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Use of Electronic Discourse in International Treaties Extracted

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Abstract

Developments in the international arena and technological progress have become an urgent need to use electronic communications and transactions, especially in light of the spread of pandemics and emergency circumstances, so we find it necessary to enter technology into international law and sign agreements and find this has applications in UN resolutions in the use of electronic communications in commercial contracts and therefore future work in the field of e-commerce, methods of international signature and documentation, Therefore, we will address the international conventions and their signature and the impact of technology on them, especially in light of the Corona pandemic and the change in all levels and the impact of legal systems and their shortcomings in the face of the new need, we will discuss in our research on international conventions and the use of electronic mechanisms in their signature or the use of E-learning communications between members and the legality of these mechanisms as an alternative to reality while studying the legal texts of this and solving the related problems and the statement of international legislative deficiencies.

Keywords

Corona pandemic, electronic, international

Introduction

Originally, concluding treaties in accordance with the 1969 Vienna Treaty of treaty law defined the treaty as a written agreement between states, which means the agreement between states, and this is the consolidation of the written act required in all relations, but sometimes circumstances require speedy speeches and dealings orally, but the oral treaty has many negatives and its legal implications are unstable according to the parties and their commitment, Considering that the written agreement is documented in a way that maintains the legal security of the parties as well as the establishment of rights and stability in dealings, the jurisprudence in this has differed between supporters and opponents, but at the end there is a possible opinion that is taken, which is that international law did not expressly provide for the exclusion of oral treaties from its scope, and all of this makes us conclude the importance of development in concluding treaties in non-traditional ways, The legal regulation of electronic speech in the Model Law, the Unistral E-Commerce Act of 1996 as well as 2001 and 2017, was intended to enable business using electronic means to facilitate business activities, as well as the 2005 United Nations Convention on the Use of E-learning Communication, which is complementary and complementary to the Model Law for facilitating electronic communication.

The importance of the study

The importance lies in the fact that this context of dealing has been imposed by circumstances and the nature of developments, and therefore needs great attention in it, to be a starting point for facilitating the task of concluding treaties in light of technological progress and the age of speed.

The problem of the study

The problem revolves around the nature of the new dealing as it is not mentioned in international law, which initiated and allowed limited electronic dealing such as commercial dealing exclusively, like of circumstances and developments require that there be a text of law covering all dealings and areas, so we look at adapting the law and finding solutions by creating texts consistent with the nature of reality and dealings.

In our research, we used this analytical approach, which through this approach we reviewed international legal texts that are the legal basis for electronic discourse.

In the light of the above, we divide the research into two subjects, the first the concept of international treaties, which we divided into two demands, the first on the definition of international treaties and the second on the subjectivity of international treaties, and the second is the legal regulation of electronic discourse,

which we divided into two demands, the first by the Model Law of 1996, 2001 and 2017 and the second under international agreements.

First research

The concept of international treaties

International treaties have played an important role in creating international legal norms. It is the main and first source in terms of the arrangement contained in article 38 of the Statute of the International Court of Justice. It is one of the richest, most obvious, and least controversial sources in modern international law and the most controversial and most expressive of the true will of the parties, but at the same time we must know the value of oral treaties and the need to distinguish them from written treaties, so we will divide this research into two demands, the first, the definition of international treaties and the second self-oral treaties.

The first requirement: Definition of international treaties

Article II of the Vienna Convention on treaty law defined it as "an international agreement concluded in writing between two or more states and subject to international law, whether in one or more documents and whatever the term" ⁽¹⁾

It can also be defined as the will of two or more persons of international law to have a certain legal impact in accordance with the rules of international law." Since the treaty is an agreement between two or more persons of general international law, this agreement must be written and concluded in accordance with the provisions of international law ⁽²⁾.

This treaty requires formal and substantive conditions to be achieved to acquire its international legal status, and the treaties are classified in terms of the number of parties, into bilateral treaties between only two persons of general international law and collective treaties between third parties and more international persons ⁽³⁾.

It is necessary to highlight the condition of liberalization, wherewith the end of successful negotiations is to move to the stage of writing the outcome of the negotiation, perhaps the most important problem facing this stage is the choice of the language of blogging, and there is no room for the emergence of this problem if the negotiating states speak one language, or agreed during the negotiation to choose the language of liberation, but otherwise, the problem exists and needs solutions, states may choose one language with international spread, even if it is a language One of the parties^[4]

The text of the treaty is edited in it, and the text of the treaty may be written in more than one language, in which case the edited text in one of these languages may be given priority when interpreted, or the parties may agree that all of these texts should be of the same value.⁽⁵⁾

The second requirement: Oral self-treaties

Although the origin of the conclusion of international treaties is editorial according to the 1969 Vienna Treaty, sometimes states find themselves obliged to speed up the conclusion of international treaties, do not wait to write to achieve this, so they exchange wills orally without the need to write, but taking into account the limited convening of such treaties for their seriousness, specificity, and lack of availability, as they are held in secret political topics, On topics of little importance or of a detailed nature of a pre-concluded agreement, some have defined this type of treaty as an agreement that is being consulted between representatives of at least two persons of international law to create international legal implications.⁽⁶⁾

The existence of the oral international convention is demonstrated by a document referring to this treaty, and the issue is more precise, because of the difficulty of establishing a dividing line between written international treaties and oral international treaties, because the former is edited with the primary objective of codifying it, while in some other cases this is about the boundaries between oral international treaties in their abstract form and between the international treaty written in its precise concept, As happens when two heads of state meet to discuss and consider one of the topics of interest to them with the editing of the topic of the meeting in question, in which the incident is confirmed, the exchange of views and the two presidents reach certain conclusions [\(17\)](#)

As for the position of international jurisprudence on the possibility of concluding treaties orally, some of them supported the idea of authorizing them, considering that the agreement is an international treaty, whether written or oral, although the 1969 Vienna Convention did not include its provisions, but emphasized writing in the conclusion of international treaties, but on the other hand the Treaty of Vienna implicitly confirmed that the rules on oral treaties are probably not certain enough to allow their legalization, This has made traditional international jurisprudence possible to hold it or even by reference, as happens when one of the warring parties raises a white flag, and the answer to it from the other side is the same flag.⁽⁸⁾

International work has indeed been carried out on the treaty in writing, but at the same time it does not deny its contract orally, the type of treaties are subject to customary international law, which is seen as international treaties binding on the parties to it as long as it has not been raised in any form of proof, and the status of obligation is not linked in a particular way, as the oral international agreement has a legal value not less than the agreement written by article 3 of the Convention in us, It produces its legal implications fully.⁽⁹⁾

As for the doctrinal position rejecting the convening of the treaty orally, some international jurisprudence believe that oral treaties are outside the scope of international treaties, because international law is only used by written treaties⁽¹⁰⁾

Through these opinions, we believe that the question of writing in

international treaties does not invalidate oral treaties, nor erase their effects or their legal power, but it is better and guarantor to be written until they complete their formal requirement.

Second research

Legal regulation of electronic speech

After we discussed in the first research treaties in their traditional form and the procedures for concluding them or contracting them and the impact of developments in the world and their reflection on dealing with legal procedures, we discuss in this research the legal regulation of electronic discourse and in the words of the most accurate research in the texts governing this new style by diving into the texts and procedures that we can benefit from in the statement of electronic discourse in concluding treaties, Which we're going to knock on in this research that we divided into two demands, the first about the law.

The first requirement: In accordance with the Model Law of 1996, 2001 and 2017

The idea of international trade emerged in the 1970s and was taken care of by the United Nations, and this interest resulted in the emergence of the Model Law on International Trade in 1996 which was aimed at having a legal environment operating by electronic transactions and modern means of communication, yet this law is not binding on states unless it is included in their national legislation despite this project related to e-commerce, but it did not involve a specific definition of it, and only defined the exchange of electronic information In trade^[11]

The Model Law of 1996 laid the legal foundations for electronic transactions in the field of international trade, and we find that it emphasized electronic transactions in this area. ^[12]

This international law is the first international legislative text based on electronic trading dealings, and therefore emphasizes the authority of electronic transactions and electronic discourse, the Model Law on E-Commerce (Model Law) aims to enable the practice of trading using electronic means, overcome obstacles and draw a road map for the national legislator for electronic transactions, and the purpose of the Trade Act specifically is to overcome obstacles arising from legal provisions that may not be diverse. Contractually by treating paper and electronic information equally. This equal treatment is essential to the use of paperless speeches, thereby enhancing efficiency in international trade. ^[13]

The Model Law of 2001 is a law complementary to the Model Law of 1996, which is specific to electronic signature and its scope in the commercial field only, and confirmed the electronic signature and electronic data, therefore proved a legal position when he emphasized the use of the creation of the signature to create a legal effect, thus establishing the principle of electronic transactions. ^[14]

The Model Australian Electronic Records Act 2017 also emphasized electronic transactions and established the legal position of such electronic transactions. [\[15\]](#)

Thus, the legal regulation of these above-mentioned laws has established electronic dealing, which we can use to conclude treaty contracts as long as there is legal regulation and general principles, although such regulation is within the scope of international trade only.

The second requirement: Under international agreements

One of the important international agreements that emphasized electronic transactions is the United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005), which is important international legislation in establishing the principles and concepts of the use of electronic transactions, and therefore this agreement is to overcome legal obstacles to electronic communications in business dealings. [\[16\]](#) Therefore, we find it an important legal basis for strengthening the legal texts governing the subject matter of electronic discourse in the conclusion of international treaties, so we find that it knew the electronic discourse as any speech addressed by the parties through e-mails and electronic media. [\[17\]](#) This agreement has emphasized that the validity of the letter or contract should not be denied simply because it is electronic, thus obliging the parties to the legality of electronic communication in their dealings by the provisions of the agreement. [\[18\]](#)

. On the occasion of the development of the United Nations Shipping Convention of Goods 1978, known as the Hamburg Convention of 1978, article 14/3 authorized the signing of the shipping bond electronically, without reaching the intended purpose, thus finding that international agreements have established the way for the use of electronic communication in international transactions. It was initially in the international trade area, and therefore may be expanded to include the conclusion of treaties, especially in light of the rapid development and emergence of pandemics, disasters, and events, creating an international mood to adopt new international rules for this type of dealing. [\[19-22\]](#)

Even asking the state about international practices, if this practice is contrary to the provisions and international law rules, is a natural and logical requirement (Dr. Mohammed Salman Mahmood, 2017). In doing so, the international community has come up with important laws that are the legal basis for adopting electronic discourse in the future in concluding all treaties even outside the commercial sphere and making electronic discourse have a fixed legal value, and that's what we will put forward at the end of our research.

Conclusion

1. The legal basis for concluding treaties is the 1969 Vienna Treaty, which emphasized the written agreement to produce a stable legal impact.

- 2- The rules of international law, even if they confirm the agreement, are written, but do not exclude the oral agreement from its rules.
3. The rules of international law have allowed oral agreement to produce its effects when needed, as confirmed by international jurisprudence and the international judiciary.
- 4- The basis of the law for electronic speech came with clear texts, but came specialized in the field of business dealing and did not expressly provide for transactions in all its forms.

Recommendation

- 1- From our limited point of view, it is necessary to establish a permanent committee at the United Nations to consider developments in reality and to harmonize those developments with legal texts, through examination, scrutiny, opinion on amendment or the proposal of new conventions.

It is absolutely essential that there be binding rules for countries to adopt electronic transactions to reduce effort, expenditure and time investment.

- 3- After the expansion of electronic transactions and speeches, it is very necessary for states and the international community to adopt systems to protect against cyberattacks, because electronic discourse has become comparable to written discourse.

It is absolutely essential that the international community, in its legislation, commit itself to adopting electronic communications explicitly in compliance with the promise of international law.

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