

Major steps for interpreting treaties

The major steps for interpreting international treaties and documents created under them are:

1. Ensure you have the treaty in force at the time relevant to your problem and that it has been ratified by the country you are considering and actually entered into force for that country.

Normally, a country is only bound by a treaty if it has ratified the treaty. When a treaty is created it is normally signed by the parties to it but they are only bound following later “ratification” by their governments of the terms of the treaty. This is the step where a country formally agrees to be bound by the treaty.

The procedure for ratification varies from country to country. In Australia and the UK, treaty ratification is a Royal Prerogative exercised by the Executive Government alone and does not require the approval of Parliament; however, by convention treaties are usually placed before parliament for 21 days before ratification. In the USA, the President may negotiate and sign a treaty, but the treaty must be consented to by a two-thirds vote in the Senate. Only after the Senate approves the treaty can the President ratify it.

The text of most treaties is rarely altered but you need to ensure that this is the case. Normally, the treaty in force will be the current version of the treaty available on official websites but if your problem involves something that occurred in the past the treaty in force at that time may apply.

The treaty should be obtained from its official website (e.g. www.ramsar.org). There is normally a rich supply of relevant documents on such sites and details of the states that have ratified the treaty. If there is no official website, obtain the treaty and ratification details from the United Nations Treaty Collection (<http://treaties.un.org>) or other governmental site or published treaty series (e.g. the Australian Treaty Series).

2. Skim-read the whole treaty and identify the parts relevant to your problem.

You might find it useful in this step to read the table of contents and note the headings in a list on a single page so that you can see a simplified structure of the whole document.

3. Interpret the parts of the treaty relevant to your problem in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose and any subsequent agreement or practice by the parties.

This is the main rule for interpreting international treaties under customary international law. It is recognised in Article 31 of the [Vienna Convention on the Law of Treaties 1969](#), extracted below.

When interpreting a treaty you must pay particular attention to terms defined in the treaty as well as terms defined by subsequent agreement between the parties. If a term is not defined in the treaty or in a subsequent agreement or decision of the parties made under the treaty, the “ordinary meaning” is the definition of words found in a normal dictionary (e.g. the Oxford English Dictionary) and applying normal rules of grammar.

The parties to the treaty may make subsequent agreements about the operation of a treaty and the meaning of particular terms. For instance, the parties to the [World Heritage Convention](#) have agreed on [operational guidelines](#) to the treaty that define important terms in it such as the meaning of “outstanding universal value.” You should check for such agreements and documents, which are normally available on a treaty’s main website.

OPTIONAL ADDITIONAL STEP

While not necessary for most problems, as an optional additional step, you can:

4. Search for decisions of international bodies, courts and tribunals interpreting and applying the treaty in question, particularly the parts relevant to your problem.

International treaties are rarely the subject of litigation and there are few decisions of international bodies, courts and tribunals in the vast majority of cases.

However, for some treaties there are important bodies for resolving disputes between the parties such as the World Trade Organisation for international trade disputes. Their decisions are important to consider for interpreting a treaty.

This additional step can be difficult and in the vast majority of cases you will either find no relevant decisions or decisions that merely affirm the plain meaning arrived at in the three steps set out above.

RECOGNISE YOUR LIMITS

You can have confidence that the three main rules give above will resolve 95% of problems involving treaty interpretation, but you should recognise that a small percentage of problems will be more difficult. For such difficult problems, international lawyers will often disagree or be unable to give a definitive answer. A definitive answer might not be possible where the parties to the treaty dispute its obligations and refuse to submit to the jurisdiction of an international court or tribunal to resolve the dispute. Allow for more difficult cases and, if something is unclear, recognise it in your use of the treaty.

Extract from the Vienna Convention on the Law of Treaties 1969¹

Article 31

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
 - (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
 - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
 - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
 - (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32

Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable.

¹ Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. UNTS Vol 1155, p 331. Available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (viewed 10 December 2018).