

Received: December 2023 Accepted: January 2024

DOI: <https://doi.org/10.58262/ks.v12i2.179>

Armed Conflicts and their Effects on International Treaties

Ahmed Jabbar Hadi Al-Allaq¹, Mohammed Salman Mahmood²

Summary

The United Nations International Law Commission has recently taken up the topic of how armed conflicts affect treaties, in line with the United Nations Charter's call for the formulation and advancement of international law. Since international treaties are one of the sources, it created draft articles for this subject and brought them to the General Assembly for consideration and decision-making. It is the cornerstone of international law and the standard on which the international judiciary bases its decisions. Because of the rights and obligations it entails between the contracting parties, as well as the public and private concerns it controls, it forms the cornerstone of international relations and one of the key pillars of the international legal system. Because of this significance, it is necessary to understand the legal ramifications in order to apply the law's provisions correctly. Additionally, to guarantee that treaties are upheld even in the face of shifting conditions and emerging facts, such as in the event of armed conflicts that pose a threat to both the enforcement of treaties and their very existence. The draft articles were created to address this problem; they serve as a legal guideline and point of reference for interactions between states, and this study analyzes the draft articles.

Keywords: *Treaty Relations, Armed Force, Protection of Treaties, Security Council and International Relations*

The Substantive Interrelationship between International Treaties and Armed Conflicts

For the sake of the rule of law at the global level, international law, which is essentially customary law (1), came to establish its principles that govern the behavior and relations of states and persons of public international law in organizing international justice affairs, resolving disputes, and maintaining international peace and security, to be based on several sources referred to in Article Eight. These sources, which can be considered "official," are represented in both general and special international agreements as well as international custom. The Thirty Statutes of the International Court of Justice have their origins in the work done in the 1920s by the Advisory Committee of Jurists of the League of Nations for the Permanent Court of International Justice (2). Such as a recurring law, general principles of law, then court rulings, the doctrines of major authors in public law, and the rules of justice and equity. It may be noted that international agreements came in these sources are at the forefront because of the regulatory value and higher human rights principles they represent.

The Vienna Convention on the Law of Treaties Deals with the Subject of Expiration of Treaties

And stopping their implementation, through Articles Fifty-Four to Sixty-Four. Although the provisions contained in these Articles of the Convention referred to external factors that have

¹ Imam Ja'afar Al-Sadiq University, Maysan, Iraq Email: ahmed.jabbar@Sadiq.edu.iq

² Dijlah college University, Baghdad, Iraq

a negative impact on treaties and fundamental changes in circumstances, they did not address the issue of the impact of “war” (2) on treaties except with reference. A reservation mentioned in Article 73.

In keeping with the theme of how treaty parties' relationships can alter, particularly in the event of an armed conflict, the International Law Commission made the decision to look for a legal framework that would enhance certain provisions of the Vienna Convention on the Law of Treaties and investigate the impact of armed conflict in all of its manifestations on treaties. Consequently, during its sixth session, the Commission determined The General Assembly may take note of the proposed articles pertaining to the effects of armed conflicts on treaties thanks to the 50th Act of 2004's inclusion of the topic and the appointment of a special rapporteur on the subject.

After studying several previous projects and reviewing the reports of successive special rapporteurs, the committee reached the adoption of draft articles for the project consisting of eighteen articles, and submitted a recommendation to the United Nations General Assembly at its 3118th session on August 5, 2011 treaties, and to subsequently establish a convention based on these articles.

What is Meant by a Treaty According to the Law of Treaties

Treaty means (1) “the international agreement concluded between states in a written form, and which is regulated by international law, whether it is contained in one document or two or more related documents, and whatever its specific name.” This definition (2) is stated in Paragraph 1/A of Article Two of the Convention. Vienna Treaties Law of 1969, which clarifies that agreements between countries are subject to formal conditions that the agreement be in writing. Perhaps the writing requirement is more about proof than it is about the validity of the contract. Because writing (3) is a means of clarifying the terms of the agreement to state the rights and obligations and a reference for interpretation. Also, writing, whether contained in one document or several documents, allows the signing of the agreement, and it has more guarantee for the contracting parties, and then the ratification of this agreement. In addition to the formal conditions, there are conditions Another objective matter is that the treaty should be concluded between persons who have the legal capacity of public international law and that the consent of its parties be achieved.

It is a legitimate matter recognized by public international law, and according to what was stated in the aforementioned paragraph, these conditions must be met in order for us to be faced with an international treaty, and Article 102 of the United Nations Charter added a condition for the United Nations to recognize the treaty, namely the necessity of registering treaties with the General Secretariat. The international organization has the effect, in the event of failure of this registration, that this treaty may not be invoked before the various branches of the United Nations (1), including the International Court of Justice (2).

Accordingly, the treaty must be concluded between two or more persons of public international law, whatever it is called an agreement, understanding, protocol, covenant, charter, or otherwise (3). It is an expression of voluntary actions whose effects result in accordance with the provisions of the law, and must Originally, the treaty instrument must be in writing, whether its texts and provisions are contained in one document or more, and that it deals with an issue of public international law. There is nothing preventing the agreement from being verbal, as was explained above, because transactions between countries are not limited to international agreements covered. The Vienna Convention on the Law of Treaties, but it extends beyond it

to another group of agreements, dealings and understandings (4), which makes it take the rule of international treaties, and has legal effects, and this is what it recognized.

What is Meant by a Treaty According to the Draft Articles

Article Two of the draft articles addressed the statement of what is meant by a treaty, as it clarified in its paragraph (a) what is meant by a treaty by saying that the term “treaty” means an international agreement concluded between states in writing and subject to international law, whether this agreement is contained in one document, or in two, or more related documents, whatever its specific name, it includes treaties concluded between countries International organizations are also parties to it.” It is noted that this definition is compatible in principle with the definition provided by the Vienna Convention for the treaty, and includes the same conditions and elements, but on the one hand, it added to it the inclusion of treaties concluded between states, and international organizations are parties to it, as this added The definition is the following phrase and includes treaties concluded between states to which international organizations are also parties. Thus, this definition has expanded to include international parties other than states, namely international organizations, to become on an equal footing with states in concluding agreements and to be parties to them. This is a natural result of the principle of legal personality. For international organizations, it is considered a positive development in expanding the basis of recognition of non-state public international law persons as eligible to be parties to treaties. However, this definition, on the other hand, excluded the inter-treaty relations of international organizations, that is, those concluded between international organizations only from the scope of the project, and this is also a result of Natural to the legal entity, activity, and special nature of international organizations; Because it is inconceivable that armed conflicts would occur between international organizations themselves, and the definition did not distinguish between the types of treaties, whether bilateral or multilateral, nor between their topics, whether they regulate public or private affairs. Rather, it was limited to dealing with treaties that entail the correct legal effects, and the effect Armed conflicts over it (5).

Explain What is Meant by Armed Conflict

Armed conflict is considered one of the oldest phenomena that humanity has witnessed. Fighting methods have evolved with the development of the means used in these conflicts and their ability to kill people and objects, which has made setting controls and restrictions necessary to limit the manifestations of escalation and excessive use of violence. Within this context, we will present the concept of armed conflict within the framework of the draft articles (the first requirement, then the extent to which armed conflicts are subject to the rules of international law, the second requirement (6).

The First Requirement is the Concept of Armed Conflict

It is important to know what is meant by the concept of armed conflict (1) within the framework of the draft articles, and whether what is meant by it is international armed conflict or does it include non-international armed conflicts, especially since the latter are considered forms of internal conflicts, but they often include influential external elements? Such as the varying participation of other countries indirectly in such combat conflicts, such as financing armed groups, supplying them with weapons, and providing training and shelter centers, and may even extend to guidance and control. The world is also witnessing a noticeable increase in such conflicts, which in turn is witnessing battles that may be more intense. The ferocity and violence of international conflicts, which often affects the entity of the state itself and its ability to fulfill its treaty obligations.

In their relations, countries face many crises that may develop into a form of conflict. Conflict is a more developed and more escalating form in international relations than crisis, whether political, economic, or other crises. The conflict may be legal, economic, or otherwise (2).

Capacity of States to Conclude Treaties During Armed Conflict

The state is established as a person of international law with the legal personality under which it has the necessary capacity to undertake actions and conclude treaties (7). The question that arises is whether the participation of states in an armed conflict, whether international or non-international, leads to these states, or one of them, losing their legal capacity, or diminishing it, meaning that their personality is the legal framework affected by this armed conflict, or does it remain in place and recognized? The legal rule contained in Article VI of the Vienna Convention says: "Every state has the capacity to conclude treaties," which means that every internationally recognized state has the necessary capacity to conclude treaties, and armed conflict does not diminish or eliminate this capacity. A state's membership in international organizations may be suspended. Or territorial due to the presence of an armed conflict. However, this suspension does not affect the state's capacity and legal personality to conclude international treaties in the presence of an armed conflict (1). This is a legal rule recognized in international law, which requires that states may continue to conduct transactions among themselves, and conclude Treaties, arrangement Rights and obligations during armed conflict, and in accordance with this legal rule, Article Eight of the draft articles stipulates

- 1 - The existence of an armed conflict does not affect the capacity of a state party to that armed conflict to conclude treaties in accordance with international law (10).
- 2 - States may conclude legal agreements that entail the termination or suspension of a treaty in force between them or part of it during situations of armed conflict, it may agree to amend or revise the treaty"

This text reaffirms the importance of treaties and their vital role in international relations, and that they are one of the main sources of international law. It also confirms the principle contained in Article VI of the Vienna Convention on the Law of Treaties: Every state has the capacity to conclude treaties, and this capacity is not affected by the state of armed conflict, whether international or not. International, but treaties may be the legal means to find some solutions to issues resulting from and related to armed conflict, such as the case of exchanging prisoners, or concluding a temporary or permanent truce. The second paragraph of this article also indicated the possibility of concluding a treaty to end an existing treaty, or suspend its effectiveness (11). Or make an amendment to it, which requires a consensus of wills to carry out such actions in order to reinforce the principle of continued legal capacity

States During Situations of Armed Conflict

While the project emphasized the capacity of states to conclude international treaties, or to amend them during armed conflict, it did not neglect to emphasize the importance of this capacity and its connection to expressing the will of states through the forfeiture of the right to request non-enforcement of the first section treaty according to what the state expresses explicitly or implicitly (12).

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