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Concluding International Contracts: Between Personal Considerations and Legal Controls

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Abstract: Countries, especially developing ones, are working to control the rules of technology in order to achieve sustainable development, keeping pace with the developments of the times, as technological progress in the field of technology has become a feature of today's world. This is that knowledge and technological expertise and knowledge economy have reduced all effort and time, but rather have become One of the most important wealth possessed by countries and institutions, and this is why the countries sought to acquire technology that is compatible with their capabilities and their development programs, and the way was in many cases is technology transfer, through technology transfer contracts and this is what we will work to demonstrate in this study by giving controls To Mvahmah and procedural contract for the transfer of technology.

Keywords: Technology; contract; conditions; effects.

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Introduction: A contract is considered the most important form of legal act, representing the legal expression of transactions, whether domestic or international. Therefore, a contract can be either domestic or international. International bodies and organizations only began to address international contracts in the context of commercial transactions. These bodies have exerted considerable effort to unify the rules governing international trade, leading to the emergence of a new branch of law: "International Trade Law" (Mahmoud Samir El-Sharkawy, 1992, p. 17). This branch encompasses international agreements concluded in the field of international trade, as well as model contracts and general terms established in this area.

The same applies to the process of transferring technology and technological knowledge, which only acquired its regulatory dimension and legal framework during the last few decades, as it has become one of the most important commercial operations with a national and international dimension, due to its inclusion of the transfer of various services, patent rights, technical and artistic knowledge and expertise and the tools accompanying them, especially in the field of advanced industrial sciences. For example, all rights arising from a patent are transferable wholly or partially, as stipulated in Article (paragraph 01 of Article 36 of Order 03-07 dated July 19, 2003 relating to patents, Official Gazette 44 dated July 23, 2003, Algeria.

36. "Rights arising from a patent application or patent and/or related potential addition certificates are wholly and partially transferable." Therefore, they constitute a crucial and fundamental requirement for developing countries, which have recognized their role as a cornerstone of development and technological advancement. This is due to the resources and mechanisms they provide, which drive the overall economic development process. Consequently, developing countries have collectively strived to acquire technology, even if it necessitates importing and transferring it from abroad. Numerous methods and approaches have emerged for this transfer, among which the technology transfer contract, the focus of this research paper, has gained popularity. It is essential to highlight this contract due to its unique characteristics and importance for developing countries. Its uniqueness lies in the fact that the subject matter of the contract is based on a set of personal considerations that must be taken into account, particularly regarding the obligations incumbent upon both parties. Its importance is primarily rooted in the economic and developmental dimension, governed by a set of regulations.

Hence, the following question arises: Is the unique nature of the technology transfer contract a restriction, or is it necessitated by the interests of the contracting parties? In other words: To what extent can these considerations... Can personality and economic development programs influence technology transfer contracts? To accomplish this task, answer the central question of the problem, and address this topic, we follow a theoretical scientific approach, primarily the descriptive analytical method, as it is the most suitable. In order to answer this problem and elaborate on it in this study, we will review all of this according to the following plan:

First axis; The Conceptual Framework of Technology Transfer Contracts:

A technology transfer contract is not a contract like any other. It is, in itself, one of the most profound phenomena in contemporary life. Its importance is not limited to its role in international trade; its effects extend to various stages of production, services, the information technology industry, scientific and technological discovery, and even other sectors that are pillars of the state and its sovereignty. This contract is the primary and most common instrument in executing all international trade transactions in general, as it expresses the contractual will of the two contracting parties, even if this will be relative due to conflicting interests and the dominance of one party. All of this embodies the principle of the supremacy of will, giving the contract binding force both with respect to its parties and with respect to third parties (Murad Mahmoud Mawajdeh, 2010, p. 41).

Within the realm of technology transfer, the contract has become the primary and most widely used legal instrument for conducting technological exchanges between developed countries on the one hand and developing countries and their projects on the other. Therefore, the technology transfer contract is defined as: a technology transfer contract is an agreement whereby the technology supplier undertakes and commits to transfer, in return, technical information to the technology importer for use in a specific technical method for producing or developing a particular good, or for installing or operating machinery or equipment, or for providing services. The mere sale, purchase, lease, or rental of goods, or the sale of trademarks or trade names or licensing their use, is not considered technology transfer unless it is included as part of the technology transfer contract or is related to it. It is clear from this definition that the essence of the technology transfer agreement is not the tangible elements included in the subject matter of the agreement, but rather the intangible element represented by the right to knowledge, information, expertise, or technical services. This is also what the Egyptian legislator adopted in his definition of the technology transfer contract (Ibrahim Sayed Ahmed, 2004, pp. 9-10).

Technology transfer contracts are defined in the International Code of Conduct as: arrangements between parties involving the transfer of methodological know-how for manufacturing a product, implementing processes, or providing services. They do not include transactions involving only the sale or lease of goods. The Code lists all contracts that constitute technology transfer contracts, including:

a. Transfer of ownership of licenses for all forms of industrial property, excluding trademarks and trade names unless they form part of a technology transfer contract.

b. Provision of technical know-how and expertise.

c. Provision of technological know-how necessary for turnkey projects.

d. Provision of technological know-how necessary for acquiring and using raw materials, intermediate materials, or both. This definition clarifies that a technology transfer contract or contracts can encompass the material and technical aspects of technology, meaning all its elements and components, as deemed appropriate by the contracting parties for transfer and agreement. Therefore, a technology transfer contract, or international technology transfer contract—and we have characterized it as international because most parties to such contracts are of different nationalities and locations, given that technology is transferred from developed to developing countries—is a transfer across borders. This applies even to internal transfers, as we mentioned earlier, where the transfer occurs between a company and its branches, which constitute a single economic and legal entity. However, when the transfer is between a state and a company, or a state and one of the company's branches, considering that the company is originally a multinational corporation, the contract is generally considered international (Moussa Khalil Mitri, 1993, pp. 236-237).

A technology transfer agreement is any agreement between two parties with unequal levels of technological development—developed and developing countries—aimed at transferring or facilitating the transfer of technology. This technology encompasses the entirety of the technology or some of its tangible and intangible components, integrated into knowledge that will help establish technological foundations.

The transfer of all or part of the technology is not in its raw, static form, but rather includes the knowledge, techniques, and expertise that contribute to revitalizing the technological sector of the importing country. The goal is to then attempt to control and produce the technology independently, according to the scale, nature, sector, and objective agreed upon by both parties. This process safeguards the rights and obligations of each party in the technology transfer agreement. To clarify the economic parameters of technology transfer agreements, which are based on a set of characteristics that include personal considerations related to economic importance, the economic characteristics of technology transfer agreements are as follows:

1. An agreement based on personal considerations: In this type of agreement, the personal considerations of the country wishing to contract with the technology are paramount. The intentions of the country or party seeking technology transfer are evident from the moment they express their desire to transfer the technology and their attempt to keep pace with development. The technological aspect involves selecting the contracting party and focusing on ensuring that this party actually possesses the technology, has experience in such fields, and controls and is completely independent of technological dependence. This demonstrates that both parties to the contract focus on the personal considerations of the source and recipient of the technology.

2. A long-term contract of an advanced nature: The length of the contract varies depending on its subject matter. However, it can be generally said that the duration should be sufficient to achieve the contract's objective, its purpose, and the desired results and effects. Since developing countries seek genuine and effective technological empowerment from such contracts, contracting countries often resort to establishing a special system for these contracts that aligns with the long duration, the controls governing the contract, and the conditions and matters subject to modification, according to the interests of both parties.

3. A developmental contract influenced by politics: This contract is based on reconsidering the priorities of the recipient country, where the extent of technology's contribution to its economy and development plans is studied. Herein lies the state's skill in its ability to select the best technologies. (Salah al-Din Jamal al-Din) (Muhammad Abdul Rahman, 1993, p. 82) and the most suitable. This contract is also influenced by political factors and the political and ideological orientation of the receiving state. Often, these factors hinder technology transfer and technological development, especially in cases of internal or external political conflict between the exporting and receiving states (Wafaa Mazid Falhout, 2008, p. 131).

4. A contract that is mostly international in nature: The international nature of this process is one of the most important characteristics of these contracts in most cases, although it can be a national contract, since the project defined the scope it covers by defining the nature of the two parties to the contract without regard to the nationality of either of them. This means that this contract is considered international if the subject of the agreement is the transfer of technology across the borders of a country, whether the two parties to the agreement reside or conduct commercial or industrial activity in the same country, or in two different countries. In other words, the nationality of the two parties is irrelevant. This is the criterion adopted by the International Technology Transfer Code project. In this context, we note that the code has introduced a fundamental amendment by allowing each country to decide that the code applies to the transfer of technology beyond its borders (Walid Awda Al-Hamshari, 2009, p. 43).

5. A Contract of a Commercial Nature: A technology transfer contract is considered a commercial contract, and its execution is considered a commercial act. This is due to its subjection to the theory of commercialization and to the aforementioned draft law, which stipulated in its first article that "the international conduct of technology transfer is a commercial process." This stems from the fact that the party undertaking this activity does so professionally and commercially, leading to the act being considered commercial in terms of evidence, jurisdiction, and statute of limitations.

Second Axis; Technology Transfer Contracts and Their Regulations:

Technology transfer contracts have developed rapidly in recent times and have become a hallmark of international trade. A technology transfer contract reflects the strategies of its parties, as expressed in the pre-contractual phase, which we mentioned earlier as the negotiation stage. This stage is often complex and fraught, as it determines the contract's content, including the parties, its duration, and the type, scope, and scale of the technology to be transferred. The technology itself is the subject of the contract, representing what one party has committed to providing to the other. During this stage, the parties also define the dispute resolution provisions and the applicable law. All of this is done to establish a suitable and stable foundation upon which the contractual relationship between the parties will be built. In other

words, it marks the transition from the negotiation phase, characterized by give-and-take, to the implementation phase through the contract itself. The contract is a legal construct that represents the execution of what the parties have established and prepared in previous stages, in a final and binding form. At this stage, the performance elements of the contract are defined, and the contract is drafted according to the agreed-upon wording and established practices for such contracts. The conclusion and finalization of the contract is considered the finalization of the contract. One of the most challenging tasks for legal professionals, given the technical, engineering, and accounting considerations inherent in the subject matter of the contract, is to consult with technical experts alongside legal professionals. Therefore, the successful drafting and conclusion of such contracts and their implications necessitates the involvement of technical experts.

Firstly, the formation of technology transfer contracts, including restrictive clauses and substantive elements:

1. Restrictive Conditions of Technology Transfer Contracts: Technology transfer contracts are often between developing countries that import technology and developed countries that monopolize and export it. This creates the potential for arbitrary conditions imposed by the technology-owning countries, leading them to include a set of restrictive conditions. Countries and companies owning the technology are keen to include stringent conditions in technology transfer contracts under the pretext of ensuring their control over technical knowledge and technological superiority, ostensibly for monitoring and inspection purposes. In reality, stipulating such conditions, or some of them, in the contract restricts the technology importer, making them dependent on and subservient to the supplier (Jalal Wafaa Muhammadin, 2001, p. 73). These are also known as common working conditions imposed by the technology supplier on the importer to restrict the importer's freedom to use the technology or dispose of the output obtained from its use. This monopolistic approach stifles all technological development, making these conditions prohibitively difficult for technology-importing countries. This is inconsistent with the general principles of reciprocal and bilateral contracts, placing it instead within the realm of contracts of adhesion. These conditions are as follows:

1.1. Restricting the recipient's freedom to use and develop the technology: This condition is further divided into three sub-conditions:

- Restricting the recipient's freedom to use the technology and the means to do so, without deviating from what has been established by the technology provider (Zeina Ghanem Al-Saffar, 2012, p. 88).

- Prohibiting the technology recipient from any form of technological development; otherwise, this is considered a violation of the contract.

- Restricting the recipient's freedom to determine the forms of production and benefits.

2.1. Accepting improvements introduced by the technology supplier and paying for these improvements, even if the technology recipient did not request them.

3.1. Prohibiting improvements or modifications to technology to suit local conditions.

4.1. Restricting the volume, price, distribution, or export of production.

2. Pillars of a Technology Transfer Contract: A technology transfer contract reflects the strategy of its parties as expressed in the preceding stages. This initial phase is often complex, fraught, and lengthy. During this phase, the contract's content is defined, including the identification of the parties, its duration, the nature and components of the subject matter, restrictions on exploitation, the obligations of both parties, penalties for breach of obligations, and the termination process. Additional provisions are also agreed upon, such as dispute resolution and the determination of the applicable law. All of this serves as a prelude to the final contract, which reflects the final intentions of the contracting parties. This contract is based on:

1.2. Consent: This is a fundamental pillar in all contracts, as no contract exists without the consent of both parties. It is the essence of the contract and the absolute expression of the parties' will to enter into this contractual relationship, establish its desired effects, and exchange the necessary viewpoints. Since this contract pertains to sovereign and developmental matters, it is given paramount importance and even has its own specific framework. It is preceded by preliminary stages and culminates in a final contract, which outlines the various terms of the agreement. The spirit of the contract is generally based on the freedom of will. The contracting parties, in accordance with the principle of the law of the contracting parties, have the right to discuss and debate before concluding the contract. Once concluded, the contract becomes binding

on both parties because the will of the parties is paramount, and each party considers its public and private interests and its internal public order. This is so that the desired objective of the technology transfer contract can be achieved (Wafaa Mazid Falhout, 2008, p. 109). The conditions in technology transfer contracts are a broad area of research and discussion among many legal scholars and international organizations. The United Nations Conference on Trade and Development (UNCTAD) discussed them while drafting the International Code on Technology Transfer. This issue was a point of contention among many participating countries, due to concerns that these conditions would have a significant impact, especially on technology-receiving countries. Conditions imposed by technology monopolists can lead to the collapse of the economies of technology-receiving countries, disrupting the economic equilibrium of the contract and undermining the principle of mutual consent between the contracting parties. This often occurs when a technology-transferring institution or company operates in the same country as the technology recipient. These conditions can lead to a monopoly of the technology, defeating its intended purpose and frequently conflicting with free competition. Therefore, in this context, particularly regarding absolute monopolies, various mechanisms have emerged to reconcile these conflicting interests. One such mechanism is the theory of "fundamental facilitation," which is among the solutions used to resolve disputes. This theory appeared in Article 82 of the Treaty on European Union in 1968. - Parties to the Contract: A technology transfer contract is concluded between There are two projects: the first is the technology seeker and importer, and the second is the technology supplier or source. The contract is usually concluded between two projects, one from an advanced industrial nation that controls the technology, and the other from a developing nation seeking technology and striving to catch up. Despite this, there is no impediment to both parties being advanced and developed nations, but the degree of control each has over the technology will differ. The parties to a technology transfer contract are often referred to as the donor (the first party, who owns and possesses the technology) and the recipient (the second party, the technology seeker).

The contract's preamble usually specifies the source of the technology's ownership and possession: is it the technology's creator, or did they acquire it through a concession agreement? What is the basis of the supplier's ownership of the technology? (Jalal Wafaa Muhammadin, 2001, p. 25). These details demonstrate the parties' respect for the contract and the obligations arising from it. Ownership of a thing is absolute, granting its owner all the powers and privileges that the law bestows upon that thing, without any dependence on the other party, who is considered a third party to the contract, if one exists. 2.2. Subject Matter of the Contract: The parties to the contract are keen to describe and define the technology, hence the importance of specifying the characteristics of the transferred technology (WIPO Publications No. 620 "A", Geneva, 1978, paragraph 135). This description and definition of the subject matter of the contract is often detailed and documented, and is included in appendices attached to the technology transfer contract. These appendices include specific details of the technology, general and essential information, a collection of images, designs, maps, user manuals, and instructions. If tools and equipment are involved, they may be included with appendices listing raw materials, spare parts, and instructions for installing, preparing, operating, and maintaining the equipment. Therefore, these matters are often emphasized, and even the law emphasizes them. For example, Article 74, paragraph 2 of the Egyptian Commercial Code states: "...The contract must include a statement of the elements of knowledge and its related components transferred to the technology importer. This statement may be accompanied by feasibility studies, instructions, designs, engineering drawings, maps, images, computer programs, and other documents illustrating the knowledge, in appendices attached to the contract and considered part thereof."

It should be noted that technology transfer, often referred to as the transfer of methodological knowledge—that is, technical knowledge—is used in the production of goods, the application of an industrial process, or the provision of services. Accordingly, this view includes: licensing elements of industrial property such as patents, industrial designs and models, technical know-how, trade secrets, turnkey contracts, technical assistance, research and training. All of this was previously mentioned in the context of technology elements when we discussed the definition of technology. The subject matter of a technology transfer contract, or its content, consists of the elements that achieve the objectives of the parties involved, as defined by the obligations and rights of each party. The subject of the technology transfer contract is specified in the brief "opening clause," which consists of a few lines outlining the tasks to be undertaken by each party.

In reality, and considering the majority of laws regulating technology transfer, we find that this contract is considered a formal contract. This is because writing is a logical necessity in technology transfer contracts, dictated by the nature and importance of these contracts. Without writing, it would be practically impossible for the judiciary and legal scholars to monitor the terms stipulated in the contract. Furthermore, the transfer of technology and its components, such as patents and technological know-how, to the

importer, and enabling them to control it, necessitates that this knowledge be documented in written documents and instructions. This is clearly stated in Article 74, Paragraph 1 of the Egyptian Commercial Code, which stipulates: "A technology transfer contract must be in writing, otherwise it is void." According to this article, writing in a technology transfer contract is not merely a requirement for its validity, but has become a fundamental element and a condition for its validity (Hani Salah Sirya Al-Din, 2001, p. 44). Thus, writing has come to be referred to as the formal condition for the conclusion of a technology transfer contract. Article 36, Paragraph 2 states: "Writing is required in contracts involving the transfer of ownership, assignment of exploitation rights, or suspension of rights." This right, or the lien or release of lien related to a patent application or patent, is governed by the law regulating this contract and must be recorded in the patent register. With the development of modern technology and the emergence of electronic contracting, particularly online contracting, the "electronic contract" and "electronic signature" (Article 323 bis 01, Order No. 75-58 of September 26, 1975, containing the Civil Code, as amended by Law 05-10 of June 20, 2005), questions arise regarding the validity of electronic media as acceptable physical supports for recording written documents, and the related legal recognition of electronic signatures. Through laws and treaties regulating electronic contracts and electronic signatures, such contracts have become recognized, and technology provides fertile ground for them.

Secondly; Forms of Technology Transfer Contracts: When the characteristics and aforementioned elements of a technology transfer contract are present, a technology transfer contract is formed in its legal and economic sense, and it entails all the desired legal effects. A technology transfer contract involves the transfer of this technology, which is considered the transfer of technical and industrial knowledge, in whole or in part, to another party. This means that the subject matter of this contract is limited to the mere transfer of this knowledge, and the legal relationship is confined to the transfer of the technical knowledge according to the supplier's commitments at the time of contracting. These forms are widespread and are considered general and simple forms of technology transfer contracts. Among the most important of these models are:

1. Technical Assistance and Training Contract: Technical assistance is considered an essential element of technical knowledge, and this term is used in the majority of technology transfer contracts. Technical assistance is included in the contract as a condition in the original contract or in a subsequent, independent contract. Its elements include training employees, workers, and professionals in certain methods of controlling and developing technology, specifying the number of trainees, the location, and the training methods. Therefore, technical assistance is the provision of the necessary services to implement the transferred technical knowledge. This contract is often a condition in the transfer of technical knowledge and technology in its general form, due to the importance of this type of contract. Technological development is implemented, and it also focuses on training and retraining state employees and workers to ensure the effective use of technology. This enables the recipient's technical staff to utilize the technology efficiently. It's important to consider that the quality of training depends on the careful selection of trainers, the programs implemented, and the degree of integration between theoretical and practical training.

2. Engineering Contract: This contract is considered one of the best legal instruments for distinguishing between the tangible necessities of the industrial complex and the intangible elements of technology transfer. Under this contract, the engineer undertakes to design or construct facilities according to the contract's terms and requirements, or to perform other related tasks, such as:

- Preliminary and feasibility studies.

- Studies related to manufacturing methods and initial projects.

- Project studies (Nassira Boujemaa Saadi, n.d., p. 177).

- Providing technical and industrial assistance to various trade associations.

- Monitoring the operations of industrial complexes.

- Conducting initial operational tests for certain equipment. 3. Licensing Agreement: This agreement takes two forms, depending on its subject matter and the specific technological element it focuses on. In the first form, the subject matter of the agreement may be a single element of industrial property, such as a patent. In this case, the license applies solely to the patent itself (Hani Salah Serry El-Din, 2001, p. 52) and treats it as the subject of the agreement, applying the provisions governing patent licensing and the rights it grants.

(Hani Salah Serry El-Din, 2001, p. 52) The second type of licensing agreement is a technical know-how license. In this case, the contract pertains to the use of technical know-how not covered by a patent or other industrial property rights. Even without a patent, technical know-how is subject to an exclusive right under

the TRIPS Agreement and is protected by Article 10 bis of the Paris Convention (Article 10, paragraph 2, of the 1967 Paris Convention, "false claims in business which, by their nature, discredit a competitor's enterprise, products, or industrial or commercial activity"). Therefore, technical know-how can be sold or leased.

4. Turnkey Contract: This type of contract first appeared in the United States after the end of World War II as one of the urgent options for European countries whose infrastructure had been devastated by the war. It aimed to boost foreign investment in these countries to transfer modern technologies, saving time and effort in rebuilding what had been destroyed. In this contract, the financier or investor does not bear the risks associated with the execution and transfer of knowledge and technology; rather, the financier bears the responsibility for the costs.

Conclusion: From the above, it is clear that technology transfer contracts are among the most widespread contracts in recent times, due to their role in promoting economic development and acquiring technology to bridge the technological gap between developed and developing countries. Technological advancements in many sectors have become a necessity for all countries, and this is what developing countries strive to achieve by acquiring and updating this technology according to their development strategies and programs. This is done within a regulated legal framework and through technology transfer contracts. These contracts have a number of characteristics that distinguish them from other contracts, whether national or international. One of these characteristics is that they go through a very important stage preceding the contracting stage, namely the negotiation stage, which is of paramount importance and plays a major role in deciding the contracting issue, given that the choice of the contracting party is largely influenced by personal considerations, as they are often the ones who hold a monopoly on this technology.

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