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IV. Research and Interpretive Resources

This chapter provides a brief overview of resources that may aid research on issues with an international, comparative, transnational, or foreign law dimension. Also summarized are resources – beyond those typically used in U.S. litigation – that may prove useful for interpreting treaties and other international or foreign instruments.

A. Judicial Interpretation of International or Foreign Instruments

The primary treaty governing judicial interpretation of international agreements is discussed below.

1. Vienna Convention on the Law of Treaties

The primary international resource for judicial interpretation of foreign treaties or other instruments is the 1969 Vienna Convention on the Law of Treaties² – a treaty that the Supreme Court has cited on numerous occasions, as discussed below.

a. Background on the Vienna Convention on the Law of Treaties

The 1969 Vienna Convention on the Law of Treaties, which guides international lawyers’ construction of treaty terms, is not to be confused with other multilateral agreements that also may be called simply “the Vienna Convention”; these include the 1961 Vienna Convention on Diplomatic Relations³ and the 1963 Vienna Convention on Consular Relations.⁴

¹ For what this section contains, see the Detailed Table of Contents, <http://www.asil.org/benchbook/detailtoc.pdf>.

² Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, available at http://treaties.un.org/doc/Treaties/1980/01/19800127%2000-52%20AM/Ch_XXIII_01p.pdf [hereinafter Vienna Convention on Treaties]. This treaty, which entered into force on Jan. 27, 1980, has 113 states parties; however, the United States is not among them. U.N. Treaty Collection, *Vienna Convention on the Law of Treaties*, http://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXIII~1&chapter=23&Temp=mtdsg3&lang=en (last visited Dec. 9, 2013).

³ Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95, available at http://treaties.un.org/doc/Treaties/1964/06/19640624%2002-10%20AM/Ch_III_3p.pdf. This treaty, which entered into force on Apr. 24, 1964, has 189 states parties; among them is the United States, which ratified on Nov. 13, 1972. See U.N. Treaty Collection, *Vienna Convention on Diplomatic Relations*, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-3&chapter=3&lang=en (last visited Dec. 9, 2013). The Convention has been implemented in the United States by means of the Diplomatic Relations Act of 1978, 22 U.S.C. §§ 254a-254e (2006). This treaty is discussed *supra* § II.B.

⁴ Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77; T.I.A.S. 682, 596 U.N.T.S. 261, available at <http://treaties.un.org/doc/Publication/UNTS/Volume%20596/volume-596-I-8638-English.pdf>. This treaty, which entered into force on Mar. 24, 1967, has 176 states parties; among them is the United States, which ratified on Nov.

b. Status of the Vienna Convention on the Law of Treaties within the United States

The 1969 Vienna Convention on Treaties enjoys wide membership: more than half the countries of the world are states parties. The United States, however, is not. As explained at the State Department website:

The United States signed the treaty on April 24, 1970. The U.S. Senate has not given its advice and consent to the treaty. The United States considers many of the provisions of the Vienna Convention on the Law of Treaties to constitute customary international law on treaties.

U.S. Dep't of State, *Vienna Convention on the Law of Treaties*, <http://www.state.gov/s/l/treaty/faqs/70139.htm> (last visited Dec. 9, 2013). The U.S. Court of Appeals for the Second Circuit has affirmed this position:

Although the United States has not ratified the Vienna Convention on the Law of Treaties, our Court relies upon it as an authoritative guide to the customary international law of treaties, insofar as it reflects actual state practices. The Department of State considers the Vienna Convention on the Law of Treaties an authoritative guide to current treaty law and practice.

Mora v. New York, 524 F.3d 183, 196 n.19 (2d Cir.) (internal quotation and citation omitted), *cert. denied*, 555 U.S. 943 (2008); *see Ozaltin v. Ozaltin*, 708 F.3d 355, 358 n.4 (2d Cir. 2013) (quoting first sentence of the passage above, in the course of relying on the Vienna Convention on the Law of Treaties definition of the term “depository”).

In a 1982 opinion for the Court, then-Justice William H. Rehnquist cited Article 2 of the Vienna Convention on Treaties to support the proposition that term “treaty,” in international law, “ordinarily refers to an international agreement concluded between sovereigns, regardless of the manner in which the agreement is brought into force.” *Weinberger v. Rossi*, 456 U.S. 25, 29 n.5 (1982). *See also Igartúa v. United States*, 626 F.3d 592, 624-25 (1st Cir. 2010) (relying on the Article 2 definition of a treaty “reservation”), *cert. denied*, 132 S. Ct. 2375 (2012); *Continental Ins. Co. v. Federal Express Corp.*, 454 F.3d 951, 956 (9th Cir. 2006) (in international aviation case, relying on Article 40, which deals with treaty amendments).

A recent Supreme Court usage occurred in a dissent that cited Article 27 of the Vienna Convention on the Law of Treaties for the proposition that “treaty parties may not invoke domestic law as an excuse for failing to conform to their treaty obligations.” *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 391 (2006) (Breyer, J., joined by Stevens and Souter, JJ., dissenting).

24, 1969. *See* U.N. Treaty Collection, *Vienna Convention on Consular Relations*, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-6&chapter=3&lang=en (last visited Dec. 9, 2013). This treaty is discussed *supra* § II.B.

c. Key Provisions on Interpretation in the Vienna Convention on the Law of Treaties

Articles 31, 32, and 33 of the 1969 Vienna Convention on the Law of Treaties have particular relevance to the interpretation of treaties. After quoting the text of each of these articles in turn below, this section addresses the use of these interpretive provisions in U.S. courts.

i. Article 31: General Rule of Interpretation

Article 31 of the 1969 Vienna Convention on the Law of Treaties states in full:

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.

ii. Article 32: Supplementary Means of Interpretation

Article 32 of the 1969 Vienna Convention on the Law of Treaties states in full:

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.

iii. Article 33: Interpretation of Treaties Authenticated in Two or More Languages

Article 33 of the 1969 Vienna Convention on the Law of Treaties states in full:

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.

iv. Judicial Reliance on Interpretive Provisions of the Vienna Convention on Treaties

Notwithstanding that the United States is not a party to the 1969 Vienna Convention on Treaties, holdings in lower courts in the United States have relied on the treaty's interpretive provisions on a number of occasions; for example, to:

- Support the position that a treaty's preamble forms a party of the treaty, as set forth in

article 31(2) of the Vienna Convention on Treaties. *E.g.*, *Gandara v. Bennett*, 528 F.3d 823, 827 (11th Cir. 2008); *Mora v. New York*, 524 F.3d 183, 196 (2d Cir.), *cert. denied*, 555 U.S. 943 (2008); *Cornejo v. County of San Diego*, 504 F.3d 853, 858 (9th Cir. 2007).

Reliance on these interpretive provisions of the Vienna Convention on Treaties also appeared in dissenting opinions in two Supreme Court cases:

- *Abbott v. Abbott*, 560 U.S. 1, 40 n. 11 (2010) (Stevens, J., joined by Thomas and Breyer, JJ., dissenting) (quoting the provision in Article 32 of the Vienna Convention on Treaties by which courts may resort to supplementary materials when there is ambiguity or to avoid a “manifestly absurd” result); and
- *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155, 191 (1993) (Blackmun, J., dissenting) (citing Article 31 of the Vienna Convention on Treaties for the proposition that “[i]t is well settled that a treaty must first be construed according to its ‘ordinary meaning’”).