

Treaty Law, Drafting and Interpretation¹

1. Introduction and background

Treaties have governed international law for centuries. As such, treaties have had a large impact on how the world works. Treaties can be bilateral (between two parties) or multilateral (between multiple parties). Multilateral treaties are usually agreements that are negotiated in technical sessions over a period of time, such as the United Nations Framework Convention on Climate Change (UNFCCC). Multilateral treaties seek to create a global approach on important international issues, such as peace and war or climate change. Multilateral treaties reflect the overall agreement of the parties involved in the negotiations – although sometimes they rather reflect what they agree to disagree about.

In the 17th century, the Dutch jurist and scholar Hugo Grotius (1583 – 1645) established general principles for treaty interpretation which still are relevant. They are similar to the principles of treaty interpretation captured in the 1969 Vienna Convention on the Law of Treaties. The Convention determines the secondary rules that apply to the development and application of treaties – e.g. adoption, reservations, amendments, interpretation, withdrawal etc. The “law of treaties” is different from “treaty law” which includes the substantial law in treaties, including the details of the obligations.

2. Treaty

A treaty is an express agreement entered into by different actors, namely states and international governmental organisations, under international law. They can be called, inter alia, international agreements, protocols, covenants, conventions, charters, declarations, memoranda of understanding, modus vivendi, pacts or exchange of letters. Regardless of the title, the agreement is only a formal treaty if it is legally binding. This is of importance in how the agreement affects the signatories. If binding, then the party in breach of the treaty might, for example, be liable for non-compliance with the treaty agreement. Treaty law is therefore often compared to contract law because parties also accept certain obligations vis-à-vis each other.

A formal definition of “treaty” and “international agreement” has been debated by academics for years. Lord McNair’s working definition describes treaties as “...a written agreement by which two or more States or international organizations create or intend to create a relation between themselves operating within the sphere of international law”. For the purpose of international relations the key question is whether the agreed instrument creates legally binding obligations under international law.

According to some scholars this depends on the intention of the parties. They are free to create non-binding or binding arrangements evidenced by, for example, concrete binding language and formal procedures. If there is no obligation that is created in the agreement, then there can be no question of being bound to it. Non-binding agreements are often referred to as a “gentlemen’s agreement” or a “declaration”.

In order for a treaty to be binding, it must be formally concluded and ratified. Ratification (acceptance, approval and accession) under international law indicates a state’s consent to be bound by a treaty following the formal adoption and signature. In most countries this is preceded by a process of domestic ratification. The process differs from country to country but usually involves parliament and the passing of domestic legislation (authorising government’s action).

In addition, Article 102 of the UN Charter states the following:

¹ This section is based on a presentation by Jill Barrett on 4 April 2013.

“1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.”

The provision requires that all treaties and international agreements entered into by any member of the United Nations must be registered with the Secretariat and be published by the Secretariat. Parties to a treaty may not invoke that treaty before the International Court of Justice or any other UN body unless it is registered.

The 1969 Vienna Convention on the Law of Treaties helps to define a treaty in Article 2 paragraph 1 (a). According to the provision, treaty means *“an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”*. The 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, in Article 2 paragraph 1 (a), uses very similar language.

Therefore, a treaty must be (1) a binding instrument, which means that the contracting parties intended to create legal rights and duties; (2) concluded by states or international organizations with treaty-making power; (3) governed by international law and (4) in writing. The phrase *“whatever its particular designation”* emphasises that the descriptive name and form of an agreement are not necessarily decisive. The agreement qualifies as a treaty if it follows the aforementioned criteria. It must be concluded between at least two parties possessing treaty-making capacity. Their intention must have been to create a degree of formally binding obligations under international law.

There are other international instruments that are not intended to be treaties. They are usually non-binding and may be called: Memorandum of Understanding, Declaration, Arrangement, Action Plan, Guidelines, Gentlemen’s Agreement or Protocol (which, however, could also be binding instruments depending on intention and content). The name *“protocol”* is occasionally associated with a supplementary non-binding agreement added to an existing treaty. However, the London Protocol which prohibits dumping at sea, for example, is a complete replacement of the earlier treaty on the issue (and not an add-on to the London Convention). Similarly, the Montreal Protocol is a separate international treaty.

3. Practical exercise

The above text has helped explain the difference between a binding treaty and a non-binding document. In order to learn what this looks like in practice, please read the following extracts and identify if they are from a treaty or non-binding treaty-like instrument:

a) Sino-British Joint Declaration (extract)

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China have reviewed with satisfaction the friendly relations existing between the two Governments and peoples in recent years and agreed that a proper negotiated settlement of the question of Hong Kong, which is left over from the past, is conducive to the maintenance of the prosperity and stability of Hong Kong and to the further strengthening and development of the relations between the two countries on a new basis. To this end, they have, after talks between the delegations of the two Governments, agreed to declare as follows:

1. *The Government of the People's Republic of China declares that to recover the Hong Kong area (including Hong Kong Island, Kowloon and the New Territories, hereinafter referred to as Hong Kong) is the common aspiration of the entire Chinese people, and that it has decided to resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997.*

2. *The Government of the United Kingdom declares that it will restore Hong Kong to the People's Republic of China with effect from 1 July 1997.*

3. *The Government of the People's Republic of China declares that the basic policies of the People's Republic of China regarding Hong Kong are as follows:*

(1) Upholding national unity and territorial integrity and taking account of the history of Hong Kong and its realities, the People's Republic of China has decided to establish, in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, a Hong Kong Special Administrative Region upon resuming the exercise of sovereignty over Hong Kong.

(2) The Hong Kong Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China. The Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.

(3) The Hong Kong Special Administrative Region will be vested with executive, legislative and independent judicial power, including that of final adjudication. The laws currently in force in Hong Kong will remain basically unchanged.

...

4. *The Government of the United Kingdom and the Government of the People's Republic of China declare that, during the transitional period between the date of the entry into force of this Joint Declaration and 30 June 1997, the Government of the United Kingdom will be responsible for the administration of Hong Kong with the object of maintaining and preserving its economic prosperity and social stability; and that the Government of the People's Republic of China will give its cooperation in this connection.*

5. *The Government of the United Kingdom and the Government of the People's Republic of China declare that, in order to ensure a smooth transfer of government in 1997, and with a view to the effective implementation of this Joint Declaration, a Sino-British Joint Liaison Group will be set up when this Joint Declaration enters into force; and that it will be established and will function in accordance with the provisions of Annex II to this Joint Declaration.*

6. *The Government of the United Kingdom and the Government of the People's Republic of China declare that land leases in Hong Kong and other related matters will be dealt with in accordance with the provisions of Annex III to this Joint Declaration.*

7. *The Government of the United Kingdom and the Government of the People's Republic of China agree to implement the preceding declarations and the Annexes to this Joint Declaration.*

8. *This Joint Declaration is subject to ratification and shall enter into force on the date of the exchange of instruments of ratification, which shall take place in Beijing before 30 June 1985.*

This Joint Declaration and its Annexes shall be equally binding.

Done in duplicate at Beijing on 19 December 1984 in the English and Chinese languages, both texts being equally authentic.

Analysis: Despite the fact it is called a declaration, binding language such as “subject to ratification” and “shall enter into force” indicate that the Sino-British Joint Declaration is in fact a treaty.

b) Afghanistan Compact (extract)

The Islamic Republic of Afghanistan and the international community:

Determined to strengthen their partnership to improve the lives of Afghan people, and to contribute to national, regional, and global peace and security;

Affirming their shared commitment to continue, in the spirit of the Bonn, Tokyo and Berlin conferences, to work toward a stable and prosperous Afghanistan, with good governance and human rights protection for all under the rule of law, and to maintain and strengthen that commitment over the term of this Compact and beyond;...

Have agreed to this Afghanistan Compact....

PRINCIPLES OF COOPERATION

As the Afghan Government and the international community embark on the implementation of this Compact, they will:

- 1. Respect the pluralistic culture, values and history of Afghanistan, based on Islam;*
- 2. Work on the basis of partnership between the Afghan Government, with its sovereign responsibilities, and the international community, with a central and impartial coordinating role for the United Nations;*
- 3. Engage further the deep-seated traditions of participation and aspiration to ownership of the Afghan people;*
- 4. Pursue fiscal, institutional and environmental sustainability;*
- 5. Build lasting Afghan capacity and effective state and civil society institutions, with particular emphasis on building up human capacities of men and women alike;*
- 6. Ensure balanced and fair allocation of domestic and international resources in order to offer all parts of the country tangible prospects of well-being;*
- 7. Recognise in all policies and programmes that men and women have equal rights and responsibilities;*
- 8. Promote regional cooperation; and*
- 9. Combat corruption and ensure public transparency and accountability.*

...

COUNTER-NARCOTICS – A CROSS-CUTTING PRIORITY

Meeting the threat that the narcotics industry poses to national, regional and international security as well as the development and governance of the country and the well-being of Afghans will be a priority for the Government and the international community. The aim will be to achieve a sustained and significant reduction in the production and trafficking of narcotics with a view to complete elimination. Essential elements include improved interdiction, law enforcement and judicial capacity building; enhanced cooperation among Afghanistan, neighbouring countries and the international community on disrupting the drugs trade; wider provision of economic alternatives for farmers and labourers in the context of comprehensive rural development; and building national and provincial counter-narcotics institutions. It

will also be crucial to enforce a zero-tolerance policy towards official corruption; to pursue eradication as appropriate; to reinforce the message that producing or trading opiates is both immoral and a violation of Islamic law; and to reduce the demand for the illicit use of opiates.

COORDINATION AND MONITORING

The Afghan Government and the international community are establishing a Joint Coordination and Monitoring Board for the implementation of the political commitments that comprise this Compact. As detailed in Annex III, this Board will be co-chaired by the Afghan Government and the United Nations and will be supported by a small secretariat. It will ensure greater coherence of efforts by the Afghan Government and international community to implement the Compact and provide regular and timely public reports on its execution.

Analysis: The Afghanistan Compact is not a treaty. Much of the language is based upon “commitment”, which tends to be used for non-binding text. It is not clear who the international community is in this document and as such, it is not evident who is a party (there are participating countries mentioned, but not parties) to the Compact. The language is indicative of a policy statement rather than a treaty. Further, there is no mention of ratification, signature or enforcement.

c) Memorandum of Understandings on ASEAN Cooperation and Joint Approaches in Agriculture and Forest Products Promotion Scheme (extract)

1. The Governments of ASEAN Member Countries hereby agree to establish the ASEAN Cooperation and Joint Approaches on Agriculture and Forest Products Promotion Scheme, hereinafter referred to as the Scheme.

2. In this Scheme, "Promotion" means joint efforts to improve the competitiveness of ASEAN agriculture and forest products. These include negotiation, collective bargaining, and addressing issues and problems encountered by Member Countries in the international markets.

3. The objectives of the Scheme are to:

- i. Strengthen the collective bargaining position of ASEAN on matters affecting agriculture and forest products trade in the world markets;*
- ii. Expand agriculture and forest products exports through product diversification, intensification of downstream processing and higher value added activity;*
- iii. Continue upgrading the quality of ASEAN Agriculture and Forest Products; and*
- iv. Lay down the foundation for bigger and closer economic ties between ASEAN Member Countries.*

4. The products to be covered by the Scheme shall be reviewed periodically by Member Countries and the Private Sector. The Initial Product List covered by the Scheme appears in the Schedule.

5. Promotional programmes of the agriculture and forest products shall be initiated by the private sector in consultation with the National Coordinator of Member Countries as referred to in paragraph 17.

6. The Governments of Member Countries shall assist and facilitate the private sector's initiatives.

7. The Scheme shall establish a mechanism for joint approaches and promotion to expand ASEAN exports of agriculture and forest products in the world market.

II. JOINT PRODUCT PROMOTION IN WORLD MARKET

8. The Scheme shall establish guidelines and procedures for joint ASEAN products promotions which shall include the following programmes/activities:

- i. Joint efforts to counter campaign against ASEAN products;*
- ii. Joint negotiations to overcome discriminatory Non-Tariff Barriers (NABs) and unfair practices imposed by importing country/countries; and*
- iii. Joint promotion of product through participation in promotional activities.*

9. A product to be considered for inclusion in the Scheme must satisfy any two of the following criteria:

- i. The product is being subjected to discriminatory treatment and/or non-trade related issues;*
- ii. The product is of major export interest to or has export potential for at least two Member Countries; and*
- iii. The product has economic impact in terms of income generation and employment on a large number of people in ASEAN.*

...

V. COORDINATION MECHANISM

16. A Joint Committee shall be established to coordinate joint efforts and programmes under the Scheme.

17. The Joint Committee comprising the ASEAN Coordinator the National Coordinators and the Private Sectors shall oversee the implementation of the Scheme and report to SOM-AMAF. The Joint Committee shall be responsible for the overall implementation of the Scheme while the National Coordinators shall be responsible for activities organised by respective Member Countries. The ASEAN Coordinator and the National Coordinators shall be appointed by the ASEAN Secretariat and Member Countries respectively.

18. The Joint Committee shall adopt its own rules of procedures.

VI. ENTRY INTO FORCE

19. This Memorandum of Understanding shall enter into force from the date of its signature and shall initially apply for a period of five (5) years. It may be extended by the consensus of all Member Countries beyond the original five-year period.

Analysis: The 1994 Memorandum of Understandings on ASEAN Cooperation and Joint Approaches in Agriculture and Forest Products Promotion Scheme is not a treaty. The text is ambiguous and filled with aspirational language. Further, there is no voting procedure, compliance procedure or depository. The language of the text reveals that the signatories have merely signed the Memorandum of Understanding, rather than agreeing to the actual terms and conditions. Also of consideration is that the Vienna Convention establishes in Article 7 that signatories of a treaty must have full powers.

d) Memorandum of Understanding between ASEAN and China on establishing the ASEAN-China Centre (extract)

The Governments of the Member States of the Association of Southeast Asian Nations comprising Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam (hereinafter referred to collectively as "ASEAN" or "ASEAN Member States") and the Government of the People's Republic of China (hereinafter referred to as "China") (hereinafter referred to collectively as "Contracting Parties" or "Parties"; or singularly as "Contracting Party" or "Party");

RECALLING the thrust of economic cooperation between ASEAN and China which both sides can mutually benefit;

MINDFUL of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and the People's Republic of China signed in Phnom Penh on 4 November 2002 ("Framework Agreement") as well as the various agreements on trade in goods, services, dispute settlement, investment and other agreements relating to economic cooperation signed between ASEAN and China under the umbrella of the

Framework and the Joint Declaration of the Heads of State/Government of Association of Southeast Asian Nations and the People's Republic of China on ASEAN-China Strategic Partnership for Peace and Prosperity signed in Bali on 8 October 2003;

REALIZING the vast potential for economic cooperation between the Contracting Parties;

RECOGNISING that cooperation is based on equity, friendship and mutual benefit;

STRESSING that the areas of cooperation under this Memorandum of Understanding shall be complementary to the activities carried out in other ASEAN-China fora;

HAVE AGREED as follows:

ARTICLE I - ESTABLISHMENT AND LOCATION

1. The Contracting Parties shall hereby establish a one-stop information and activities centre known as the ASEAN-China Centre (hereinafter referred to as "the Centre") to promote ASEAN-China cooperation in trade, investment, tourism, education and culture, with active involvement of the private sector. The Centre shall gradually expand to include a more comprehensive array of activities and participants.

2. The Centre shall be a non-profit organisation but be able to raise funds necessary for its operation.

3. The Headquarters of the Centre shall be located in Beijing. Its affiliated centres may be established in ASEAN Member States as well as other parts of China in the future.

...

ARTICLE XXIV - AMENDMENTS

1. Either Contracting Party may propose amendments to this Memorandum of Understanding. A proposed amendment shall be communicated to the Secretary-General who shall communicate it to the other Contracting Parties at least six months in advance for the consideration by the Joint Council.

2. Amendments to this Memorandum of Understanding shall be adopted by the Joint Council and shall require acceptance by the Members of the Centre. However, the amendments involving following matters shall require subsequent acceptance by all Contracting Parties before they come into force:

a) fundamental alteration in the purpose or the functions of the Centre;

b) change relating to the right to withdraw from this Memorandum of Understanding;

c) introduction of new obligations for Members;

d) change in the provisions regarding privileges and immunities of the Centre and the persons related to the activities of the Centre; and

e) other matters determined by the Joint Council as important.

3. Amendments accepted by the Contracting Parties shall enter into force upon the date of the last deposit of the instruments of acceptance with the ASEAN Secretariat.

ARTICLE XXV ENTRY INTO FORCE AND DURATION

1. After the completion of its internal legal procedures for the entry into force of this Memorandum of Understanding, each ASEAN Member State shall give written notification to the Secretary-General of ASEAN, who shall, immediately notify China when all of the ASEAN Member States have finished the said procedures.

2. After the completion of its internal legal procedures for the entry into force of this Memorandum of Understanding, China shall give written notification to the Secretary-General of ASEAN.

3. This Memorandum of Understanding shall enter into force upon receipt of the last written notification is received. The Secretary-General of ASEAN shall notify ASEAN Member States of the entry into force of this Memorandum of Understanding.

4. This Memorandum of Understanding shall remain in force for a period of five years, and thereafter may be extended by decision of the Joint Council. This Memorandum of Understanding shall be deposited with both the Ministry of Foreign Affairs of China and the ASEAN Secretariat. The Secretary-General of ASEAN shall promptly furnish a certified true copy to all ASEAN Member States.

Analysis: The 2009 Memorandum of Understanding between ASEAN and China is a treaty. Even though it is referred to as a Memorandum of Understanding, it is a treaty because it has a very specific provision of entry into force and duration, which is similar to a ratification procedure. Further, not every treaty has a settlement of disputes provision.

e) Memorandum of Understanding Between the Association of Southeast Asian Nations and the People's Republic of China on Strengthening Cooperation in the Field of Standards, Technical Regulations and Conformity Assessment (extract)

The Governments of the Member States of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN") and the Government of the People's Republic of China (hereinafter referred to as "China") (hereinafter singularly referred to as "Party" and collectively referred to as "the Parties");

REFERRING to the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China signed on 4 November 2002 and its amending Protocols;

RECOGNISING that further cooperation among the Parties in the field of standards, technical regulations and conformity assessment has important significance in safeguarding national security, in the protection of human, animal or plant life or health, in the protection of the environment, in the prevention of deceptive practices, in raising the quality of mutually supplied goods, in the protection of consumer's rights, and in facilitating and promoting regional trade, towards the effective and successful realisation of the ASEAN-China Free Trade Area;

DESIRING to further promote the cooperation between relevant Parties in implementation of the Agreement on Technical Barriers to Trade of the World Trade Organisation (hereinafter referred to as "TBT Agreement");

WISHING to further strengthen the strategic partnership established between ASEAN and China,

HAVE REACHED the following understandings:

Article 1 OBJECTIVE

The Parties, subject to the terms of this Memorandum of Understanding and the laws, rules, regulations and policies from time to time in force in each country, will strengthen cooperation in the field of standards, technical regulations and conformity assessment on the basis of equality, mutual benefit and mutual respect, in order to ensure that imported and exported products between ASEAN and China conform to requirements of safety, health, environment, the protection of the interests of consumers, and the promotion of regional trade in line with the principles of the TBT Agreement.

Article 2 AREAS OF COOPERATION

1. Taking into account the existing implementation system of the TBT Agreement and subject to the terms of this Memorandum of Understanding and policies on standards, technical regulations and conformity assessment of the Parties, the Parties, in order to strengthen the cooperation and consultation mechanism between them, endeavour to cooperate in the following areas:

(a) establishment of an efficient system of information exchange and communication for which the Parties will decide on the priority sectors for cooperation;

(b) conducting exchange visits of relevant management, enforcement and technical personnel of the Parties so as to exchange experience and consult and resolve relevant problems;

(c) conducting training courses, seminars and other similar activities based on the needs and capabilities of the Parties, and in consideration of narrowing the development gap within ASEAN;

(d) conducting collaborative research in areas of mutual interest within the scope of this Memorandum of Understanding; and
(e) other areas as agreed by the Parties.

...

Article 4 FINANCIAL ARRANGEMENTS

The financial arrangements to cover expenses for the cooperative activities carried out within the framework of this Memorandum of Understanding shall be mutually agreed upon by the respective Parties on a case-by-case basis subject to the availability of funds.

...

Article 9 FINAL PROVISIONS

1. This Memorandum of Understanding shall come into effect on the date of signing and will be valid for a period of five (5) years. Thereafter it shall be automatically renewed every two (2) years unless sooner terminated by written notice by either ASEAN or China, six (6) months prior to the intended date of termination.

2. The termination of this Memorandum of Understanding will not affect the implementation of on-going programmes, or programmes which have been accepted by the respective Parties prior to the date of termination of the Memorandum of Understanding.

3. A Party shall not use the name, logo and/or official emblem of any of the Parties in any publication, document and/or paper without the prior written approval of such Party.

4. For the ASEAN Member States, this Memorandum of Understanding shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof, to each ASEAN Member State.

IN WITNESS WHEREOF, the undersigned, being duly authorised by the respective Governments of the Member States of ASEAN and the Government of the People's Republic of China, have signed this Memorandum of Understanding.

Analysis: The 2009 Memorandum of Understanding is not a treaty. The language is weak and unclear. Language such as "understanding" is not as conclusive for example of "have agreed", which is used in treaty language. Further, the document uses language such as "come into effect" rather than "come into force". The content is aspirational rather than based on legally binding measures and language.

3. Treaty Practice

Treaty practice describes the procedure for the development, handling and maintenance of treaties. It includes the drafting, the adoption of text at the end of the negotiation, how text is processed for signature, who can sign the text, how the signatories sign the text, how the ratification instrument is drafted, how the reservations or declarations are drafted, the management of treaty records, depository function etc. The treaty practice of states differs and the relevant internal manuals and instructions are not always made public. New Zealand, for example, has its manual on the website available at:

<http://www.mfat.govt.nz/downloads/treaties-and-international-law/International-Treaty-Making-Guide-2012.pdf>

The United Nations Treaty Handbook has been prepared by the UN Office for Legal Affairs as a guide to the Secretary-General's practice as a depositary of multilateral treaties and the UN Secretariat's practice in relation to the registration and publication functions. It aims to assist states in becoming party to international treaties. The handbook contains practical examples (e.g. of reservations or declarations) and is written in simple language with step-by-step instructions, and explanations that cover many aspects of international treaty law and practice. It is available at:

<http://treaties.un.org/doc/source/publications/THB/English.pdf>

4. Drafting and interpretation

The 1969 Vienna Convention on the Law of Treaties is the most important source on the law of treaties. It mainly codifies existing customary international law on treaties. To date, it has been signed and ratified by over 113 countries. Nearly all industrialised nations have become party to the Vienna Convention. Exceptions include, for example, the United States, France and Turkey. As the Vienna Convention generally reflects customary international law, there are very few reasons that countries would object to its application. The Vienna Convention (in section 3) contains rules on how to interpret a treaty:

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 connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection 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.

Article 33 – Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.