



Legal framework for foreign debt of countries

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Abstract

Foreign loans have distinct provisions regarding their legal nature, foreign loans are different than sources of international financing such as foreign investment, and foreign aid. Moreover, foreign loans differ from internal loans, including interest rates, borrowing conditions, loan donors, and other factors. The paper focuses on the idea that an international debt contract takes many forms such as an international treaty, it needs to a treaty requires the fulfillment of specific formal and substantive conditions to acquire its international legal status. The research problem revolves around the legal nature of the international public loan, which differs from the national public loan. The research found International foreign debt agreements concluded by the borrowing State with other States or international economic organizations are considered international treaties because their parties in all cases are subjects of public international law, and therefore subject to the provisions of public international law. However, it differs from it in terms of the details of how it materializes, except for the form element of the legal authorization by the legislature to conclude a treaty on international foreign debt.

Keywords: Legal framework, foreign debts, international transactions.



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Introduction

Foreign loans have their own provisions in terms of their legal nature, and distinguish them from other sources of international financing such as foreign investment, foreign aid, and also distinguish them from internal loans in several respects, for example, they are distinguished in terms of interest, borrowing conditions, and loan donors ... etc. of differences.

The legal nature of the international public loan differs from the legal nature of the national public loan, where there is a wide disagreement between the two types, and it is only united by the subject, which is the state's access to the amount of debt.

Research Objectives: The research aims at the following:

1. Know the laws and international treaties that play a crucial role in the regulation and management of these debts, as they contribute to ensuring that the parties comply with the agreed terms and protect the rights of creditor and debtor countries.
2. The existence of international legal mechanisms to deal with cases of default, as borrowing countries face economic and political challenges that affect their ability to meet their financial obligations.
3. The legal framework seeks to enhance transparency in financial agreements and ensure long-term financial sustainability, thereby helping to achieve international financial stability.
4. The legal framework for foreign debt must be integrated with the national economic policies of borrowing countries, ensuring the achievement of sustainable development goals and promoting economic growth.



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An integrated and comprehensive international legal framework for foreign debt that can contribute to enhancing financial justice, achieving economic stability, and guaranteeing the rights of all parties involved.

These objectives will help build a comprehensive understanding of the legal framework of foreign debt of countries, and provide insights and recommendations for improving debt management at the international and national level. **Research hypothesis:** This research assumes that the legal framework for foreign debt of countries differs significantly from the legal framework of the internal debts of countries due to the multiplicity of parties involved, the complexity of contractual terms, and international legal effects, and also foreign debt usually includes creditor countries, international financial organizations, and private financial institutions, which requires an international legal framework that regulates relations between them. **The research depends** on the analytical and inductive approach of an agreement concluded by borrowing countries with international lenders such as the International Monetary Fund, or with local bodies such as foreign banks, in order to know the legal nature of these agreements. **We will address the research** in two requirements dealing with various aspects of the subject, as well as the introduction, and conclusion, as it deals with the first requirement (**The concept of Foreign debt and its importance**) through two branches, the first branch deals (**definition of foreign debts**), while the second branch discusses(**the importance of foreign debts**), and deals with the second requirement(**the legal nature of foreign debts**) through two branches, the first branch deals with the {**legal nature of loans concluded with private foreign persons (national foreign debts)**} while the second branch discusses the { **legal**



nature of loans Concluded with international persons (international foreign debts)}.

The First Requirement

The concept of Foreign debt and its importance

The international debt contract may take the form of an international treaty, and the treaty is defined as "written agreements concluded between two or more persons of international law within the framework of the latter, and with the intention of arranging legal effects"ⁱ, This means that the treaty can be concluded between states, or between states, international organizations, or between the organizations themselvesⁱⁱ, and that the treaty is an agreement between two persons, or more persons of international law aimed at producing certain legal effects, and also defined as an international agreement between two or more states in writing and subject to international law, whether it is in a document One or more of them, whatever the designation applied to it, and this treaty requires the fulfillment of formal and other objective conditions in order to acquire its international legal statusⁱⁱⁱ. Foreign debts are subscribed to by individuals residing outside the country, that is, foreign debts are financed from foreign savings, and often the borrowing state puts on loan bonds some guarantees, advantages in addition to interest, and the benefits are usually relatively low in the internal debt compared to the interest granted in the external debt, in order to encourage foreign capital owners (individuals, international institutions) to grant credit to the borrowing state, and thus subscribe to foreign debt, and a major disagreement has arisen in jurisprudence The legal about adapting the nature of foreign debt contracts, and several different trends have emerged in it, Accordingly, we will



address the topic through two branches, the first branch deals with (**definition of foreign debts**), while the second branch discusses (**the importance of foreign debts**).

The first branch

Definition of foreign debts

Foreign debts in which the lender is one of the natural or legal persons from outside the state (foreign nationals, states, international organizations and bodies such as the International Monetary Fund, held by the government in foreign markets, meaning that the subscribers to this debt are foreigners, whether they are individuals, or international and regional financial institutions, in other words, it means that the state obtains sums of money from countries, bodies, or international organizations, Foreign debt has been defined by a set of definitions, including the following:

1. It is an agreement between the government or one of its institutions with an external source to obtain financial or real resources with the obligation to repay those resources and the amounts due from them (interest) within a future period of time agreed upon at the time of the debt contract^{iv}.
2. Those amounts borrowed by a national economy, for which the term of debt exceeds one year, and which are payable to the lender by payment in foreign currencies, or by exporting goods and services to it, and payment shall be made, either through national governments, official subsidiary bodies, or through official public bodies guaranteeing the obligations of such individuals and private institutions, The preceding concept of external borrowing excludes loans whose duration is less than one year, as well as in this Definition of debt unsecured by governments^v.



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3. It is the money lent by various foreign sources of lending to countries, based on a set of prevailing financial and commercial rules and principles, according to market conditions, with a pledge to refund them and pay interest on them, according to agreed terms^{vi}.

The World Bank defines it as: "Resources [real or material] that can be obtained from non-residents and are payable in foreign currencies, goods or services^{vii}."

The second branch

The importance of foreign debts

The importance of foreign debts is as follows:

1. Foreign debts achieves for the country obtaining purchasing power in foreign currencies, facilitates the process of financing economic development, in other words, foreign debt means an amount of money obtained by the state from foreign governments, or from international financial institutions in foreign currency, and includes interest with the determination of the maturity period, with the aim of developing infrastructure projects, and the national productive base. Foreign debts dominates the rest of the sources of financing in terms of taking the largest share of foreign flows directed to developing countries^{viii}. Loans obtained by the State from various foreign lenders, in various forms, make the ownership of the various assets with which they are financed national, not foreign, and this type of loan does not entail the formation of direct ownership rights of foreigners, or foreign lending bodies over these assets.



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2. This resource occupies an important position for developing countries, which is devoted to consumption and investment, and can help achieve the economic growth of the recipient country if it is well used.

3. External borrowing is important as a source on which many countries rely as a means of financing government budgets, in addition to several sources that are relied on almost habitually in contemporary finance as a result of financial, economic and political variables, and as a result of this importance, many international organizations and specialized international agencies have established their activity to provide international financing means of borrowing, grants, and aid, and international financial institutions have greatly multiplied, and their activity has increased, and their resulting effects in many countries of the world^{ix}.

Second Requirement

The legal nature of foreign debts

Addressing the legal nature of the public debt contract in an absolute manner does not raise many problems, in the context of the internal public debt, it is facing a public law contract to which the state is a party, and it enjoys powers and privileges above the other party, in addition to the possibility of including unusual conditions within the framework of contracts in which equal legal positions of the parties to the contract, including non-payment of the value of the debt, or its annual interest without the legal possibility of the other party to sue When the State denies the implementation of the terms of the debt contract, despite the negative effects that may provoke this and weaken the confidence of individuals in the financial position of the State, these characteristics make the internal public debt contract a contract to which the provisions of administrative



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law contracts apply, in which the State - the administration - enjoys a legal status that is not equal to the other party to the conclusion of the public debt, but in the context of the public debt - governmental - external, the previous characteristics do not appear.

Debt has previously been defined as "a contract under which an institution, financial or banking company undertakes to lend to the State or a public legal person (local or utility) a sum of money in exchange for the State's undertaking by the State or the public legal person to return the amount of the debt upon the specified term." Therefore, a great disagreement has arisen in legal jurisprudence about the adaptation of the nature of this contract, and several different trends have emerged in that, and also in the legal nature of this contract, Therefore, we have to deal with this in two branches, the first of which examines the **legal nature of loans concluded with private foreign persons (national foreign debts)**, and in the branch we discuss the **legal nature of loans concluded with international persons (international foreign debts)**.

The first branch

Legal nature of loans concluded with private foreign persons (national foreign debts)

First of all, we would like to say that loans concluded with private foreign persons cannot be considered international treaties subject to the provisions of international law, because these persons are not considered subjects of public international law that have the capacity to conclude international treaties, and these loans are not equal to contracts concluded between traders dealing in the theater of international economic relations that are subject to international trade law^x. It governs relations in which the



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parties occupy similar legal positions, while loans concluded by the State with foreign private persons are characterized by varying legal status among its parties. The question now is if these loans are not international treaties, nor commercial contracts, then what is their legal nature? The French Council of State went to adapt these loans as administrative contracts, and that was on the occasion of a loan contract that includes the condition of payment in gold issued by the French government in the United States of America in the period between the First and Second World Wars, and ends in 1941, but due to the circumstances of World War II was postponed beyond that, and in 1948, bondholders asked to pay their value, either in gold, or French francs depending on their value on the day of the claim, and when the dispute was raised before the Council of State In France, he issued his judgment considering the disputed debt as an administrative contract issued by the French state^{xi}. Its implementation is governed by the rules of French law regardless of the place of its issuance in the United States of America, and that the payment of amounts due at the expiry of its term must take place in New York, and the Council decided to apply the rules of French law to the fact of the case, and to oblige the French Government to pay the amounts due to lenders through convertible currency in gold^{xii}. Commenting on this provision, some argue that if a debt concluded with foreign private persons is considered an administrative contract^{xiii} However, this debt is not absolutely subject to the law of the borrowing State, but the rules relating to public order in the State in whose territory such loans are executed, such as the rules of securities law or the rules relating to the acquisition of bond licenses, must be respected. Loans with foreign private persons also have different characteristics from loans



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with national private persons, such as the idea of diplomatic protection of the foreign State of the contracting party with the State, and such loans usually include an arbitration clause that takes away the jurisdiction of the national courts of the parties to the debt contract from considering its disputes, and sometimes excludes the application of the law of the borrowing State.^{xiv}

The second branch

Legal nature of loans concluded with international persons (international foreign debts)

Loan agreements concluded by the borrowing State with other States, or international economic organizations, are considered as international treaties because their parties are in all cases subjects of public international law, and therefore subject to the provisions of international law, if they meet the characteristics necessary for international treaties^{xv}. As the view was that international foreign debt is an international treaty in all cases, what is important in their view is the availability of the elements of the international treaty of capacity, consent and legitimacy of the object of the treaty, in addition to the prior approval of the legislative authority on the debt, and therefore disputes that arise between the parties to the debt are subject to international jurisdiction, not national, unless the parties agree otherwise by an explicit provision^{xvi}. It follows from this that if treaties are subject only to general international law, also the contract belonging to international law, which is objectively centered in the international legal system, although it is a fully international legal act, will be governed by international law only if it is internationalized by the parties, that is, if persons choose international law as the governing law of the contract^{xvii}. In



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other words, the subordination of debt concluded with international persons to public international law remains subject to the will of its parties, which may agree to exclude this law, and subject the debt to another law such as the national law of the lending state, and then the debt is not considered an international treaty, but only a financial contract between two international persons^{xviii}. Loan agreements may take different names, such as an international financial agreement^{xix}. The name (financial agreement) was mentioned in Article (1) of the law ratifying the financial agreement (electricity reconstruction project) concluded between the Government of the Republic of Iraq and the International Development Association of the World Bank No. (58) for the year 2007, as this article stipulated that (the Republic of Iraq ratifies the financial agreement {electricity reconstruction project} ... etc.) And the exchange of notes and letters^{xx}, and jurisprudence uses several labels as a synonym for the expression of a treaty such as agreement, agreement, joint declaration, protocol, covenant, charter, system, and some have tried to give each of these terms a meaning contrary to the other term, and despite the different labels, they give one meaning^{xxi}.

Discussion

Conclusion

1. International foreign debt agreements concluded by the borrowing State with other States or international economic organizations are considered as international treaties, because their parties in all cases are subjects of public international law, and therefore subject to the provisions of public international law, if they meet the characteristics necessary to be available in international treaties, and it is required to



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conclude several elements that have been worked to be called conditions in the jurisprudence of public international law, and these elements ostensibly coincide with the pillars of national foreign debt of mutual consent, place, cause, and form, However, it differs from it in terms of the details of how it materializes, except for the form element of the legal authorization by the legislature to conclude a treaty on international foreign debt, after which it declares its acceptance of the procedures for concluding the debt contract with a view to ratification by the competent authority.

2. Public loans are unique in their characteristic of the rest of the other financial resources such as taxes and fees, these resources do not differ in their legal nature according to their types, while public loans, each type of type has a legal nature that differs from the other, compulsory loans are legal (regulatory) links, while optional loans are contractual links that may be civil, or administrative, and foreign debts concluded with international persons are international treaties, while foreign debts concluded with private foreign persons are administrative contracts of a nature Especially derived from the fact that one of its parties is a foreign person belonging to another state.
3. The distinctive criterion that can be determined for the emergence of the international legal personality that is compatible with international dealings is the criterion of addressing the provisions of international law, because it is the most responsive to the international legal system, as those who possess the elements of legal personality are considered according to the perspective of public international law addressed by its provisions.



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4. The conclusion of international agreements is a manifestation of the sovereignty of the state, so the legal basis enjoyed by the federal state in the international agreements it concludes finds its legal basis in the possession of international legal personality on its terms, as it is responsible for conducting international relations, and as long as the federal state is the full international person, it is the one who conducts international affairs with other states, and international organizations for its possession of external sovereignty.
5. The establishment of the description of the international legal personality in the international legal system entails some advantages, including the right to conclude international conventions, plead before international courts, the implementation of international obligations, and other rights.
6. Not all subjects of public international law are parties to the international foreign debt treaty, for example, as the main subject of public international law, States must have a degree of sovereignty in order to have the necessary capacity to conclude a foreign debt treaty. This treaty shall be dependent on the authorization of the state to which it belongs, and if it is permissible, it shall be valid, and if it does not authorize it, it shall be invalid, and for the states, or territories belonging to the banner of federal states, reference must be made in this case to the provisions of the federal constitution of the state to determine whether it owns each of them, or does not have the right to conclude treaties individually, as well as the case for regional and global international organizations, not all of them are suitable for concluding a treaty of this kind, but must be classified among the financial



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organizations. Specialized such as the International Monetary Fund, the World Bank, and the Arab Monetary Fund.

7. Requesting the intervention of the legislative authority more than once in order to conclude foreign debt treaties of an international character is not a violation of the principle of speed in addressing the financial crises of the state, as the main objective of the process of international external lending is to address a financial problem by exerting all means in order to avoid the financial crisis.
8. The ratification stage is one of the most important stages of the conclusion of treaties, because it involves the consent of the final parties to their terms, and ratification is not a formality, but a very important act intended for the internal organs of the State to approve the debt treaty in a manner that binds the State to it at the international level.
9. The importance of ratifying loan treaties lies in giving each country the opportunity to reconsider before the final commitment to the treaties, as well as that the repeated legislation would create effective legislative control over the most dangerous action of the executive branch, which is to subject the will of the state to external dictates that may reflect negatively on its economy and even endanger its sovereignty.

Proposals:

1. We find it necessary to include an explicit provision in the Iraqi Constitution in force that emphasizes the principle of the legality of foreign debt, so that the resort of the executive authority to it depends on prior permission from the legislative authority, and through a law



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enacted for this purpose in order to avoid the negative effects that may ensue.

2. States shall establish legislative rules governing the process of international borrowing, provided that these rules are flexible in a way that allows this process to keep pace with developments that require the development of economic life and have a positive impact on national economies.
3. Countries that are always the borrowers shall establish an independent body under the name of the " International Foreign Debt Authority " that includes in its membership various legal, political and economic disciplines for the purpose of presenting the draft international foreign debt treaty to it for review, and submitting a detailed report thereon to the legislative authority before enacting it by the ratification law, given the conditions that may be included in this type of treaty to be filled by the lending party, some of which may be ambiguous and later interpreted against the interest of the borrowing countries.

Footnotes

ⁱ Ahmed Abdel Mawgoud Mohamed Farghaly, Legal Treatment of the Problem of Law Applicable to International Loan Contract Disputes, Research Published in the Journal of (Legal Journal), Publisher, Cairo University, Faculty of Law, Khartoum Branch, Volume 8, No 12, 2020, p. 4147

ⁱⁱ Dr. Muhammad Nasr Muhammad, Al-Wafi in Explanation of International Treaties under the Provisions of the Vienna Convention on the Law of Treaties of 1969, Publisher Library of Law and Economics, Riyadh, Saudi Arabia, 2012, p. 12

ⁱⁱⁱ Dr. Sada Daham Al-Fahdawi, and Dr. Abdul Samad Zanganeh, The criterion for distinguishing between the international treaty and the convention, research published in the Journal of Legal Sciences, College of Law, University of Baghdad, first No, 2018, p. 465



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^{iv} See Hussein Nimr Shamekh Al-Rifai, The Impact of Foreign Loans and Aid on Economic Growth: A Case Study of Jordan for the Period (1976–2005), Master's Thesis in Economics, Faculty of Economics and Administrative Sciences, Yarmouk University, Irbid, Jordan, 2006, p. 7, as well as Nozha bin Issa, The impact of oil shocks on some macroeconomic variables: Government spending, unemployment, inflation, indebtedness, an econometric analytical study in Algeria for the period (1970–2015), Master in Finance and Banking, Faculty of Economic and Commercial Sciences, Larbi Ben M'hidi University, Algeria, 2017, p. 36, and also see Dr. Badie Jamil Al-Qadr, Foreign loans and their role in development, research published in the Journal of Al-Rafidain University College of Science, No. 31, year 2013, p. 4

^v Hafez Abdul Amir Amin, The Developmental Effects of Funding Sources on the Iraqi Economy for the Period (2004–2013), Thesis, PhD in Economic Sciences, Faculty of Administration and Economics, Al-Mustansiriya University 2017, pp. 53–56, as well as Bin Saber Fatiha, Foreign Indebtedness and its Impact on Development, PhD Thesis in Law, Faculty of Law and Political Science, University of Mostaganem, Algeria, 2018, p. 7

^{vi} Dr. Alia Muhammad Abdul Al-Ghaish, The effects of foreign debt and its repercussions on economic development in developing countries, the Egyptian case during the period (2010–2018), research published in the Journal of Sharia and Law, No (34), 2019, pp. 692–693, as well as Sadiq Zweir Al-Saidi, The impact of the flow of foreign loans in achieving structural transformations of the economies of some ESCWA countries for the period (2002–1990), Master's Thesis, College of Administration and Economics, University of Baghdad, 2005, p. 6

^{vii} Mustafa Haider Al-Qadi, The Effectiveness of Means of Financing Development in Developing Countries with Reference to the Iraqi Economy, Master's Thesis in Economic Sciences, Council of the College of Administration and Economics, University of Kufa, 2018, pp. 45–46, as well as Ali Salman Hussein, The Role of the Interest Rate and the Foreign Exchange Rate in the Movement of International Financial Flows, Egypt and Japan, A Case Study for the Period (1990–2005) Master's Thesis, College of Administration and Economics, University of Baghdad, 2008, pp. 86–87.

^{viii} See Hammam Wael Abu Shaaban, The Impact of External Finance on Economic Growth: An Applied Study of Arab Countries, Master's Thesis in Development Economics, Faculty of Commerce, Islamic University of Gaza, 2016, p. 39



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^{ix} See Dr. Qabas Hassan Al-Badrani, External Public Borrowing and the Conditions of International Financial Institutions, research published in Al-Rafidain Journal of Law, Vol. (11), No (4), 2009, p. 187.

^x It is sufficient for the contract to become international for the foreign element to deal with one of the elements of the contract that make up it, such as if one of its parties, or both of them, are foreigners, or the place to which the object is received is abroad, or it has been concluded or executed abroad, considered by Dr. Abdul Redha, The arbitrator's authority to free international contracts from being subject to national laws (a comparative study), research published in the Journal of Al-Muhaqiq Al-Hilli for Legal and Political Sciences, No (2), 2018, p. 14.

^{xi} The state, to a large extent subject to its own logic, is justified by the existence of manifestations of the public authority of the state within the international administrative contract, after it reserves for itself some of the privileges that appear in its formation and implementation, see Duvan Lydia, The Legal System of International Administrative Contracts, A Comparative Study, PhD Thesis in Law, Faculty of Law, and Political Science, Kasdi Merbah Ouargla University, Algeria, 2018, p. 116

^{xii} Dr. Haider Wahab Abboud: A Study in the Legal Nature of Public Loans, Research Published in the Journal of the College of Law at Al-Nahrain University in 2012, Volume 14, No (1), p. 22

^{xiii} The public loan includes exceptional conditions that are unusual in private law contracts, and some consider it an act of sovereignty, so the state has the right to change it according to what it deems appropriate to its circumstances, also see Azra Kata Hanoune, The legal basis for the public loan contract, research published in the Lark Journal of Philosophy, Linguistics and Social Sciences, publisher Faculty of Arts, University of Wasit, No (22), 2016, p. 270, as well as Zayer Belkacem, The legal system of the loan, and its role in economic development, Master's thesis in economic law, Faculty of Law and Political Science, University of (Dr. Tahar Moulay, Saida), Algeria, 2016, pp. 43-44

^{xiv} Ahmed Abdel Mawgoud Farghaly, Legal Treatment of the Problem of the Law Applicable to International Loan Contract Disputes, p. 4161, as well as Dr. Haider Wahab Abboud, A Study in the Legal Nature of Public Loans, Previous Source, pp. 22-23

^{xv} The preamble to the Vienna Convention on the Law of Treaties of 1969 emphasized the great role of treaties in the history of international relations, and their increasing



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importance as a source of international law, considered by Dr. Taleb Rashid Yadkar, Principles of Public International Law, Publisher Mokriani Foundation, Iraq Erbil, 2009, p. 70

^{xvi} Ahmed Abdel Farghaly, Legal Treatment of the Problem of the Law Applicable to International Loan Contract Disputes, previous source, p. 4163, and also see Dr. Ahmed Khalaf Al-Dakhil: Public Finance from a Legal Perspective, 1st Edition, Tikrit University Press, Tikrit, 2013, p. 184

^{xvii} Adly Mohamed Abdel Karim, The Legal System of Contracts between States and Foreign Persons, PhD thesis in private law, Faculty of Law and Political Science, University of Abou Bakr Belkaid, Tlemcen, 2011, p. 344.

^{xviii} Such as the loan concluded between Denmark and Malawi in 1966, which was subject to Danish law, and the loan contracts concluded between the United States of America and Britain, which were subject to the law of the State of New York, is considered by Dr. Haider Wahab Abboud: A Study in the Legal Nature of Public Loans, previous source, p. 22, As for the Iraqi legislator, he indicated the applicable law in terms of place, as paragraph (1) of Article (25) of the Iraqi Civil Code No. (40) of 1951, which indicates that (applies to Contractual obligations The law of the State in which the common domicile of the contracting parties is located, if they unite a domicile, and if they differ, the law of the State in which the contract was concluded shall apply, unless the contracting parties agree, or it appears from the circumstances that another law is intended to be applied.

^{xix} The name (financial agreement) was mentioned in Article (1) of the law ratifying the financial agreement (electricity reconstruction project) concluded between the Government of the Republic of Iraq and the International Development Association of the World Bank No. (58) for the year 2007, as this article stipulated that (the Republic of Iraq ratifies the financial agreement {electricity reconstruction project} ... etc.)

^{xx} Article (1) of the Law on the Ratification of the Two Letters, the Two Exchange Memoranda, and the Minutes of the Talks on the Japanese Loan to the Government of the Republic of Iraq No. (59) of 2007 stipulates that (the Republic of Iraq ratifies the two letters, the two mutual memoranda, the minutes of the talks ... etc.)

^{xxi} Dr. Muhammad Nasr Muhammad, Al-Wafi in Explanation of International Treaties under the Provisions of the Vienna Convention on the Law of Treaties of 1969, previous source, p. 14

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