

Treaty Interpretation

Does the Vienna Convention on the Law of Treaties 1969 (VCLT) apply?

For the VCLT to apply, the treaty must be written and between states, (art 1 VCLT) governed by international law, (art 2(1)(a) VCLT), and must be concluded after 27th January 1980, date of the VCLT's entry into force. (art 4, 84(1) VCLT)

- The VCLT does apply to the present treaty, given that it is written between (States) and was concluded after the VCLT's entry into force. (Hungary v Slovakia)
- While the VCLT does not apply to the present treaty, as the treaty was concluded after the VCLT's entry into force, (art 4 VCLT) (States X & Y) are bound by the customary international law reflected in the VCLT's provisions. (art 3(b); Hungary v Slovakia)
- The fact that the agreement has been named '...' is immaterial and does not in itself indicate that the agreement is of less-than-treaty status. (art 2(1)(a) VCLT; South West Africa Cases 1962; 'Report of the International Law Commission' 1966)
- The fact that the agreement is embodied in multiple instruments is immaterial and does not affect its treaty status. (art 2(1)(a) VCLT)

While the VCLT only applies to treaties between states, (arts 1, 3 VCLT), this does not affect the legal validity of the current treaty between, (art 3(a) VCLT) or the applicability of customary international law reflected in the VCLT, (art 3(b) VCLT; Hungary v Slovakia).

While the VCLT only applies to treaties between states, (arts 1, 3 VCLT), the fact that (non-state actor) is a party to the treaty does not prevent the VCLT from applying to (state X & Y). (art 3(c) VCLT)

If not an original party to the VCLT:

- While (State) is not an original party to the VCLT, it may validly consent to be bound by the VCLT through accession (art 83 VCLT)
- However, VCLT only applies to (state) on the 30th day after its accession to/ratification of the VCLT (art 84(2) VCLT).

Treaty or instrument of less than treaty status?

... may argue that as the agreement was written on ..., it is of less than treaty status.

- However, while (Exchange of letters) may *prima facie* be of less than treaty status, but may nevertheless constitute an international agreement if the parties intend to be bound. (Qatar v Bahrain)
- Signed minutes may constitute such a written instrument and form an international treaty, and not only a mere record of events (Qatar v Bahrain) [unless interpretation proves otherwise]
- A joint communiqué is not precluded from constituting an international treaty (Aegean Sea Continental Shelf)
Intent to be bound?

- Ultimately, an agreement may constitute an international treaty if the parties have demonstrated an intent to be bound by the agreement, with reference to the instrument's objective content, and not the subjective intentions of the parties. (Qatar v Bahrain)
- In determining whether the agreement constitutes a treaty, the Court must "have regard above all to its actual terms and the particular circumstances" of its drafting. (Aegean Sea Continental Shelf)
- That a treaty's terms are so general that they do not generate legal rights and obligations, indicates that it is of less than treaty status. (Oil platforms)
The document's usage of 'will' instead of shall, and avoidance of the term 'agree' indicate that it is likely an instrument of less than treaty status, as it evinces that in drafting the treaty, States did not intend to be bound.
- Preambles to a treaty/declaration are expressions of moral or political commitments and cannot be considered as intentions to be bound. (but reflect the objectives/core principles of the instrument)

Memorandum of Understanding?

The instrument may not be a treaty, but rather a memorandum of understanding, an instrument of less than treaty status intended to record the parties' mutual understandings on how they will conduct themselves in a non-binding way.

Concessionary Contract?

*(State) may not successfully argue that the treaty is a concessionary contract instead of a treaty, as the current facts are distinguishable from Anglo-Iranian Oil Company, where the ICJ did not find for a treaty, but a concessionary contract between a government and foreign corporation.

Political Declarations

Political declarations are not governed by international law, and may show a moral and political commitment to (particular courses of action), but are not binding absent an express intention to create legally binding relationships. [eg: Declaration on Environment and Development; UNGA Resolution]

However, declarations may reflect State Practice which lead to a finding of Customary International Law. (Texaco)

International organization

Constituent instrument:

The VCLT applies to a constituent instrument of an international organization. (art 5 VCLT)
As _ is clearly a constituent instrument of _ as an international organization, the VCLT applies.

Treaty adopted by an IO

The VCLT applies to any treaty adopted within an international organization. (art 5 VCLT)

The VCLT however, does not apply to state succession/state responsibility/impact of treaties during hostilities. (art 73 VCLT)

Unilateral declarations

Unilateral declarations may create legal obligations which bind the State making it, if such an intention is proven. (Nuclear Tests) It does not matter essentially whether the declaration is made orally or in writing. (Nuclear Tests)