binding if governments have ratified it. Ratification[59] is the confirmation of the treaty that the competent authorities (usually the parliament) commit their government to other governments by doing it; Therefore, ratification is the final formality that gives validity to the treaty, or it is a judicial practice according to which the competent authorities confirm the will of the government in validating the treaty.

In other words, ratification is the governments' final approval of a judicial action that their full-fledged representatives realize with their signatures. The approval is proved by the exchange of documents in which this approval is stated. Oppenheim believes:

[53] Letter (a), paragraph 2 of Article (12) of the 1969 Vienna Convention
[54] Clause 12, Article (3) of the Law of International Treaties and Covenants
[55] Article (8) of the Law of International Treaties and Covenants
[56] Clause 2, Article (9) of the Law of International Treaties and Covenants
[57] Article (24) of the 1969 Vienna Convention stipulates the entry into force of treaties: "-1 A treaty shall enter into force on the date specified in the treaty or in a manner agreed upon by the negotiating countries; 2- If the treaty does not stipulate this or there is no agreement on this matter, the treaty as soon as all the negotiating countries give their consent.
to apply it as a commitment, it becomes effective; 3- If a country's consent to be bound by a treaty takes place on a date after the effective date of the treaty, the treaty will be effective for that country from the later date, unless the treaty stipulates otherwise; 4- The provisions of the treaty regarding the confirmation of the validity of its text, the proof of the countries' consent to the treaty, the manner and date of entry into force, the limitation of obligations, the duties of the trustee and other issues that must be raised before the treaty enters into force, from the time the text was accepted. the treaty will be mandatory"
[58] Rule
[59] Ratification

"Each treaty is concluded as soon as it is signed; However, its binding force remains suspended until its approval. As a result, until the approval is announced, even though the treaty has been concluded, there are no effects on it" (Falsafi, 205: 2017).

According to Article (14) of the 1969 Vienna Treaty, ratification is one of the approaches to declaring consent to be bound by the treaty; Therefore, the act of ratification is a necessary and necessary act to declare consent to the formal treaty, and today several reasons justify the necessity of the process of endorsement by the nations involved in the treaty.

1) In most countries, legislatures possess the authority to assess and provide input on foreign policy, and in order to reserve this right, it is imperative to either approve or reject the signed text of the treaty;

2) The desire to avoid the controversy caused by the assessment of exceeding the limits and powers that the plenipotentiary representatives may have done when signing the treaty is another reason for the necessity of the act of approval by the legislature;

3) According to the constitutions of many countries, including Afghanistan[60] and especially the countries that have a representative regime, legislative assemblies are partners in concluding international treaties (Ziyai Bigdali, 2008:46).

4. Procedures for ratifying treaties

The formalities of ratifying treaties are different according to the governments and types of different political systems and different eras. If a comparative research is done in this field, we will find that there are three religions and each religion has its own initiative and has solved the problem of ratifying the treaty with its own special method.

41 The exclusive competence of the executive branch

That the approval of the treaty is only under the exclusive authority of the executive branch is the method of authoritarian regimes that have a strong executive branch; Like Japan, which in the constitution of February 11, 1189 (Article 13) and the Third Reich, which in its law of March 24, 1933 (Article 4), explicitly considered the ratification of treaties as a special authority of the executive branch.

4.2 Exclusive jurisdiction of the legislature

The basis of this the essence of religion revolves around the concept of free will, according to which international politics is controlled by the legislature. Here, the involvement of the executive power is reduced to the level of conducting initial discussions leading to the finalization of the treaty and its approval is placed in the jurisdiction of the legislative power. This practice becomes common in different ways: sometimes the normal leg of the legislation approves treaties using its usual way of establishing laws. This practice is basically common in Latin America. Sometimes, the involvement of all legislative bodies in the approval of the treaty is considered necessary; Like the countries that have demanded the simultaneous intervention of two legislatures in the form of Congress in this matter[61]. In the former Soviet system, which is often inspired by people's democracies, the legislatures themselves do not partake in the approval of the treaty and it is left it to their elected representatives, namely the Presidium[62].

4.3 Mixed ritual

[60] According to Clause 5 of Article (90) of the Constitution: "Approving international treaties and covenants or terminating Afghanistan's accession to them" is one of the powers of the National Council.

[61] Traces of this method (interference of both parliaments) can also be traced in the legal system of Afghanistan. Clause 1 of Article (9) of the Treaties Law, when the confirmation (approval) of a number of treaties requires confirmation by the National Council, it means the National Council of both houses, the House of Representatives and the Senate. If in practice, after the approval of the House of Representatives, the text of the treaty is sent to the Senate and that House also confirms If there is no approval, a joint committee will be appointed from both houses, and if this committee does not agree, a vote will be taken again in the House of Representatives. If it gets two-thirds of the votes of the present members, it does not need to be sent to the Senate again

[62] Praesidium

In this constitution, the executive the legislative branches, while each has its own authority, cooperate with each other. There are various mixed religions and each of them has adopted a special way and custom. In this tradition, sometimes treaties are divided into two types. One category is approved by the executive branch freely and on its own behalf, but the other category is approved by obtaining prior permission from the legislative branch.

This method, which makes the direct or indirect approval of the executive branch dependent on the type of treaty, is sometimes called the French-Belgian method. Treaties are ratified in the same way in England, with the difference that in the country in question, it is usually the king who has the authority to ratify treaties; Indeed, in the Constitution of the United States of America, the power to ratify international treaties is specifically granted to the Senate, the supervision of the country's foreign policy is only exercised by this House, and the House of Representatives only has the authority to ratify treaties that have a financial aspect (Kaliyar, 1989). 454-459).

4.4 Judicial system of Afghanistan

In Afghanistan's judicial system, in terms of form, international treaties and covenants are sent to the National Assembly by the Foreign Ministry to the Ministry of State for Parliamentary Affairs and through this ministry to the National Assembly for confirmation (approval) of the National Assembly. In addition to not being able to postpone the ratification of the treaty for more than one month (one month for the House of Representatives and 15 days for the Senate), the parliament prioritizes reviewing the treaties if necessary[63]. In the U.S. legislative process for treaties, after the House of Representatives votes and approves, the treaty is then sent to the Senate for confirmation. Then, the international treaties and covenants are sent to the President for approval by the National Assembly, and with the approval of this official, the international treaties and covenants are completed during the internal and judicial procedures (Forough Asefi, 2019: 126).

The Constitution of Afghanistan stipulates in terms of the authority to approve (ratify) treaties: "Approving international treaties and covenants or terminating Afghanistan's accession to it[64]" is one of the authorities vested in the National Assembly. Also, Clause 14 of Article (3) of the Law on Treaties stipulates: "Approval: Ratification of treaties and international covenants listed in Article (9) of this law is done by the National Assembly of the Islamic Republic of Afghanistan". In Afghanistan's judicial system, according to Article (11) of the 1969 Vienna Treaty, which considers "ratification" as one of the methods of agreeing to the treaty, it has given a special definition of ratification and identified it as an authority of the government (cabinet).

The Law of Treaties stipulates in this regard:
"Approval[65]: It is the acceptance of the treaty, covenant, agreement, contract, protocol and memorandum of understanding that is done by the the Cabinet of the Islamic Republic of Afghanistan.[66]"

However, the procedure for approval international treaties and covenants in this country has its own rules. A number of treaties that need to be ratified by the National Assembly are listed in paragraph 1 of Article (9) of the Treaty Law.

Paragraph 1 of this article stipulates:

"International treaties and covenants in the following areas will be enforced after the ratification of the Ministerial Cabinet, the confirmation of the National Assembly and the ratification of the President of the Islamic Republic of Afghanistan: Armistice Treaty (end of war); the agreement on the determination and stabilization of borders; Treaty establishing foreign relations, friendship and international cooperation; non-aggression treaty; the treaty establishing the international organization; A treaty that requires the amendment of the law in force; the treaty on the judicial status of nationals; the agreement to grant or obtain a loan or to grant tax exemptions and customs products; Treaty on the extradition of accused and convicted persons and judicial

[63] Article (97) of the Constitution of Afghanistan
[64] Clause 5, Article (90) of the Constitution of Afghanistan
[65] Approval
[66] Clause 13, Article (3) of the Law of International Treaties and Covenants

cooperation; International covenants (conventions) and attached protocols; treaties and security agreements; Economic treaties and agreements, and other treaties that needs the ratification of the National Assembly according to their content and nature. The reason why this authority has been assigned to the National Assembly is perhaps the same reason that the National Assembly, as the highest legislative pillar of the government, is the embodiment of the will of the people[67] and represents the nation.

However, treaties other than the above, that is: "Memorandums of understanding, agreements and simple and executive contracts which, based on the Foreign Ministry, do not require the ratification of the National Assembly are approved and enforced by the Ministerial Cabinet[68]."

The method of recognition of international treaties and covenants in Afghanistan's judicial system is like the approval of a law. When the treaty or international covenant is sent to the National Assembly through the office of the Minister of State for Parliamentary Affairs, it is first sent to the House of Representatives, which is then discussed and reviewed. the necessary provisions of the treaty or international agreement and weighing it with the country's fundamental interest on national level, in case of agreement, it will be put to a vote for confirmation.

If two-thirds of the present members vote in favor of it, that treaty or international agreement will be forwarded to the Senate for confirmation[69]. However, if the Senate does not agree with the ratification of the international treaty or pact by the House of Representatives and the Senate, the mixed commission will be formed with an equal number. If the dispute is resolved, the treaty or pact will be considered ratified. If there is a dispute, the treaty or international agreement will be returned to the House of Representatives and put to a vote again. This time, if the same treaty or international agreement receives a majority comprising two-thirds of the affirmative votes from the members in attendance and casting their votes, it will be considered approved and without Sending to the Senate is sent directly to the endorsement of the President (Forough Asefi, 2019: 128).

4.5 Competent authority to deposit documents of ratification of treaties

Depositing the ratification documents of treaties is one of the phases of the process of concluding treaties. Until the early 20th century, it was a common practice for the contracting states to exchange documents of ratification; in such a way that each of them sends documents of ratification to the other contracting states as many as the participating entities to the treaty; But since the application of this statute in the territory of multilateral treaties to which many governments are parties caused problems, the signatory governments established a new statute by mutual agreement and designated an authority for depositing ratification documents so that the depositing of documents is concentrated in that authority. No government has to prepare and send a ratification document to each of the participating entities in the treaty (Falsafi, 2017: 295).

Based on paragraph 1 of Article (76) of the 1969 Vienna Treaty: "Negotiating states can, in the treaty itself or in any other way, designate one or more governments or international organizations or the highest administrative authority of that organization as the trustee of the treaty (the custodian of the treaty documents) do". The trustee of the treaty, after receiving the original of the treaty, is obliged to deliver its copies to the parties of the treaty. After receiving the ratification documents of the treaty, he prepares a parliamentary version of this deposit and communicates it to the interested governments. Today, the Secretary General of the United Nations is usually the Secretary General of multilateral treaties[70], and according to letter (g) of Article (77) of the 1969 Vienna Treaty, one of the responsibilities of the Secretary of the Treaty is to "register the treaty in the United Nations Secretariat". In the Constitution of Afghanistan, it is not mentioned about the deposit of international treaties, but Article (10) of the Law of Treaties states: "The signing of certified documents, after approval (by the Ministerial

[67] Article (81) of the Constitution of Afghanistan
[68] Paragraph 2 of Article (9) of the Law of International Treaties and Covenants
[69] Although Article (64) of the Constitution (which expresses the authority of the President) mentions the ratification of laws and legislative decrees as the authority of the President in its paragraph 16, it does not mention the ratification of treaties; However, Article (9) of the Law of Treaties considers the president's approval as a condition for treaties to come into force.
[70] Today, the Secretary General has many duties that can be classified into administrative and executive duties in a general division of duties. Being the Secretary General's secretary of treaties is one of the Secretary General's administrative duties.

Cabinet), confirmation by the National Assembly (and presidential approval) of the treaties by Foreign Ministry"; Therefore, the Foreign Ministry is obliged to deposit its certified documents to the trustee of the treaty (depending on the case) after completing the formalities of ratification or approval of the treaties.

4.6 enforcement authorities and control of the implementation of treaties

International treaties are sources of international law and create international obligations, and the violation of these obligations will also cause international responsibility. If the treaty provisions are silent, these documents in themselves do not have internal requirements. In other words, they do not necessarily require an arrangement to be effective in the domestic judicial system. Of course, this does not deny the fact that the national judicial system considers treaties as sources of domestic law and implements them in a timely manner (Khalaf Rezaei, 2016: 132), however, in general, international rules, whether customary or contractual, are binding and must be implemented in good faith[71].

For this reason, the introductory statement of the United Nations Charter (paragraph three) considers compliance with treaties and relying on other sources of international law as a requirement for the sustainability of the existing international system, and Article (26) of the 1969 Vienna Treaty has emphasized on the correct implementation of international regulations; Concerning the establishment of an appropriate environment for the ensuring the effective execution of international obligations is regarded as an essential prerequisite for the establishment of security in the international community.

To demonstrate the judicial foundation of governments' obligations to implement international regulations (principles of loyalty to the covenant[72]), judicial scholars have developed several theories, each of which has a worthy reputation in its own position. Despite this, all of them have neglected one important point, which is the forced implementation of international rules. Maybe because addressing this issue considering the implementation mechanisms of the practical application of international law, it really seems pointless, because these mechanisms in many instances, they lack an international character and can only be comprehended within the framework of domestic judicial systems (Falsafi, 2017:547).

Therefore, by accepting a treaty, governments undertake to adhere to the rules and regulations of that treaty and fulfill their obligations, and when the implementation of treaty obligations is subject to legislation or other national measures such as action by the judiciary governments. The contracting parties are obliged to arrange the judicial effect of the obligations in the national judicial system. Simultaneously, during the execution of treaties, the principle of territoriality of the implementation of treaties prevails, which is recorded in Article (29) of the 1969 Vienna[73] Convention. In other words, the treaty requirements of governments are primarily international and their national implementation is secondary. The opposite concept of this rule of treaty law, which states that states cannot avoid their obligations by citing their judicial system, such as loopholes in the law[74].

It is that the committed countries, if necessary, must take the necessary judicial measures to implement their obligations. In other words, if the current laws furnish the required and comprehensive foundation for fulfilling international obligations, the governments will not be required to enact or change domestic laws and regulations. Therefore, by joining the treaties, the governments are committed to fulfill the obligations arising from it, but the way of implementing them by the government organs can take different forms according to the internal regulations of the countries.

In some judicial systems, treaties are promptly integrated into the domestic system upon their conclusion and becoming effective at the international level, and in some others, internal measures such as the establishment of executive laws are considered necessary to integrate the elements of the treaty into the domestic system. The method of entering international regulations in the first category judicial systems is called "general

[71] Good faith
[72] Pacta sunt servanda
[73] Article (29) of the 1969 Vienna Convention stipulates: "With the exception of cases where another intention is inferred from the treaty or through another means, the treaty is binding on each party throughout its territory."
[74] Article (29) of the 1969 Vienna Treaty

transformation[75]"; If the constitution has generally decreed the implementation of treaties at the domestic level, but in the second category of judicial systems, special laws have been provided for entering the requirements of treaties into the domestic system, and this method is called "special transformation[76]" (Khalaf Rezaei , 2016:133).

In the judicial system of Afghanistan, none of the above two methods are explicitly mentioned and the laws are silent in this regard, only the Law of Treaties stipulates the implementation of treaties: " Ministries and government departments are required to undertake the essential measures for executing treaties and covenants. international, agreements, contracts, protocols and memoranda of understanding contained in this law, to adopt in the relevant fields[77].

If, for the implementation of an international treaty and covenant, it is necessary to enact a new judicial document or to amend a valid judicial document, the ministries and government departments are obliged, after the endorsement of the Foreign Ministry, to go through the steps of establishing the judicial document or amending the judicial document[78].

The last article states that in case of conflict between the treaty or the international agreement with the domestic law, the relevant domestic institutions are obliged to amend the domestic law. At the same time and if it can be deduced from this article, the treaty has not been accepted as a "general transformation" nor as a "specific transformation", rather the practical procedure shows that the provisions of the treaties are reflected in the form of internal laws and become enforceable. Therefore, in the judicial system of Afghanistan, provision has been made for a better and more effective implementation of international treaties and covenants in the first step of the regulatory mechanism. This mechanism is executed by the Foreign Ministry. As the Law of Treaties stipulates in this regard: the control over the implementation of treaties, covenants and other documents is the duty of the Foreign Ministry.

4.7 Registration of international treaties and covenants

Treaties are often published in the official texts of the signatory countries. The publication of treaties has the advantage that they can be cited in courts; But some treaties, especially military treaties or political agreements, etc., are not published since the past. The League of Nations Covenant stipulates in the field of publication of treaties: "Every treaty or international obligation that is concluded in the future must be registered by the secretariat immediately and published by the same office as soon as possible." None of these treaties or international obligations will be valid before being registered in the secretariat[79].

Despite all this, it was practically shown that the way and customs of the past still remain in force; The countries only informed the secretariat about the existence of the treaties and kept the text of the treaties hidden. In this case, the United Nations Charter contains provisions similar to the Covenant, but the guarantee of non-registration of treaties in the "Charter" system is slightly different from the guarantee of implementation mentioned in the "Covenant". In this regard, the Charter stipulates: "If the treaties are not registered with the United Nations Secretariat, they can never be invoked against one of the United Nations bodies.[80]" The 1969 Vienna Convention regarding treaties considers one of the responsibilities of the treaty secretary to be "registration of the treaty in the United Nations Secretariat[81]".

Also, the international judicial procedure in two different cases (Maru Matis case and Danzig Free City case), even though one of the involved parties in the case was not a member of the League of Nations, and the contested agreement was not registered with the League of Nations Secretariat, however, compliance with the

[75] Genenral Transformation
[76] Special Transformation
[77] Article (12) of the Law of International Treaties and Covenants
[78] Article (14) of the Law of International Treaties and Covenants
[79] Paragraph 1 of Article (13) of the Law of International Treaties and Covenants
[80] Article (18) of the Covenant of the League of Nations
[81] Article (102) of the United Nations Charter

agreement He considered the mentioned letters mandatory (Mosizadeh, 1389: 89) for these reasons (Article (18) of Covenant 102, Charter, letter (g) of Article (77) of the Vienna Convention of 1969 and judicial procedure) that international treaties as a set Very suitable multilingual books have been published by the United Nations and the League of Nations (Kaliyar, 1989: 460).

According to the judicial system of Afghanistan, only those treaties mentioned in paragraph (1) of article (9) of the Law of Treaties and Covenants of Afghanistan are registered in the United Nations Secretariat or other international organizations pertaining to the subject matter of the treaty[82]. Therefore, other cases under the title of agreement, contract, protocol, memorandum of understanding, etc., do not need to be registered. Meanwhile, the United Nations General Assembly has determined the conditions for the execution of Article (102) of the Charter through resolutions dated February 10, December 14, 1946, and November 3, 1948. In these resolutions, the task of registering treaties has been widely interpreted; This means that all international documents mean not only formal treaties but also declarations of acceptance of the compulsory authority of the International Court of Justice, technical agreements concluded between governments or international organizations, and unilateral declarations by governments regarding partial nullification. A treaty or the invalidity of treaties that were concluded before World War II with former hostilities must be registered in the secretariat and published in the collection of treaties of that organization (Mousazadeh, 2010:90), in Afghanistan after registration in the United Nations' secretariat or other relevant organization, the Foreign Ministry is obliged to preserve the original of the treaty, covenants and contracts that are authorized by the Ministerial Cabinet or the confirmation (approval) of the National Assembly and the endorsement of the President and a copy of it to available to the Ministry of Justice[83]، And the Ministry of Justice publishes the treaties and covenants listed in paragraph (1) of Article (9) of the Treaty Law in the official gazette[84].

Therefore, despite the fact that many treaties are printed in the official gazette of Afghanistan, like many other countries, even after the publication of the treaties, the courts cannot directly refer to them, but exclusively pertain to the stipulations of the treaties that are reflected in the normal laws. they did

4.8 Competent authority to suspend, modify or terminate contracts

Usually, the methods of concluding, terminating, withdrawing and suspending any treaty are foreseen and determined in the treaty itself or according to the agreement of its parties. If not, the regulations outlined in the 1969 Vienna Convention on the Law of Treaties will take precedence. According to paragraphs 2 and 3 of Article (65) and Article (67) of the 1969 Vienna Convention on Treaties: the party that withdraws from the treaty should issue a notice that includes the proposal, reasons, deadline, and approval of the competent authority. At the same time, the issuing party can cancel the notification at any time. In the judicial system of Afghanistan, how to terminate, withdraw or suspend treaties is also provided. The Law of Treaties stipulates the definition of termination: "Termination: is the deterioration of a contract (treaty, agreement, contract, protocol and memorandum of understanding) and withdrawal from the accession of international covenants[85]"; »; And according to the constitution: "Approving international treaties and covenants or terminating Afghanistan's accession to it[86]" is one of the authorities of the National Assembly. The implementation of this authority is raised when the treaty has been violated by the contracting party, as determined by the relevant ministries, departments and institutions[87]. On the other hand, the suspension, modification and renewal of treaties and covenants are implemented by the authorities that have been approved, confirmed or sanctioned by them[88]. Hence, documents that did not necessitate the endorsement of the National Assembly upon acceptance similarly do not require the approval of the National Assembly during suspension, adjustment, renewal or termination[89].

[82] Letter "z" of Article (77) of the 1969 Vienna Treaty
[83] Paragraph 1 of Article (15) of the Law of International Treaties and Covenants
[84] Paragraph 2 of Article (15) of the Law of International Treaties and Covenants
[85] Paragraph 3 of Article (15) of the Law of International Treaties and Covenants
[86] Clause 15, Article (3) of the Law of International Treaties and Covenants
[87] Clause 5, Article (90) of the Constitution of Afghanistan
[88] Paragraph 2 of Article (13) of the Law of International Treaties and Covenants
[89] Paragraph 3 of Article (13) of the Law of International Treaties and Covenants and Paragraph 4 of Article (13) of the Law of International Treaties and Covenants

5. Conclusion

Although there has been no strong and law-abiding government in Afghanistan since ancient times, and most of the governments of this country have failed; This country has joined a large number of international treaties. A superficial survey shows that Afghanistan adheres to more international documents than many of its neighboring states; However, accession to international treaties has not been the same type and has a single procedure. Possibly, this stems from the fact that the incumbent government or governments have not adhered to the same concept.

Sometimes the ideas of liberal democracy, sometimes Marxist ideas and often Islamic beliefs have prevailed. Additionally, the ruling systems from the monarchy to the republic, the People's Republic, the Islamic State and the Islamic Emirate have ruled over this land. For this reason, the method and procedure of attracting international treaties is not uniform and coherent, but some of these governments/governments have acted in such a strict way against international treaties, and some others have openly moved toward accepting the treaties, while some find themselves in a middle ground. They have behaved in two ways. Nevertheless, the endorsement of laws, particularly the Law of International Treaties and Covenants sanctioned in 2015, signifies a positive stride towards establishing a unified procedure.

Therefore, according to the prevailing political, social and cultural situation in this country, the majority of international treaties, especially human rights treaties, have been accepted, but in practice and according to the special mechanism ruling in the judicial system of this country, the treaties are directly in the courts of this country. They cannot be cited by the country, but the provisions of the accepted treaties should be reflected in the normal laws of the country so that the judges can refer to them. However, the practical procedure is such that the status of international treaties in legislative documents is even lower than the legislative decrees of the president, and it is not mentioned about treaty obligations in government offices.

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