



# The Legal Effect of Diminishing State Sovereignty and Entering into Unions on the State's Ability to Conclude Treaties

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## ABSTRACT

There is no doubt that the state has the right to conclude treaties.,But the question arises regarding countries with limited sovereignty, or those that have entered into unions with others.,The most significant form of lack of sovereignty is that of dependent states.andSearchinIts inability to conclude treaties,Her legal personality was not fully established.,To keep her hand off external representation, However, practical experience has confirmed the need to consider each case individually.independentlyAs for entering into unions, the most important form is a federal union, which is permitted to conclude treaties.,It is a permanent union of different sovereign states.,The union has authority over its members and their citizens.,However, small states, or states within a federal union, do not possess the status of a state, and therefore do not have international legal personality.,Its legal personality dissolved into the federal union.,Therefore, it is unable to conclude treaties.

**Keywords:** Federal union, dependent states, states under protection, personal union, confederation.

## Introduction

There is no dispute about the right of states to conclude treaties. However, there are some cases that may raise questions about the completeness of their international legal personality and, consequently, their capacity to conclude treaties. We will address the issue of limited sovereignty and the formation of unions as one such case. It seems appropriate to divide the discussion into three sections. The first section examines the nature of a state's eligibility to conclude treaties. The second section explores the limitations of state sovereignty and their impact on a state's eligibility to conclude treaties. Finally, the third section focuses on the formation of unions and their effect on a state's eligibility to conclude treaties.

## First requirement: What constitutes a state eligible to conclude treaties?

Public international law deals with the rights and obligations of states, so it is necessary to define the concept of a state according to the purposes of international law. That is, when does an entity qualify as an "international person"? Traditional international jurisprudence has often defined a state as: "a legal and political unit, composed of people, residing on a defined territory, and subject to political authority within a governmental and legal framework."<sup>1)</sup> This definition suggests that the state is based on three real elements: the people, the territory, and the government. These elements correspond to the "Three-Element Principle." The doctrine of the three elements, formulated by the German jurist Georg Jellinek at the end of the nineteenth century (<sup>2)</sup>In addition, there are two other elements necessary for the concept of a state to be complete: recognition and the non-existence of international legal personality. We will elaborate on the above as follows:

### First: A permanent peopleA permanent population:

Jean-Jacques Rousseau states in his book "The Social Contract or Principles of Political Law" that it is humans who create the state.<sup>3)</sup> Various constitutions stipulate that "the people are the source of all powers." This highlights the importance of the people compared to the ruling authority, whose features are defined only by the laws enacted by the people. The Montevideo Convention on the Rights and Duties of States also stipulates the necessity of a permanent population for the state. The state exercises its jurisdiction and powers only over a group of individuals. Within this group, a distinction is made between nationals of the state and foreigners. Foreigners include citizens of other countries, stateless persons, and refugees who do not belong to any other state. The state's jurisdiction extends to those who belong to it or are present within its territory, whether natural or legal persons; the latter are included permissibly among individuals.<sup>4)</sup>

### Second: A specific regionA defined territory:

Each state has its own portion of the Earth, which is called a territory. This is what distinguishes a state from a nation. Ancient definitions of the state—especially Greek



and Roman—lacked any reference to the state's territory as an element of its formation. It was conceivable that a state could move from one territory to another without this having the slightest effect on its legal personality. The importance of territory as an element of state formation began to emerge at the beginning of the Middle Ages. Its importance gradually increased during the feudal era and the late Middle Ages, when kings claimed private ownership of their territories. Then, a kind of development occurred as the legal understanding of the element of territory grew.<sup>5)</sup> It began to be included in the definition of the state as one of its main elements, and this trend then became established.<sup>6)</sup>

### **Third: A government with effective controlEffective control by a government<sup>(7)</sup>:**

This element is formed by the existence of a government.<sup>8)</sup> An organization capable of imposing its control and sovereignty.<sup>9)</sup> Based on the two aforementioned elements (people and territory), this sovereignty has two aspects: one internal and the other external. Internal sovereignty is embodied in the existence of a government capable of establishing a legal system that guarantees constitutional independence. Constitutional autonomy, and its preservation. External sovereignty, on the other hand, means the ability to act independently at the international level, without legal dependence on other states in the international community.

The mere existence of a government is insufficient; it must possess actual sovereignty over its people and territory, both internally and externally. In 1920, the International Commission of Jurists presented The International Committee of Jurists issued its report on the situation in Finland, in which it concluded that Finland was no longer a sovereign state in the legal sense, due to the inability of its governments to exercise effective control.

However, the criterion of the sovereignty of authority or government is not always strictly applied. A state's existence cannot be terminated simply because it is temporarily unable to exercise its sovereignty due to civil wars or other internal disturbances. The extended period of Lebanon's de facto partition did not prevent it from continuing to exist legally as a state. Similarly, the absence of a government in Somalia (described in the Security Council resolution as a "unique case") did not justify the termination of its legal personality. Even in the case of the occupation of an entire state, its legal personality persists as long as its allies continue the struggle against the enemy, as was the case with Germany's occupation of parts of Europe during World War II.

The temporary circumstances a state may experience, which affect its ability to enforce its sovereignty, do not affect its legal existence; this reflects the international system's interest in stability and avoiding premature change. The government may be able to regain its effectiveness.

### **Fourth: ConfessionRecognition:**

Legal scholars agree that a state exists when its three elements—people, territory, and governing authority—are present. However, its participation in shaping

international legal rules and its entry into reciprocal relations with other states require recognition from other states or entities within the international community.<sup>10)</sup>

New states often face the challenge of international recognition. Recognition here means a willingness to treat the new state as a member of the international community. The first known example is Spain's recognition in 1648 of the Dutch Confederation, which had declared its independence in 1581. One of the most famous examples of recognition occurred when some British colonies declared their independence from Great Britain, announcing the formation of a federal government called the United States of America on July 4, 1776. A dispute arose between Britain and France regarding the recognition of the United States. Britain maintained its view that a state's territory is not acquired through revolutions or wars, but rather through the recognition of a previous sovereign. France, on the other hand, based its recognition of the United States on the principle of effectiveness. The doctrine of effectiveness, which was later known in the nineteenth century (<sup>11</sup>).

#### **Fifth: Non-expiration of international personality Not Extinction of International Personality:**

International legal personality ceases when a state loses one or more of its essential elements, such as territory, population, or government. Other reasons for the cessation of international legal personality include a state entering into a de facto or de jure union, a federation, or merging with another state to create a new state.<sup>12)</sup> In the latter case, international agreements previously signed by either state before the date of merger often remain in effect, but their application is limited to the territorial scope established at the time of their signing. This was evident in the declaration of the merger of the Republic of Egypt and Syria into a single state called the United Arab Republic on February 22, 1958. The international legal personality of each of them ceased to exist as of that date, giving rise to a new international legal personality, the United Arab Republic. This continued until Syria declared its secession from the United Arab Republic in September 1961.<sup>13)</sup>

The Fatwa and Legislation Department of the Ministries of Foreign Affairs and Justice issued a ruling stating that "If the agreement concluded in 1954 between Syria (formerly) and Iran stipulated an exchange of views between the two governments in the event that a citizen of one of the two countries wishes to exchange his nationality for the nationality of the other country, and Article 69 of the Provisional Constitution of the United Arab Republic, as well as Article 30 of Nationality Law No. 82 of 1958, stipulated respect for treaties and agreements concluded between Egypt or Syria and other countries before the establishment of the union, provided that their application is limited to the territorial scope specified for them at the time of their signing, and the Nationality Law stipulated the obligation to respect them even if they contradict the provisions of this law, then saying that this agreement is no longer relevant is a statement that explicitly contradicts the Constitution and the law."<sup>14)</sup>

## **The second requirement: The lack of state sovereignty and its impact on its eligibility to conclude treaties.**

The argument of international law is defined by the British jurist Oppenheim<sup>15)</sup> Sovereignty is defined as: "Supreme authority, independent of any other authority on earth. In its precise and narrowest sense, it means independence everywhere, both within and outside the country." According to this concept, a state is fully sovereign if no other entity interferes in its internal or external affairs.

The state is also defined as: "a sovereign entity - there is a link between the state and sovereignty - that has full sovereignty over its internal territory, whatever its political system may be."<sup>16)</sup> Sovereign states are also prohibited from interfering in the internal affairs of other states.<sup>17)</sup> This means that a state is fully sovereign if it has complete control over its territory. It does not allow any other state to interfere in its internal affairs, and it is prohibited from interfering in the internal affairs of other sovereign states.

Some scholars recognize it (<sup>18)</sup> It is defined as: "A state that is not subject, in the exercise of its internal and external powers, to any external authority, and this sovereignty is not affected by the state's subjection to public international law." This is the prevailing view in most countries of the world at present.

Based on the foregoing, a fully sovereign state's capacity to enjoy rights and bear international obligations qualifies it to conclude treaties. This raises the question of what forms of diminished state sovereignty are and the extent to which states are capable of concluding treaties.

It takes one of two forms: dependency or protection systems. The latter may take a coercive form, such as colonial protection, or a contractual form—albeit an attempt to legitimize occupation—such as protectorates and protected states. We will elaborate on this as follows:

### **First: Dependent States Vassal States<sup>19)</sup> And its capacity to conclude treaties:**

Dependence is One of the colonial systems that prevents the dependent state from exercising its external sovereignty over its territory, which is then controlled by the dominant state. While a treaty is not required to regulate it, one may be concluded in some cases. A dependent state is a semi-sovereign state; although it may be independent in its internal affairs, it is subject to total or partial dependence in its external affairs.

The system of dependency was considered a form of international trusteeship; the dependent state could not, at least in principle, have international representation except through the dominant state. Clear foundations for this system could not be established, and each case could be examined individually. Despite the dependent state's lack of international legal personality—as this role was monopolized by another state—in some instances, it was granted certain powers of international representation. For example, the Ottoman Porte granted Egypt the right to conclude commercial and postal treaties with foreign countries without consulting Turkey.

Similarly, Bulgaria was permitted to conclude treaties concerning postal services, railways, and the like.

In practice, a dependent state might deviate from its designated path. For example, although Bulgaria was not permitted to engage in wars independently of the Ottoman Empire, it fought its war with Serbia in 1885 without the Ottoman Empire's consent.

The professor believes Oppenheim argued that dependent states cannot maintain international existence while their sovereignty is completely or partially compromised. They must either relinquish their dependency and gain full sovereignty, as in the case of Romania, Serbia, and Montenegro, or they will lose what little sovereignty they retain and be annexed by another state, as in the case of the Republic of South Africa in 1901, or merge with another state, as in the merger of Kniphausen in Germany with Oldenburg in 1854.

**Practical application: The international character of Egypt during its subjugation to the Ottoman Porte:** Egypt came under Ottoman rule in the 16th century AD, during the reign of Selim I, who ruled the Ottoman Empire from 1512 to 1520 AD. He conquered Egypt during that period, specifically in 1517 AD, and died in 1520 AD.<sup>20)</sup> Ottoman rule continued until the French campaign in Egypt.<sup>21)</sup> (1798, until 1801). Then the Ottomans returned with the support of England, which exploited the situation and did not leave Egypt until the Treaty of Amiens was concluded on March 25, 1802, between England and France. This treaty stipulated the British withdrawal from Egypt, which was implemented in March 1803. However, the situation in Egypt did not calm down due to England's desire to control it.<sup>22)</sup>

Muhammad Ali Pasha assumed power in accordance with the will of the people on May 13, 1805. He enjoyed popular leadership and the support of the Egyptians, which helped consolidate his rule and overcome the obstacles placed before him by the men of Istanbul on one hand, and the British and their Mamluk proxies on the other.<sup>23)</sup>

This leadership, the desire for independence from the Ottoman Porte, and his ambition to expand his dominion and conquer numerous countries alarmed England. Consequently, England dispatched a campaign to occupy Alexandria on March 14, 1807, under the command of General Fraser. Fraser<sup>(24)</sup> However, it failed, leading to the signing of the Treaty of London on July 15, 1840, between England, Russia, Austria, Prussia, and Turkey. This treaty significantly impacted Egypt's international standing, granting Muhammad Ali and his successors hereditary rule over Egypt. For his lifetime, he was to govern the southern region of Syria, known as the Vilayet of Acre (Palestine), provided he accepted within ten days. His acceptance was contingent upon the evacuation of his troops from Crete, the Arabian Peninsula, the Adana region, and all other Ottoman territories except the Vilayet of Acre, and the return of the Ottoman fleet to Turkey. Furthermore, Muhammad Ali was obligated to pay an annual tribute to the Sublime Porte. Egypt's land and naval forces were to be considered part of the Ottoman Sultanate's forces. Finally, the Allies undertook the use of force to enforce these conditions should Muhammad Ali reject them.<sup>25)</sup>

The terms of the previous treaty establish Egypt's internal independence and its subordination to the Ottoman Porte; its army was at the service of the Porte, and it paid annual tribute to it. This was confirmed by most jurists, such as:<sup>26)</sup> Oppenheim

argued that it was an acknowledgment of Egypt's limited sovereignty, recognizing it as a Vassal State under the authority of the Ottoman Porte. The Treaty of London also stipulated that Egypt could only conclude treaties concerning customs, postal services, and the foreigners' regime, subject to Ottoman oversight, and no other treaties.

This dependency persisted even with the beginning of the British occupation of Egypt in 1882. Britain did not attempt to officially declare a protectorate over Egypt, which would have altered its political and legal status. The occupation took the form of a temporary measure to restore order and stability to Egypt, following popular rejection of foreign control in Egypt, which was intended to guarantee the repayment of debts incurred by Khedive Ismail for the opening of the Suez Canal. The British protectorate over Egypt was not officially declared until December 18, 1914, thus severing the ties between Egypt and Turkey.<sup>27)</sup>

Consequently, the dependent state lacks full legal personality, as it is prevented from exercising its authority in foreign affairs. In principle, it cannot conclude treaties. However, each case must be considered individually. The dominant state may permit it to exercise its external sovereignty within certain limits.

In our estimation, although the above is the conclusion reached by the research—that the Ottoman Porte permitted Egypt to conclude certain treaties—we do not support the permissibility of dependent states joining certain agreements, such as the Madrid Agreement on the International Registration of Marks.<sup>28)</sup> Because it requires the state to possess statehood without defining its characteristics, it has become imperative to examine this concept within public international law. It stipulates that a state must have a governing authority with full sovereignty over its people and territory. We know that this sovereignty has two aspects: internal, represented by the ability to establish a legal system guaranteeing constitutional independence; and external, represented by the ability to act independently at the international level without (legal) dependence on any other state. Therefore, any breach of either of these aspects undermines statehood. When a dependent state restricts a subordinate state's ability to conduct its foreign affairs without its legal consent, the subordinate state undoubtedly loses the second aspect of its sovereignty—external sovereignty. This effectively strips it of its statehood and prevents it from joining certain agreements.

Regarding the legitimacy of Egypt's signing of certain agreements, we also emphasize that Egypt, during this period, was unable to fully enjoy its rights and bear its international obligations due to its subordination to another state and the resulting deficiency in its sovereignty. However, we attribute this legitimacy to the acceptance by other states of Egypt's signing, which constitutes implicit recognition of Egypt's sovereignty despite its subordination. Furthermore, Egypt's subordination was not documented, making it impossible to refer to a formal document upon accession, thus making the recognition of Egypt by other states the fundamental basis for its legitimacy.

**Second: Countries under protection States under protectorate and their capacity to conclude treaties:**



In this context, we distinguish between three forms: colonial protection, protectorates, and protected states, as follows:

### **1 - Colonial Protection Colonial protection and its capacity to conclude treaties:**

This is a form of protection imposed to achieve colonial objectives, aiming to annex the protected territory to the protecting state. This protection is imposed unilaterally or through obtaining the protected state's consent to conclude a protection treaty. This lends a degree of legitimacy to its position, enabling it to confront foreign powers. Among the most prominent examples of this type of protection are the British colonial protectorates over Egypt, <sup>(29)</sup> And Hong Kong. We will examine these two applications as follows:

**First application: Colonial protection of Egypt during the British occupation and its impact on the conclusion of treaties:** We examine this application to determine the extent to which Egypt's international personality has expired, and consequently its ability to conclude treaties.

Initially, colonial protection over Egypt took a disguised form from 1882 to 1914. Britain found an opportunity to impose its control over Egypt under the pretext of suppressing protests by some Egyptians who objected to the joint (French-British) financial monitoring committees imposed on Egypt to guarantee the repayment of its debts. England did not officially declare its colonial protection over Egypt and offered reasons that failed to convince the Egyptian people, or any other people for that matter.<sup>30)</sup> Its structure declared that it would not change the status of Egypt - that is, maintain its subordination to the Ottoman Sublime Porte - as the French-British agreement concluded on April 8, 1904, stipulated that "His Majesty's Government declares that it has absolutely no intention of changing the political position of Egypt" <sup>(31)</sup> On December 18, 1914, the colonial protectorate over Egypt was officially declared and continued until 1922. The "Egyptian Gazette" published <sup>(32)</sup> On the same day, the protectorate was declared. Thus, overt protection replaced the disguised protection imposed by Britain since 1882. Egypt's subordination to the Ottoman Porte ended, and it began under British colonial protection.<sup>33)</sup>

The 1919 revolution erupted on March 9th of that year, denouncing the end of the British protectorate. Without a response from Britain, the Egyptian struggle continued. In light of this, and following a study by the British cabinet (the cabinet of Mr. Lloyd George), it was announced on February 26, 1921, that the protectorate it had declared over Egypt was an unsatisfactory relationship, and Egypt was invited to enter into formal negotiations (to reach, if possible, a replacement of the protectorate with a relationship that included the special interests of Great Britain, enabled it to provide sufficient guarantees to foreign countries, and met the legitimate aspirations of Egypt and the Egyptian people).<sup>34)</sup>

Britain's unilateral declaration of February 28, 1922, included recognition of Egypt as an independent and sovereign state. This was not complete independence, however, as it was subject to certain reservations. It is well known that the protectorate which England declared it was abolishing in 1922 was the same protectorate that had been recognized by other nations at England's own request at the Versailles Conference. Its abolition by the very nations that had declared it, and the notification of this abolition



to those nations that had previously recognized it, gave this abolition an international character, so that Egypt became, in the eyes of all foreign nations, an independent state.<sup>35)</sup>

The 1922 declaration included four reservations: (securing the Empire's communications in Egypt – defending Egypt against all forms of aggression or intervention, direct or indirect – protecting foreign interests and minorities – Sudan). Some jurists found<sup>(36)</sup> This declaration granted Egypt incomplete independence. Consequently, Egypt's international legal personality was also incomplete. Indeed, the true meaning of the preceding reservations was that Egypt would not have full independence, either in foreign or domestic affairs. The first reservation justified the continued presence of the British occupation army in Egypt. The second reservation meant that the exercise of defense—a manifestation of state sovereignty—would fall under the jurisdiction of the British government. The third reservation opened the door to British interference in Egyptian internal affairs. Finally, the fourth reservation aimed to separate Sudan from Egypt and eradicate the idea of Nile Valley unity from the minds of all Egyptians and Sudanese. Therefore, Egypt did not recognize these reservations and continued to object to them and to colonial protection.

Faced with the signs of war between the Axis powers and Britain, the latter sought to de-escalate the conflict with the Egyptian people and their successive governments. Negotiations with Egypt commenced on March 2nd and culminated in the signing of the treaty on August 26th, 1936. This treaty declared Egypt an independent and sovereign state, bound to Britain by an alliance in both peace and war. It also stipulated the withdrawal of British forces from Egyptian cities and their redeployment to Suez, as well as the abolition of foreign privileges. This was unsatisfactory to the Egyptian people, prompting the Egyptian government to issue a law on October 8th, 1951, abrogating the provisions of this treaty.<sup>37)</sup>

Britain, however, did not recognize this cancellation. The Egyptian people continued their struggle against the British for their withdrawal from Egypt until the outbreak of the July 23, 1952 revolution.<sup>38)</sup> One of its political goals was to save the country from foreign occupation and colonialism.<sup>39)</sup> Finally, the revolutionary government succeeded in signing the Evacuation Agreement with England on October 19, 1954, which definitively abrogated the 1936 treaty and stipulated a period of 20 months during which all British forces would withdraw from the Republic of Egypt.<sup>40)</sup> In order to conduct its foreign policy completely independent of any foreign influences.<sup>41)</sup>

We believe that, despite reservations – and justifiably so – regarding the treaty of August 26, 1936, it allowed for the completion of Egypt's international legal personality, and consequently, the conclusion of treaties. In it, Egypt declared itself an independent and sovereign state, bound to Britain by an alliance in peace and war. Although it stipulated the transfer of British troops to Suez, legally speaking, Egypt became an independent and sovereign state. Britain's recognition of Egypt's independence and sovereignty was sufficient to restore Egypt's international personality. Evidence of this is what was published in "Al-Waqa'i' al-Misriyya" (The Egyptian Gazette), issue number (94), dated October 2, 1950, regarding Law No. 165

of 1950, concerning Egypt's accession to the Madrid Agreement on the International Registration of Marks. That is to say, the signing took place under the 1936 treaty and within the framework of the 1923 constitution.<sup>42)</sup>

**Second application: The colonial protection of the Hong Kong territory and its impact on the conclusion of treaties:** To begin with, Hong Kong has been part of Chinese territory since ancient times, and was occupied by Britain after a warOpium in 1840. Then, on December 19, 1984, the Chinese and British governments signed a joint declaration on the status of Hong Kong. This declaration affirmed the resumption of Chinese sovereignty over Hong Kong, effective July 1, 1997. The People's Republic of China also recognized Hong Kong as a special administrative region, in accordance with Article 31 of the Chinese Constitution. This was based on the principle of "one country, two systems." China did not apply its own policies to Hong Kong. Instead, the Chinese government established a specific policy for the territory, outlined in the Sino-British Joint Declaration. This policy was further embodied in the Basic Law, which China enacted to govern Hong Kong.<sup>43)</sup>

It follows from the above that the territory of Hong Kong has gone through two phases. The first was when it was an occupied territory under British colonial protection. Consequently, it could not conclude treaties because it did not possess the status of a state; it was merely an occupied territory. However, it was possible for the United Kingdom to declare the application of treaties to it as part of its territory, just as it declared the application of the Paris Convention for the Protection of Industrial Property to the territory of Hong Kong as part of the state.<sup>44)</sup> Second: At this stage, Hong Kong became part of the People's Republic of China. It is also not entitled to enter into treaties because it lacks the status of a state. While it might be permissible to benefit from the Madrid Agreement by China declaring it applicable to Hong Kong as part of its territory, has this actually occurred?

After the removal of colonial protection, the representative of the People's Republic of China submitted a statement on June 10, 1997, translated into English.<sup>45)</sup> The letter, dated June 6, 1997, from the Permanent Representative of the People's Republic of China to the United Nations Office at Geneva and other international organizations in Switzerland, included the statement that the People's Republic of China would resume exercising its sovereignty over the territory of Hong Kong.<sup>46)</sup> Hong Kong became a special administrative region of the People's Republic of ChinaSpecial Administrative Region of the People's Republic of China. It will enjoy a high degree of autonomy, except in foreign affairs and defense, which remain the responsibility of the People's Republic of China, effective July 1, 1997.<sup>47)</sup>

Applying the foregoing to the definition of "state," which is a prerequisite for joining certain agreements—such as the Madrid Agreement, as previously mentioned—it is worth noting that states under colonial protection do not fit the definition of "state" because they lack one of the essential elements of statehood: a sovereign governing authority with internal and external control. Therefore, states under colonial protection are not eligible to enter into treaties.

**2 - Nature Reserves Protectorates and their ability to conclude treaties.<sup>48)</sup>:**

This term is used in international law to refer to the relationship between a weaker state and a stronger state, where the weaker state transfers the administration of its most important affairs to the stronger state. This occurred during the period from 1653 to 1659 in English history, during the rule of the English leader Oliver Cromwell, when the protection and administration of Scotland and Ireland were transferred to England.<sup>49)</sup>

The most distinctive feature of the legal system of protectorates is that it stems from a treaty concluded between the two states. Under this treaty, the stronger state assumes the management of the weaker state's foreign affairs. The latter lacks international legal personality. The stronger state may also interfere in the weaker state's internal affairs, according to the treaty's provisions. The treaty may stipulate that the weaker state is completely deprived of the ability to manage its own foreign and internal affairs.

Britain was accustomed to managing the foreign and internal affairs of its protectorates. These included the Aden Protectorate, the Bechuanaland Protectorate, the British Solomon Islands Protectorate, the Gambia Protectorate, the Kenya Protectorate, the Nigeria Protectorate, Northern Rhodesia, the Northern Territory of the Gold Coast, the Nyasaland Protectorate, the Sierra Leone Protectorate, the Somaliland Protectorate, Swaziland, the Uganda Protectorate, and the Zanzibar Protectorate.

It follows from the above that the protectorate is incapable of managing its external affairs, and sometimes its internal affairs as well. This disqualifies it from being considered a state, as it lacks one or both of these attributes, and therefore, protectorates are not permitted to enter into treaties.

### **3 - Protected States Protected States and their capacity to conclude treaties.<sup>50)</sup>:**

The situation here differs from that of protectorates; the protected state retains its status as an independent state and its sovereignty despite concluding a protection treaty with another state. This treaty regulates the powers of the protecting state, and both parties may terminate it. In such a case, the protected state would regain all the sovereign powers previously granted to the protecting state.

The treaty between the two states may be limited to simply providing advice to the protected state, or to the presence of a resident diplomatic mission to adjudicate certain matters, as is the case with the city of Liechtenstein. Liechtenstein"<sup>(51)</sup> Its admission to the League of Nations was rejected because it was unable to fulfill all the international obligations stipulated in the treaty. Its permanent diplomatic mission possessed sovereign powers, such as diplomatic representation, management of the postal service, telegraph, telephone, and final decision-making in certain judicial matters.

This did not preclude any infringement upon its sovereignty as a state; it was a member of the Statute of the International Court of Justice and a party to a case. *Nottebohm*, which appeared before the International Court of Justice as a state – the dispute centered on the acquisition of nationality based on a genuine link between

the individual and the state – also joined the United Nations in 1990. These participations are only granted to states and not to other entities.

On a practical level, we find that the Kingdom of Morocco has signed a treaty Fez, March 30, 1912, with France. Under this treaty, France assumed sovereign powers on behalf of Morocco, including all its international relations. Despite this, the International Court of Justice affirmed Morocco's continued sovereignty as a state.

Although the treaty remained in effect from March 30, 1912, until March 2, 1956, it acceded to the Madrid Agreement Concerning the International Registration of Marks on July 30, 1917.<sup>52)</sup> As a sovereign state. Its sovereignty was not diminished by the French side's leading role in signing and ratifying accession to the Madrid Agreement, in accordance with the treaty. Fez, in signing and ratifying, did not overstep its role as an agent for Morocco, without prejudice to the latter's sovereignty. Morocco is the one whose name is listed among the members. It is Morocco that enjoys the privileges and bears the obligations.

Based on the above, it seems that practical reality supports the idea of "the sovereignty of the protected state"; although Morocco was a protected state, the International Court of Justice declared it to be a sovereign state.

Morocco's accession to the Madrid Agreement was a departure from the established conditions. A protected state is not an international legal entity; it lacks external sovereignty and may even have diminished internal sovereignty, thus negating its status as a state. Therefore, it cannot enter into treaties. This is further supported by the League of Nations' rejection of Liechtenstein's membership due to its inability to fulfill international obligations, confirming that protected states are not international legal entities.

As for its accession to the United Nations, the International Court of Justice's affirmation of Morocco's sovereignty at the time, and its acceptance as a member of the Madrid Agreement, the researcher finds no logical justification for these claims. The treaty concluded between the two parties, with one protecting the other, cannot be considered merely an agency agreement; the essence lies in the intentions and meanings, not in the words and structures. It is inconceivable that a state would conclude a treaty that would diminish its internal sovereignty, and even strip it of its external sovereignty, and yet we accept its complete international personality and recognize this treaty as a mere agency agreement. Despite the conclusion of a protectorate treaty between Morocco and France, we find the Moroccan people struggling for the expulsion of French colonialism from their country.<sup>53)</sup> It seems that her joining the agreement is nothing but a violation of its rules.

### **Third requirement: The formation of unions and its impact on the state's eligibility to conclude treaties:<sup>(54)</sup>**

States are divided, based on their structure, into simple states and composite states. A simple state is one in which a single authority manages its internal and external affairs. It thus operates under a single legal structure. The vastness of the state's territory, with separate authorities administering certain regions, or a hierarchy

of decision-making power, does not affect this unity of authority. These matters are regulated by each state's constitution or national law and do not alter the state's form, as long as there is a single government with ultimate authority over all internal and external affairs. Examples include Egypt, France, Turkey, Greece, Italy, and others. Therefore, the general consensus is that a simple state is eligible to enter into treaties; it possesses full sovereignty and constitutes an international legal entity capable of assuming international obligations.

As for the composite state A composite state is a union of several states formed to achieve common goals. This form of union holds particular importance in international law. It has appeared at various points in history in different models and types, including personal, real, confederal, and federal unions. Our focus here is on the extent to which these forms of union can conclude treaties. Therefore, we will examine the aforementioned forms of union and their treaty-making capacity as follows:

**First: The personal union and its ability to conclude treaties:**

It is a union between two or more states under a single head of state or ruler, while each state retains its complete independence and international legal personality. The unity here lies solely in the person of the ruler. Examples include the union between England and Hanover, which began in 1714 and ended in 1838, and the union between the Netherlands and Luxembourg, which began in 1815 and ended in 1890. In modern times, we find the union between the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, and New Zealand, with Queen Elizabeth II of the United Kingdom serving as its head of state.

This union does not affect, positively or negatively, the international legal personality of any of its member states. It does not entail the creation of a new state to administer the union, as each state retains its complete independence. This is evidenced by the United Kingdom's accession to the Protocol to the Madrid Agreement Concerning the International Registration of Marks, while Canada did not.<sup>55)</sup>We support the right of the constituent states of a personal union to conclude treaties, independently of the other states of the union.

**Second: The real or actual union and its ability to conclude treaties:**

This involves all member states of the union being subject to a single head of state. The member states are integrated only externally; in the eyes of public international law, they constitute a single state, while each state retains its own constitution and national legislation. Examples include: the union between Sweden and Norway, which began in 1815 and ended in 1905; the union between Denmark and Iceland, which began in 1918 and lasted until 1940; and the union between Austria and Hungary, which began in 1867 and lasted until 1918. This union acceded to the Madrid Agreement on the International Registration of Marks on January 1, 1909.<sup>56)</sup>That is, during the period of the union. With the dissolution of the union, Austria and Hungary, as independent members of the agreement, each had one vote in the Madrid Union Assembly.

Therefore, a true union is an international entity, enjoying full sovereignty. There is nothing preventing it from entering into treaties, but only as a single member state.



### **Third: The confederation and its ability to conclude treaties:**

It is a union between two or more states, with each state retaining its international personality and internal sovereignty. The union is limited to achieving specific principles and objectives outlined in an agreement concluded between a number of states. This agreement also establishes a joint body called an association or conference. Legal scholars have differed on the nature of this union. Some, notably German legal scholars, argue that it is not a state and therefore does not possess international personality. A second group of scholars recognizes the union as having a legal personality independent of its members, although this is limited to what is granted to it in the union's charter.

The international community adopted this latter view, considering the confederation a subject of public international law, possessing an international personality distinct from that of its constituent states, provided the confederation possessed an independent will separate from that of its member states. This designation was met with a degree of international recognition.

This union is distinguished by each state retaining its international legal personality, which entitles them to conclude treaties independently of the union itself. While the union is recognized as having international legal personality and the right to conclude treaties, this is limited to the powers delegated to it.

### **Fourth: Federal Union (Federal State) and its impact on treaty conclusions:**

A federal union is defined as a permanent union of different sovereign states. The union has authority over its members and their citizens. The foundations of a federal union rest on two pillars: first, the treaty establishing the union between the member states, which is merely an organizational procedure; and second, the acceptance by the members of the governing federal constitution, which is a fundamental pillar, as the constitution of the federal state establishes the rules of the union, determining whether or not the member states agree to abide by it.<sup>57)</sup>

This implies that the legal basis of the federal state can be amended without the consent of all member states. A simple majority, whether absolute or relative, is sufficient, as stipulated in the federal constitution. Therefore, the powers of member states can be reduced even without their consent. Furthermore, no state may secede from the federal state to establish an independent state. Federal bodies can also address the citizens of member states directly, without the mediation of those states.<sup>58)</sup>

Some of the most prominent examples are the United States, Canada, Australia, Switzerland, and Germany. A key advantage of federal states is that their constitutions divide internal power between the federal authorities and the member states of the union. Foreign affairs are usually handled by the federal authorities alone. However, there is no single model for federal states; many are "federal" in name only due to the effectiveness of their centralized systems.<sup>59)</sup> We will focus on the United States of America as an example of a federal union. The focus will be limited to its origins, the authority of the union itself, and the extent to which its constituent states have the right to enter into treaties independently of the federal union.

The Origins and Establishment of the United States of America as a Federal State: Most of the inhabitants of the United States are not native to the country. Rather, they came from European countries, especially Britain and Ireland. It was initially formed from thirteen separate British colonies when the American Revolution triumphed and North America declared its independence in 1778. These states formed a confederation among themselves. Then it became a federal state in 1788, after some of these states were divided into other states.<sup>60)</sup>

The federal authority of the United States of America: The U.S. Congress is the highest legislative authority in the country. It has the power to add states to the union, modify its borders, or even abolish a state if the state itself consents. The U.S. Congress consists of two houses: the Senate and the House of Representatives. The Senate is composed of two representatives from each state, while members of the House of Representatives are elected by voters in all states. The U.S. Constitution defines the powers of Congress, which include matters of defense, declaring war, paying the national debt, and so on.<sup>61)</sup>

Although the US Constitution clearly defines the powers of Congress on the one hand, and the powers of the president as the representative of the executive branch on the other, the US judiciary has permitted the delegation of (<sup>62)</sup>Congress grants the executive branch broad powers to exercise its authority in foreign relations. This is evident from the following issue:

**In the Curtis case, the court upheld Congress's delegation of foreign policy powers to the executive branch, whether explicitly stated in the Constitution or not.**<sup>63)</sup>Curtiss, the aircraft manufacturer, was negatively impacted during that period by the broad authorization granted to the legislative branch by Congress. This authorization allowed the president to issue an executive order prohibiting arms sales to countries involved in the armed conflict in South America (the Chaco region).

The company based its lawsuit on the argument that Congress cannot delegate broad powers to the executive branch in the realm of foreign relations, as this is not addressed in the U.S. Constitution.

The court based its decision on the principle that this action falls squarely within the legislative branch, a power vested solely in Congress, and that Congress cannot delegate this authority to any other body, according to traditional congressional practice. The district court therefore rejected this delegation of power to the executive branch.

The government immediately appealed the ruling, and the dispute was heard by the Supreme Court, which offered a different perspective. Justice Sutherland upheld Congress's decision to grant the president broad authority to issue an executive order prohibiting arms sales to certain countries. In his ruling, the justice noted that the usual limitations on broad legislative powers do not apply to foreign affairs, as the federal government's exercise of foreign sovereignty is not contingent upon explicit constitutional provisions.

The judge concluded that upon the separation of the United States from Great Britain, the powers of foreign sovereignty passed directly from the Crown to the Union, as foreign affairs are an inherent necessity of national sovereignty. The Court

further affirmed that "the President must act as the sole agent of the federal government in the field of international relations." Thus, the Court upheld Congress's decision to delegate broad powers of foreign policy to the executive branch.

Article II of the Constitution authorizes the President to make treaties. That is, the President negotiates and ratifies treaties, after consultation with and approval by a two-thirds majority of the Senate present. However, Article II refers only to treaties, while today the President often uses international agreements and conventions more frequently than formal treaties. In fact, executive agreements can be used quickly and commit the United States to acting unilaterally in foreign affairs without any congressional involvement. The increasing reliance of the executive branch on international agreements rather than treaties has led Congress to attempt to monitor and limit their use. Having largely failed, Congress has enacted legislation requiring it to be notified at least of the existence of an agreement.<sup>64)</sup>

**The eligibility of any of the United States states to conclude treaties:** We know that the federal union itself possesses the power to conclude treaties, as it is considered a single state with international legal personality. The question then arises: to what extent are the individual states of the United States of America also permitted to conclude treaties?

International law deals with states capable of entering into international relations, and not others. It recognizes a federal state as a state, but not its individual member states. If a member state of the federation acts in a manner that violates the obligations of the federal state, the latter is responsible under international law. For example, when a group of outlaws in New Orleans, Louisiana, killed some Italians in 1891, the United States accepted responsibility and paid compensation to Italy. However, combating crime and imposing punishment is not within the jurisdiction of the federal government, but rather falls under the jurisdiction of the state of Louisiana, as the state where the crime occurred.<sup>65)</sup>

Therefore, a statelet, or province within a federal union, does not possess the characteristics of a state (territory, population, governing authority, international recognition, and continued legal personality), and thus lacks international legal personality; its legal personality has been dissolved within the federal union. Consequently, it is incapable of entering into treaties.

## Conclusion

In conclusion, this brief overview of the legal implications of diminished sovereignty and the formation of unions on a state's capacity to enter into

treaties. We're done In addition to several findings and recommendations, the findings are as follows:

1 - A state eligible to conclude treaties is one that consists of a permanent population, Specific region A government that has effective control, as well as recognition, and whose international personality does not expire.

2 - Incomplete legal personality For dependent states, this restricts their ability to engage in external representation. In principle, they cannot conclude treaties. However, each case is considered individually. The dominant state may permit them to exercise their external sovereignty within certain limits.

3 – The concept of the state does not apply to Entities placed under colonial protection; FThe concept of "state" does not apply to it because it lacks one of the essential elements of a state: a sovereign governing authority with internal and external control. Therefore, it is not eligible to enter into treaties.

4 – Protectorates are unable to manage their own foreign affairs, and sometimes even their internal affairs. This disqualifies them from being considered states, and therefore they are not permitted to enter into treaties.

5 – Practical reality prevails Regarding the concept of "protected state sovereignty," although Morocco was a protected state, the International Court of Justice declared it a sovereign state. We disagree with this precedent; a protected state has no external sovereignty, and its internal sovereignty may even be diminished, thus negating its status as a state. It cannot enter into treaties. This is supported by the League of Nations' refusal to admit Liechtenstein due to its inability to fulfill its international obligations, confirming that protected states are not international legal persons.

6 -It is permissible The Confederation The conclusion of treaties is independent of the Union itself. As for the latter, although it is recognized as having international personality and the right to conclude treaties, this is within the framework of the powers granted to it.

7 – A federal union may conclude treaties. It has authority over its members and their citizens. States, or constituent countries within a federal union, do not have the status of a state and are therefore unable to conclude treaties.

#### **Recommendations:**

1 - Concluding an international charter that clarifies the concept of a state qualified to conclude treaties, and we call for benefiting from this research in this regard.

2 - Establishing an international court competent to make urgent decisions regarding the state's eligibility to conclude disputes, in the event of a dispute concerning its eligibility.

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## Footnotes

<sup>(1)</sup> Professor Dr. Ibrahim Muhammad Al-Anani, “Public International Law - The State,” Vol. 2, 1998, p. 88.

<sup>(2)</sup> Professor Dr. Peter Malanczuk "Akehurst's Modern Introduction to International Law" Seventh revised edition, Taylor & Francis e-Library, 2002. p. 75.



(3) Jean-Jacques Rousseau, "On the Social Contract or Principles of Political Law," translated, introduced, and annotated by Abdul Aziz Labib, Arab Organization for Translation – Beirut – Lebanon, First Edition, July 2011, p. 136.

(4) See Professor Dr. Ibrahim Muhammad Al-Anani, previous reference, p. 88.

(5) Within the framework of the growing legal understanding of the element of territory, international law scholars have addressed the issue of the nature of a state's right over its territory, and jurisprudential positions on this matter have varied, resulting in several theories, the most important of which are:

1- The Ownership Theory: Proponents of this theory view the state's right to its territory as analogous to the right of ownership, that is, as a real right. The state, as a legal entity, possesses ownership rights over its territory. Its advocates defend this theory based on the premise that the state's real right to its territory is of a different nature from private real rights established over parts of the territory, or from public ownership of other parts of the territory, such as canals, roads, deserts, lakes, and the like. Therefore, there is no conflict between them. They base their argument on the numerous international practices of some states ceding parts of their territories to other states in exchange for material compensation. This is analogous to real estate sales and internal transfers of ownership. Furthermore, the phenomenon of shared territories between some states, a situation similar to joint ownership, is observed in international life. Proponents of this theory see its importance in resolving some complex international problems. When a state refuses to concede territorial claims to another state, those problems can be addressed by establishing some real rights over the territory instead of completely relinquishing it and transferring it to the sovereignty of the state claiming it.

Despite the fierce criticisms leveled against this theory, which overlooked the political nature of the state's legal right over its territory and attempted to equate it with real estate ownership, this theory still has its supporters in modern jurisprudence.

2- The Scope Theory: According to this theory, territory is the sphere within which the state's powers are exercised. Despite its simplicity, this theory has not escaped criticism; it fails to consider situations where a state exercises its powers outside its territory, such as on the high seas or in the territory of other states through consuls and other agents.

3 – The Jurisdiction Theory: This theory complements the previous one, and its essence is that the territory of the state is the area of land in which the state exercises its jurisdiction. That is, wherever the legal system is applicable and its rules are enforceable.

The powers exercised by the state in the exercise of its sovereignty constitute its actual jurisdiction. To define this actual jurisdiction, it is necessary to identify those addressed by the orders and prohibitions issued by the state authorities. It is also necessary to define the geographical scope within which these orders and prohibitions are enforced. In other words, the state has personal jurisdiction and territorial jurisdiction. Personal jurisdiction defines the circle of individuals addressed by the state's commanding authority. Territorial jurisdiction defines the extent of its territorial authority.

Here, the territory is the administrative area within which the state exercises its authority. While the state's powers may extend beyond its territory, as it has personal jurisdiction over individuals holding its nationality, even if they reside outside its borders, the power of enforcement and coercion can only be exercised within its territory.

Professor Hamed Sultan argues that the legal nature of state territory is a blend of all these theories. The importance of territory, from a legal perspective, is evident in that it is the area within which the state exercises its sovereignty. Established principles of international law



recognize the supreme authority of the state within its territory. This territory is considered a subject of international law, stipulating that any person or thing entering or existing within a state's territory is automatically subject to the state's supreme authority. See: Professor Salah El-Din Amer, "Introduction to the Study of Public International Law," Dar Al-Nahda Al-Arabiya, 2003, p. 422 et seq.; Professor Ibrahim Mohamed El-Anani, op. cit., p. 90 et seq.; and Professor Jaafar Abdel Salam and Professor Mohamed Mustafa Younis, "Principles of Public International Law," Dar Al-Nahda Al-Arabiya, n.d., p. 276 et seq.

<sup>(6)</sup> Professor Dr. Salah El-Din Amer, previous reference, p. 422.

<sup>(7)</sup> Professor Dr. Peter Malanczuk. Op.cit, pp. 77-78.

<sup>(8)</sup> It is useful at this juncture to review the ruling issued by the General Assembly of the Fatwa and Legislation Departments regarding the formation and jurisdiction of the Egyptian government. The ruling states that "the 1971 Constitution defined the formation of the government and clarified its jurisdiction as the supreme executive and administrative body of the state. It stipulated that the government be composed of the Prime Minister, his deputies, ministers, and their deputies. The Constitution entrusted the Council of Ministers with several responsibilities, foremost among them being participation with the President of the Republic in formulating the state's general policy, overseeing its implementation, and directing, coordinating, and monitoring the work of ministries, their affiliated bodies, and public authorities. Furthermore, it granted the Council the authority to issue administrative and executive decisions in accordance with the law and to monitor their implementation, as well as to oversee the implementation of laws, maintain state security, and protect citizens' rights and the interests of the state. The Constitution also designated the Prime Minister as the supervisor of the government's work and the ministries and administrative bodies under its purview. Consequently, the Prime Minister is empowered to issue the necessary decisions to define and clarify the state's policy and the government's plan for its implementation. Through these decisions, the Prime Minister outlines the general direction that administrative bodies must adhere to in their actions when exercising their discretionary authority in managing the facilities under their jurisdiction." He conducts it from transactions involving the state's private funds." Fatwa of the General Assembly of the Fatwa and Legislation Departments, File No. 7/1/150, Session of December 5, 2012. Technical Office Collection, Vol. 67, No. 41, p. 264 et seq.

<sup>(9)</sup> It is worth noting that sovereignty cannot be transferred to another; for sovereignty is the power by which the will of the people is implemented, so to speak. In this regard, Jean-Jacques Rousseau says, "...since sovereignty is nothing but the exercise of the general will, it is never permissible to relinquish it, and since the sovereign, being only a collective entity, cannot be represented by anyone other than himself, authority can be transferred to another, but not the will." (Jean-Jacques Rousseau, op. cit., p. 105).

<sup>(10)</sup> Professor Dr. Ibrahim Muhammad Al-Anani, previous reference, p. 22.

<sup>(11)</sup> Professor Dr. Peter Malanczuk, op.cit, pp. 82-83.

<sup>(12)</sup> Professor Dr. John Westlake "International Law - Part I: Peace" Cambridge: at the University Press 1904, p. 63.

<sup>(13)</sup> Professor Dr. Ibrahim Muhammad Al-Anani, previous reference, pp. 26-28.

<sup>(14)</sup> See the First Committee of the Advisory Section for Fatwa and Legislation – Fatwa and Legislation Department of the Ministries of Foreign Affairs and Justice – Fatwa No. 260 dated October 5, 1959, Technical Office Collection, Vol. 14 and 15, No. 57, p. 85.

<sup>(15)</sup> Professor Dr. L. Oppenheim "International Law – A Treatise" vol. 1. Peace. Longmans, Green, and Co. 1905. P. 101.



<sup>(16)</sup>Professor Dr. Miyoshi Masahiro (Professor Emeritus of International Law Aichi University, Japan) "Sovereignty and International Law" Durham University Paper. p.7. Available

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<sup>(17)</sup>See Article (2/7) of the Charter of the United Nations, which states: "Nothing contained in the present Charter authorizes the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state, nor does it require the Members to submit such matters to settlement under the present Charter; however, this principle does not prejudice the application of enforcement measures provided for in Chapter VII."

<sup>(18)</sup>Professor Dr. Ibrahim Muhammad Al-Anani, previous reference, p. 103.

<sup>(19)</sup>Professor Dr. L. Oppenheim. Op.cit, pp. 133-137.

<sup>(20)</sup>He was the ninth sultan of the Ottoman dynasty and the first caliph, as the sultans before him were not caliphs. He was the first to be proclaimed caliph. The sultans after him also became caliphs, meaning each was both sultan and caliph, possessing both political and religious authority. Sultan Selim I defeated the Mamluks, led by Tuman Bay, and entered Egypt. The Ottomans relentlessly pursued the Mamluks in Cairo, killing those who remained. However, under the pretext of pursuing the Mamluks, Cairo was looted by the Ottomans. They seized camels and mules, plundering everything in sight, and targeted the grain silos in Cairo and Bulaq, looting the grain stored there. Some contemporary poets even wrote about this:

We weep for Egypt and its people, for its once-prosperous foundations have been destroyed. She became humiliated and subjugated after having been the conqueror.

Historian/ George Zaidan "Ottoman Egypt", Hindawi Foundation for Education and Culture, 2012 AD, electronic version, p. 37, p. 49.

<sup>(21)</sup>The weakness and illness plaguing Egypt at the time facilitated the French campaign. It was ruled by Sultan Selim III from 1789 until the French invasion in 1798. The son of Sultan Mustafa III, he assumed the sultanate at the age of 28. He ruled with injustice and the state was weakened. He exerted his efforts in reform, but despair had already gripped the soldiers and their morale had waned. In 1205 AH (1791 CE), a plague struck Cairo and the rest of Egypt. The country had never before suffered such a devastating epidemic, with the death toll reaching nearly a thousand per day in Cairo alone. Three rulers were appointed in a single day because Ismail Bey contracted the plague, and one after another took his place, until everyone in Ismail Bey's household perished, except for one man named Uthman Bey al-Tabl, who became the head of the city. This plague remains infamous for its devastation and is known as the Plague of Ismail. (See previous reference, p. 138.)

<sup>(22)</sup>Professor Dr. Raafat Ghoneimi El-Sheikh, "Egypt and Sudan in International Relations," Alam Al-Kutub (electronic version, Historical Studies and International Relations Authority - 4-). 1979, p. 9 and beyond.

<sup>(23)</sup>Turkey was disturbed by this leadership, as it was unfamiliar with the governors it sent to Egypt annually, dismissing them at will. It dispatched Kapudan Pasha to Egypt with 2,500 soldiers to determine which governor to retain: Khurshid Pasha (the deposed governor) or Muhammad Ali. Kapudan Pasha recognized Muhammad Ali's strength, popular support, and leadership. Without hesitation, he returned with Khurshid Pasha. He remarked of Muhammad Ali, "I am leaving in Egypt a man whom the state will one day find to be among its greatest and most dangerous adversaries. Our sultans have never been fortunate enough to find a man like this Pasha in his cunning, decisiveness, and unwavering resolve." Time proved this assessment correct, for Muhammad Ali rebelled against Turkey, defeated its armies, and

shook the foundations of the Ottoman Sultanate, nearly toppling it, had Europe not intervened. See historian Abd al-Rahman al-Rafi'i, "The Era of Muhammad Ali," Dar al-Ma'arif, fifth edition, 1409 AH - 1989 CE (electronic version), pp. 27-32. Available at the following link:

<https://www.kutub-pdf.net/book/%D8%B9%D8%B5%D8%B1-%D9%85%D8%AD%D9%85%D8%AF-%D8%B9%D9%84%D9%8A.html>

<sup>(24)</sup>The same previous reference, pp. 57-59.

<sup>(25)</sup>The same previous reference, pp. 290-292.

<sup>(26)</sup>Professor Dr. L. Oppenheim. Op.cit, pp. 135.

<sup>(27)</sup>Professor Dr. Ibrahim Muhammad Anani, previous reference, pp. 31-32.

<sup>(28)</sup>See in general our doctoral dissertation entitled "The Madrid System on International Trademark Registration: Between What Is Available and What Is Expected", Faculty of Law, Beni Suf University, 2019.

<sup>(29)</sup>See the lecture by Professor Dr. Ali Hadi Hamidi Al-Shakrawi, "Second Year - Political Systems," College of Law, University of Babylon. Available electronically through the university's e-learning system. December 16, 2011. Available at the following link:

<http://www.uobabylon.edu.iq/uobColeges/lecture.aspx?fid=7&lcid=24306>

Last visit on June 17, 2016.

<sup>(30)</sup>This includes the speech of Queen Victoria on January 7, 1882, in Parliament, where she said: "I will exert the utmost of my influence to preserve the rights that already exist, whether established by royal decrees or various international agreements, and this will be done in a spirit of goodwill towards the government of the country and the improvement of its systems, coupled with firmness and wisdom."

On June 25, 1882, Lord Dugrain and representatives of the five Great Powers signed the Charter of Innocence for Egypt. Page 33 of it stated: "All the Governments represented here undertake – in whatever arrangements may be made between them to organize the affairs of Egypt – not to seek to acquire any of its territory, or to obtain any special privilege or commercial advantage for its nationals, other than the ordinary privileges to which the nationals of other countries may share."

On July 28, 1882, the Egyptian Gazette published a copy of the letter sent by Admiral Seewer on July 26, 1882, to Khedive Tawfiq, in which he said: "I think the time is right for me to reaffirm to Your Highness, in my capacity as Admiral of the English Fleet, that the Government of Great Britain has absolutely no intention of conquering Egypt, or interfering in the religion and freedom of the Egyptians in any way. Rather, its sole aim is to protect Your Highness and to protect the Egyptian people from the rebels."

In letter No. 23, page 13, dated June 17, 1884, Lord Granville says the following: "Her Majesty's Government... desires that the evacuation be carried out at the beginning of 1888, on the condition that the Great Powers at the time agree that this action is not feared to be detrimental to peace and order."

On June 10, 1887, Lord Malmesbury declared in the House of Lords: "We have no desire to declare a protectorate over Egypt, because Her Majesty's Government has always pledged that it does not wish to undertake that task."

On May 1, 1891, Mr. Gladstone declared in the House of Commons: "I cannot but agree... that the occupation of Egypt is a heavy burden and a problem, and that the permanent occupation of the Nile Valley would be contrary to our traditional policy and contrary to the laws of Europe. I will not be the man to establish a new principle that we have discovered a



duty that releases us from the pledges and covenants we have undertaken of our own free will... It would not save our honor from harm to mention at all that we are bound by sacred covenants that preclude the idea of permanent occupation, and to interpret that endless occupation in a way that, for secondary considerations, prevents the enforcement of the pledges we have undertaken.”

See in this regard: Monsieur Theodore Zowdstein (translated by: Ali Ahmed Shukri) “History of Egypt Before and After the British Occupation” 1927 AD. pp. 16-25.

<sup>(31)</sup> The same reference as above.

<sup>(32)</sup> This is the text of the published announcement:

(Declaration placing Egypt under the protection of Great Britain)

"The Secretary of State for Foreign Affairs to His Majesty the King of Great Britain declares that, in view of the state of war caused by the actions of Turkey, Egypt has been placed under His Majesty's protection and is henceforth a British protectorate. Turkish sovereignty over Egypt has thus ceased, and His Majesty's Government will take all necessary measures to defend Egypt and protect its people and interests." (Egyptian Gazette, December 18, 1914)

<sup>(33)</sup> Historian Abd al-Rahman al-Rafi'i, "The 1919 Revolution – A National History of Egypt from 1914 to 1921," Dar al-Ma'arif, 4th edition, 1987. This book was reviewed by Counselor Helmy al-Sibai Shahin, former Deputy Head of the Government Cases Authority. (Electronic version). pp. 30-31. Available on the Bibliotheca Alexandrina website. [http://www.bib-alex.com/21\\_th.php](http://www.bib-alex.com/21_th.php)

<sup>(34)</sup> The same reference as above, p. 549.

<sup>(35)</sup> The same previous reference, pp. 565-566.

<sup>(36)</sup> Professor Dr. Ibrahim Muhammad Anani, previous reference, p. 34.

<sup>(37)</sup> October 8, 1951, was a pivotal day in Egypt's national history. That evening, Parliament convened in joint session, and Prime Minister Mustafa al-Nahhas delivered a comprehensive statement outlining the government's policy regarding the 1936 treaty. He announced the termination of political negotiations, which had been ongoing under the Wafd Party government, between the Egyptian and British governments (having proven futile). He declared the abrogation of the August 26, 1936, treaty, as well as the January 19 and July 10, 1899 agreements concerning the administration of Sudan. The decrees containing the draft laws implementing this abrogation were submitted to Parliament. Both houses of Parliament received these decrees with overwhelming support and enthusiasm. Representatives of the opposition in both houses stood and declared their support for the government's position, and Parliament unanimously approved the decrees. They were subsequently issued as Laws No. 175, 176, and 177 of 1951. It was published in the Official Gazette, Issue No. 16, October 17, 1951. The country received the abrogation of the 1936 treaty with joy and enthusiasm, demonstrating its readiness to give and sacrifice, as it had in times of crisis. The people prepared to fight the British in the Suez Canal. The revolutionary national spirit that had emerged in the 1919 revolution was evident in the people. (Historian Abd al-Rahman al-Rafi'i, "Preludes to the July 23, 1952 Revolution (The Struggle in the Canal – The Cairo Fire – The Ministries of Civil Servants – The Causes of the Revolution – Farouk Paves the Way for the Revolution)," Dar al-Ma'arif, 3rd edition, 1407 AH - 1987 CE. This book was reviewed by Counselor Helmy al-Sibai Shahin, former Deputy Head of the State Lawsuits Authority. (Electronic version), pp. 25-26.)

<http://arablib.com/harf?view=book&lid=8&rand1=cTFZSVNwYjdlQ1Yp&rand2=Y2ppaCR SJUVPRzVr>



<sup>(38)</sup>It is worth noting that even after the entire army joined the movement on the morning of July 23rd, no one could be certain that the dangers had passed. The entire Egyptian army had been under the command of Ahmed Orabi in 1882 when he declared his revolution against Khedive Tawfiq, but the agreement between the British army and Khedive Tawfiq had led to the disaster of Tell El Kebir and the British occupation. How, then, could the outcome be guaranteed on the morning of July 23, 1952, with King Farouk in Alexandria and the British occupation forces, numbering over eighty thousand soldiers, in the Canal Zone, separated from Cairo by no more than one hundred kilometers? Thus, it was impossible to declare the movement a success and the dangers over until 6:00 PM on July 26, 1952, when King Farouk left the country aboard the royal yacht Mahrousa and lowered the royal flag from the flagpole of Ras El Tin Palace. (Dr. Rifaat Younan, "Mohamed Naguib: Leader of a Revolution or a Frontman of a Movement?" Part 18 of the series "History - The Other Side - A Re-reading of Egyptian History"). Dar Al Shorouk, 1st edition, 2008 AD, pp. 42-43.

<sup>(39)</sup>Historian Abd al-Rahman al-Rafi'i, "Preludes to the July 23, 1952 Revolution," previous reference, pp. 156-159.

<sup>(40)</sup>Professor Dr. Abdullah Abdul-Raziq Ibrahim – Professor Dr. Shawqi Al-Jamal "The History of Modern and Contemporary Egypt and Sudan" Dar Al-Thaqafa for Publishing and Distribution, Electronic Version, 1997 AD, p. 309.

<sup>(41)</sup>Professor Dr. Ibrahim Muhammad Al-Anani, previous reference, p. 36.

<sup>(42)</sup>It was not only Egypt's constitution at the time of the Madrid Agreement, but it remained so even after the outbreak of the July 23, 1952 revolution. General Muhammad Naguib and his colleagues hesitated for a long time before declaring the 1923 constitution null and void, freeing themselves from its constraints and provisions immediately after the success of their movement. This hesitation stemmed from their uncertainty regarding the next steps after declaring the constitution null and void. Would this entail declaring the monarchy null and void as well? Should a new constitution be issued to replace the fallen one? Which body would have the authority to draft it? A government committee or a constituent assembly? Would it be appropriate to hold elections immediately to choose this constituent assembly? What if the constitution issued by this committee or the elected constituent assembly did not align with the ideas of the military leaders—those new rulers who seized power on the night of July 23? Would they implement that constitution or present the people with another constitution of their own making? And if the country resumed normal constitutional life, regardless of the content of the new constitution, what would become of them? Would they return to their barracks or resign from the army to enter politics? And wasn't establishing a sound democratic life the sixth and final objective of the six goals of the revolution? These were truly perplexing and troubling questions, but the leaders of the July 23, 1952 movement had to decide: either to return to the text of the 1923 constitution and adhere to it in its entirety, or to amend what needed amending, or to abandon it altogether, thus bringing relief to themselves and others. This last solution was the one they ultimately settled on. On the morning of Wednesday, December 10, 1952, President Mohamed Naguib broadcast a statement to the nation announcing the abrogation of the 1923 constitution. He indicated that a new constitution would be drafted by an appointed committee. Given the lengthy time required to draft the constitution, the government and the Revolutionary Command Council recognized the urgent need for a temporary system to govern the country during the transitional period, defining the powers and responsibilities of each state institution. On February 10, 1953, a "Constitutional Declaration" was issued by Major General Muhammad Naguib in his capacity as Commander-in-Chief of the Armed Forces and leader of the



military revolution. The Constitutional Committee finalized its draft in August 1954, but this parliamentary republican constitution was shelved, and a permanent constitution was not issued until January 16, 1956. (Dr. Rifaat Younan, op. cit., pp. 61-65).

<sup>(43)</sup> Preamble to the Basic Law of the Declaration of Hong Kong as a Special Administrative Region of the People's Republic of China:

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted at the Third Session of the Seventh National People's Congress on 4 April 1990 Promulgated by Order No. 26 of the President of the People's Republic of China on 4 April 1990 Effective as of 1 July 1997). Available at: <http://www.wipo.int/edocs/lexdocs/laws/en/hk/hk156en.pdf>

<sup>(44)</sup> The Paris Convention applied to Hong Kong, but not as a member state; rather, as a territory of a member state, it was under the colonial protection of the United Kingdom of Great Britain and Northern Ireland. The latter submitted a declaration to the Director-General of the World Intellectual Property Organization (WIPO) on August 9, 1977, asserting its claim to the application of the Convention to Hong Kong as part of its territory, as expressly permitted by Article 24(1) of the Paris Convention. See:

"Paris Notification No. 91 - Paris Convention for the Protection of Industrial Property Application of the Paris Convention to the Territory of Hong Kong". Available at: [http://www.wipo.int/treaties/en/notifications/paris/treaty\\_paris\\_91.html](http://www.wipo.int/treaties/en/notifications/paris/treaty_paris_91.html)

<sup>(45)</sup> المملكة وحكومة الشعبية، الصين حكومة بين المشترك للإعلان وفقاً: أيضاً باريس لاتفاقية بالنسبة للبيان ذات وتكرر على سيادتها الشعبية الصين حكومة استئناف مفاده. كونج هونج مسألة بشأن الشمالية، وإيرلندا العظمى لبريطانيا المتحدة بجمهورية خاص إداري إقليم كونج هونج أصبحت التاريخ، ذلك ومنذ 1997م. عام يونيو من 6 من اعتباراً كونج هونج بدرجة وسيتمتع Special Administrative Region of the People's Republic of China. الشعبية الصين للخطاب وفقاً. الشعبية الصين جمهورية مسئولية من فهي والدفاع، الخارجية الشئون في إلا. الذاتي الحكم من عالية الاتفاقية، تطبيق نطاق لتمديد بطلب الصين، ممثل تقدم فقد الشعبية، الصين لجمهورية الخارجية وزير لتفويض السابق، عن المسئولة هي الشعبية، الصين جمهورية تكون أن على 1997م. عام يوليو من الأول من اعتباراً كونج هونج إقليم: أنظر. كونج هونج إقليم على الاتفاقية تطبيق عن الناشئة الدولية والالتزامات الحقوق

"Paris Notification No. 179 Paris Convention for the Protection of Industrial Property Cessation of Responsibility of the United Kingdom, from July 1, 1997, for International Rights and Obligations Arising from the Application of the Paris Convention to Hong Kong" Available at: [http://www.wipo.int/treaties/en/notifications/paris/treaty\\_paris\\_179.html](http://www.wipo.int/treaties/en/notifications/paris/treaty_paris_179.html)

<sup>(46)</sup> جمهورية لدستور وفقاً الصين في الخاص الإداري كونج هونج لإقليم الأساسي القانون الوطني الشعبي المؤتمر سن 4/4/1990م في صدر وقد. الصين في الخاصة الإدارية كونج هونج لإقليم مصغر دستور إلى أقرب وهو الشعبية، الصين الأنظمة جميع تستند أن ويجب. الصين في الخاص الإداري كونج هونج إقليم قيام عند 1/7/1997م في النفاذ حيز ودخل القانون هذا ويشمل. الأساسي القانون أحكام إلى الصين في الخاص الإداري كونج هونج منطقة في تمارس التي والسياسات والتشريعية التنفيذية والأنظمة للسكان، الأساسية والحريات الحقوق صون ونظام والاقتصادية، الاجتماعية الأنظمة كونج هونج إقليم التشريعية السلطة تسنه قانون لأي يجوز لا ذلك، على وعلاوة بها الخاصة والسياسات والقضائية أن ينبغي أنه على 140 و 139 المادتين في ينص والذي. الأساسي القانون مع يتعارض أن الصين في الخاص الإداري القانونية الحماية لها توفر وأن الفكرية الملكية لحقوق الملازمة سياساته كونج هونج إقليم يُطور

The legal system for the protection of intellectual property rights in Hong Kong during British colonial rule, before China resumed sovereignty over Hong Kong on July 1, 1997, consisted of a variety of locally enacted legislation, the application of UK legislation, and common law and equity rules. The UK Copyright Act of 1956 applied directly in Hong Kong until June 27, 1997, with some transitional arrangements. Local legislation enacted before 1997 included, for example, the Marks Acts of 1898 and 1954, and the UK Industrial Designs (Protection) Act. Most of Hong Kong's pre-1997 intellectual property laws were modeled on

those of other common law countries, particularly the UK. Since its reunification with China, Hong Kong has gradually adapted its intellectual property legislation to local standards. The application of common law and the rules of justice in Hong Kong continues to this day under the Basic Law. For more information, see the Weibo website at the following link:

<http://www.wipo.int/wipolex/ar/details.jsp?id=6277>

<sup>(47)</sup>“Madrid Notification No. 91 Madrid Agreement Concerning the International Registration of Marks Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks - Deferred Application of the Madrid Agreement and the Protocol to the Hong Kong Special Administrative Region” Available at:[http://www.wipo.int/treaties/en/notifications/madridp-gp/treaty\\_madridp\\_gp\\_91.html](http://www.wipo.int/treaties/en/notifications/madridp-gp/treaty_madridp_gp_91.html)

<sup>(48)</sup>Professor Dr. L. Oppenheim. Op.cit, pp. 137-140.

See also:

Professor Dr. Malcolm N. Shaw, “International Law” Sixth edition, Cambridge University Press, 2008. pp. 216 – 217.

See also:

Professor Dr. Peter Malanczuk, op.cit, p. 81.

And consider this as well:

“Protectorates and Protected States” Available at:[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/268033/pan\\_dpstates.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268033/pan_dpstates.pdf)

<sup>(49)</sup>Bryan A. Garner (Editor in Chief) “Black's Law Dictionary” Ninth Edition. WEST A Thomson Reuters business. 2009. p. 1344.

<sup>(50)</sup>Professor Dr. Malcolm N. Shaw. Op.cit, pp. 216 -217.

<sup>(51)</sup> A landlocked country located in the Alps, in Central Europe. It is bordered by Switzerland to the west and south, and Austria to the east. Its area is approximately 160 square kilometers.

<sup>(52)</sup>Members of Madrid Union. Available at:[http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/madrid\\_marks.pdf](http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/madrid_marks.pdf) (Status on October 31, 2019).

<sup>(53)</sup>Although this form of state (protectorate) appears on the surface to be a consensual, contractual arrangement that preserves the sovereignty of the protected state, it is in fact a form of occupation. It is worth noting the resistance of the Moroccan people to this French occupation, and among the manifestations of this resistance was the Moroccan armed resistance from 1912 to 1934, which included:

**a) Tribes of the South and the Desert:**The tribes of the south and the Sahara rallied around Ahmed al-Hiba to lead the jihad against the occupiers, but they were defeated in the Battle of Sidi Bou Othman on September 7, 1912, due to the cowardice of the movement’s senior leaders who pretended to support him out of fear for their positions. After Ahmed al-Hiba’s death in 1919, his brother succeeded him as head of the movement, and he continued to resist the occupation until 1934.

**b) Tribes of the Middle Atlas:**The most important resistance that emerged in the Middle Atlas was that led by Mahammou Zayani, especially in the Battle of El Herri in November 1914, which ended with the defeat of the French army and its resorting to the air force. However, Mahammou stood firm against the French forces until the year 1920, when he was martyred with the weapon in his hands.

**c) Tribes of the Anti-Atlas and High Atlas:**The Ait Atta tribes, led by Assou Oubaslam, resisted the French occupation of the High Atlas Mountains and inflicted several losses on the French army, particularly in the Battle of Bougafer in 1933. This forced the French forces to



call in reinforcements to the region, tightening the noose around the resistance fighters until Oubaslam surrendered in 1933.

**d) Rural tribes:** Muhammad ibn Abd al-Karim al-Khattabi led the resistance movement in the north against the Spanish occupation, achieving a major victory against them at the Battle of Annual in 1921.

See the article by Mr. Rachid Ahmami, "Morocco under the Protectorate System," at the following link:

<http://www.khayma.com/rachidgeo/regime%20de%20protectorat%20maroc.htm>

Last visit on June 15, 2016.

<sup>(54)</sup>Professor Dr. Salah El-Din Amer, previous reference, p. 669 et seq. Professor Dr. Ibrahim Mohamed El-Anani, previous reference, p. 99 et seq. Professor Dr. Jaafar Abdel Salam - Professor Dr. Mohamed Mustafa Younes, previous reference, p. 324 et seq.

<sup>(55)</sup>Members of Madrid Union. Available at:[http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/madrid\\_marks.pdf](http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/madrid_marks.pdf) (Status on October 31, 2019).

<sup>(56)</sup>Loc.cit.

<sup>(57)</sup>Professor Dr. L. Oppenheim, op.cit, p. 129.

<sup>(58)</sup>Dr. Nouri Talabani, "On the Concept of the Federal System," an article published in the Journal of the Iraqi Scientific Academy - Kurdish Section, Second Edition, 2005. Erbil. Ministry of Education Press. pp. 12-13.

<sup>(59)</sup>Professor Dr. Peter Malanczuk, op.cit, p. 81.

<sup>(60)</sup>Dr. Nouri Talabani, previous reference, p. 26.

<sup>(61)</sup>The same previous reference, pp. 26-27.

<sup>(62)</sup>This is unlike the situation in the Arab Republic of Egypt, where the judiciary cannot authorize a delegation other than that authorized by the legislature. That is, the legislature alone has the right to delegate, not the judiciary. In this regard, the Supreme Administrative Court states: "If the legislature assigns a person a jurisdiction that he must exercise personally, the principle is that the legislature, in distributing jurisdictions, has considered the degree of responsibility in the exercise of that jurisdiction by the person assigned it. Therefore, it is not permissible for him to delegate to another the exercise of the jurisdiction assigned to him, unless the legislature authorizes this delegation; otherwise, this would be an abdication of jurisdiction and an evasion of responsibility." Appeal No. 10105 of Judicial Year 55 (Supreme) (Eleventh Circuit), Session of February 16, 2014, Technical Office Collection, Supreme Administrative Court, Vol. 59, Part 1, No. 33, p. 373 et seq.

The Supreme Administrative Court also ruled that "if an administrative authority is entrusted with a specific jurisdiction by law or regulation, it may not relinquish or delegate it to another authority or entity. This is because exercising that jurisdiction is a legal obligation, not a right that it may delegate to others. Delegation is permissible only exceptionally if the law contains a provision authorizing it. In this case, the delegation decision must be specific so that the authority holder does not relinquish all the jurisdictions granted to him by law, since the principle is that jurisdiction is exercised and not waived." Appeal No. 32157 of Judicial Year 57 (Supreme) (Eleventh Circuit), Session of February 22, 2015, Technical Office Collection, Supreme Administrative Court, Vol. 60, Part 1, No. 46, p. 468 et seq.

The Supreme Administrative Court ruled that "the delegation of authority, when permissible, must be explicit, as it cannot be presumed or inferred from inferential means that do not express it explicitly and do not lead to it with certainty. This is because delegation is an assignment of power and a transfer of jurisdiction, and therefore it must be expressed in a way

that definitively establishes the will of the delegate. The absence of any reference to delegation in the preamble of the decision renders it issued by someone who does not legally possess the authority to issue it." Appeal No. 25096 of Judicial Year 55 (Supreme) (Tenth Circuit), Session of April 22, 2015, Technical Office Collection, Supreme Administrative Court, Vol. 60, Part 2, No. 80, p. 835 et seq.

<sup>(63)</sup>United States v. Curtiss-Wright Export Corp., 14 F. Supp. 230 (SDNY 1936).

<sup>(64)</sup>Professor Dr. Jerome A. Baron – Dr. S. Thomas Dennis, "A Concise Guide to Constitutional Law: The Fundamental Principles of the U.S. Constitution," translated by Mohamed Mostafa Ghoneim, reviewed by Hind El-Bakly. A gift from the United States of America to the Library of Alexandria and the Egyptian people, October 16, 2002, Egyptian Society for the Dissemination of Knowledge and World Culture, p. 140.

<sup>(65)</sup>Professor Dr. Peter Malanczuk, op.cit, p. 81.