

ITS 25.1 – International treaties

Where a statute is passed in order to give effect to the international obligations under a treaty, the statute should if possible be given a meaning that conforms to that of the treaty. For that purpose, the provisions of the treaty may be referred to as an aid to interpretation. It is also legitimate to refer to preparatory work (*travaux préparatoires*), at least to resolve ambiguities, but only where that material is public and accessible. Assistance from foreign courts and jurists may also be relied upon although of persuasive authority only.¹

COMMENTS

A treaty is not self-executing

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A treaty is not self-executing

A treaty does not automatically become part of domestic law in India, even though it may be binding under international law. For it to have effect within any part of India, it must be incorporated through legislation. Implementing an international treaty often serves as a key reason for new legislation, and specific interpretive issues can arise when interpreting such implementing laws. This section addresses how treaties and related materials are used in interpreting this type of legislation.

Treaty Acts

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Various legislative methods can be employed to implement or incorporate treaties into domestic law, and the most suitable approach will depend on the specific context. A brief Act may stipulate that the provisions of a treaty are to carry “the force of law” within India. This gives the treaty “the character of a statutory enactment,” effectively making it function as domestic legislation.

### **Basic Approach to Interpretation of Treaty Acts**

Regardless of the method used to implement a treaty, there is a general presumption that when a statute is enacted to fulfil the India’s international obligations, it should, if possible, be interpreted in a way that aligns with the treaty's meaning. This often necessitates referring directly to the treaty.

This principle was articulated as follows:

“In 1950 there was a convention between many of the European countries... I think we are entitled to look at it, because it is an instrument which is binding in international law: and we ought always to interpret our statutes so as to be in conformity with international law. Our statute does not in terms incorporate the convention, nor refer to it. But that does not matter. We can look at it.”<sup>2</sup>

### **Different Language Texts**

When a treaty has two or more official versions in different languages, all versions are equally authoritative unless explicitly stated otherwise. Any differences in meaning between the texts are to be resolved by considering the treaty's object and purpose

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<sup>1</sup> Bennion 2020 s 24.16

<sup>2</sup> Salomon v Customs and Excise Commissioners [(1967) 2 QB 116] cited in Bennion 2020 p 758

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(see Article 33 of the Vienna Convention on the Law of Treaties).

Questions can arise about whether foreign language versions of a treaty may be referenced if only the English version is incorporated into domestic law. This issue was answered in the *English Case*.³ The court noted that the 1956 Convention had both English and French versions, which were equally valid. However, only the English text was included in the 1965 Act of England and given legal force. The court held that the English version should be interpreted in a straightforward way, suitable for understanding an international treaty, without being restricted by strict English legal rules or precedents. If needed, the French version could also be consulted for clarification. While some argue that foreign texts should only be used if the English version is unclear, the court dismissed this as overly rigid. The court clarified that English language is inherently flexible, and interpreters may need to use various tools, including other language versions, without first proving ambiguity in the English text.

Travaux Préparatoires

The term *travaux préparatoires* (preparatory work) refers to records documenting the processes, such as the proceedings of international conferences, that led to the creation of the treaty in question.

Courts are generally allowed to refer to the *travaux préparatoires* particularly in cases where the treaty's meaning is unclear. However, caution is advised in doing so.⁴ Such references

³ *Buchanan (James) & Co Ltd v Babco Forwarding and Shipping (UK) Ltd* [(1978) AC 141 cited in Bennion 2020 p 761]

⁴ *Porter v Freudenberg* [1915] 1 KB 857 cited in Bennion 2020 p 762

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should only be made when the materials are both publicly accessible and clearly demonstrate a specific legislative intent.<sup>5</sup>

### **Decisions of Foreign Courts and Jurists**

It is generally preferable for international treaties to be interpreted consistently by the courts of all states that are party to them. To achieve uniform application and ensure accurate interpretation, courts may refer to decisions made by foreign courts and writings from foreign legal scholars.

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<sup>5</sup> Fothergill v Monarch Airlines Ltd [1981] AC 251 cited in Bennion 2020 p 762