

## Entry into force

- As specified in the treaty – VCLT art 24
- *Pacta sunt servanda*
  - ‘Every treaty in force is binding upon the parties to it and must be performed by them in good faith’ - VCLT art 26 ← reflective of customary international law
- Treaty obligations
  - Prevail over customary international law except for *jus cogens*
  - Bind only the parties except by consent of another State (VCLT art 34)
    - Express consent to an obligation: VCLT art 35
    - Presumed (rebuttable) consent to a right: VCLT art 36
    - **Cannot be avoided on the basis of domestic law**: VCLT art 27
    - Are prospective only: VCLT art 28
    - Apply to all of a State’s territory, unless the contrary is specified: VCLT art 29
    - **Supersede obligations under earlier treaties between the same parties**: VCLT art 30

### *Jus Cogens*

- ‘Peremptory norms of general international law from which derogations are not permitted.’
- Art 53:

A treaty is void if, at the time of its conclusion, it conflicts with the general norm of peremptory international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.
- *Jus Cogens*
  - International Law Commission examples:
    - Ban on the use of force
    - Acts criminal under international law
    - Slavery, piracy, genocide
  - Further examples from *Barcelona Traction*:
    - Self-determination (confirmed in *East Timor* case and *Israeli Wall* opinion)
    - Aggression
    - Racial discrimination
  - Also
    - Torture
    - Apartheid

### Obligations *Erga Omnes Partes*

- Also *jus cogens* are *erga omnes partes* obligations (but not identical concepts)
- *Erga Omnes* obligations defined
  - ‘an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State ... By their very nature, the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*’: *Barcelona Traction*
- Relationship of *Erga Omnes* to *Jus Cogens*

- Not identical concepts
- All *jus cogens* obligations are likely to be owed *erga omnes*
- *Erga omnes* obligations could arise independently (including from treaty provisions)

### Termination and Suspension

- By consent (VCLT arts 54, 57)
- Unilateral denunciation or withdrawal (in VERY limited circumstances) (VCLT arts 42, 56)
- Material breach – repudiation; violation of provision essential to object and purpose (VCLT art 60)
  - *Case concerning the Gabčíkovo-Nagymaros project (Hungary v Slovakia) ICJ 1997-7-para 107.*
  - Impossibility (VCLT art 61)
- Fundamental change of circumstances (VCLT art 62)
  - *The Fisheries Jurisdiction case United Kingdom v Iceland*
  - *Case concerning the Gabčíkovo-Nagymaros project (Hungary v Slovakia) ICJ*

### Interpretation of a Treaty

1. Basic principle
  - ‘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’: **VCLT art 31(1)**.
    - Work as it was meant to
  - ***Golder v United Kingdom 1975 ECHR Ser A No 18, 14***. ‘the process of interpretation is a unity...’ → holistic interpretation
2. Context
  - agreements between parties relating to concluding the treaty: **VCLT art 31(2)**
    - Text, preamble etc
3. Additional relevant matter
  - subsequent agreement between the parties (and practice establishing agreement) regarding its interpretation (see interpretation of **article 27(3)** of UN Charter)
  - relevant rules of international law applicable between the parties: see for the above VCLT art **31(3)**. And see also Special meaning **31(4)**
4. 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.
  - Confirm the meaning resulting from the application of article 31
  - Determine the meaning when the interpretation according to article 31 is ambiguous, obscure, or leads to a result which is manifestly absurd or unreasonable: VCLT art 32.
  - *Travaux préparatoires*

### Answering an exam problem about the Law of Treaties:

- Can the VCLT be applied?

- Is it a treaty?
- Did it come into force after the VCLT?
  - If no, CIL (VCLT doesn't apply retroactively)
- Is the state a party to the treaty?
  - Advice will have to use a caveat that if the state has not signed or ratified then not bound
  - If state has signed, but not ratified, still have obligation
  - Obligation (sign not ratify): refrain from acts that go against it – Art 18 VCLT
  - If ratified: bound – art 26, *pacta sunt servando*
- Then, treaty interpretation
  - Art 31 – aid to interpretation
    - Good faith
    - Ordinary meaning
    - Object and purpose
  - What is the object and purpose?
- Look for words to interpret.
  - When there is ambiguity (ONLY WHEN AMBIGUITY) look for supplementary materials
  - Apply each word to Art 31 – the context of the Act

Apply to the problem question