



TRICI-Law

RESEARCH PAPER SERIES

THE RULES OF INTERPRETATION OF CUSTOMARY INTERNATIONAL LAW

Blog post No. 002/2019

TRICI-Law Project

by Panos Merkouris



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 groningen

faculty of law

This project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 Research and Innovation Programme (Grant Agreement No. 759728).



European Research Council
Established by the European Commission



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published in:

Blog of the Groningen Journal of International Law (21 October 2019), available [here](#)

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October 21, 2019 by GroJIL-blog

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In international law, interpretation is ubiquitous and is the process through which the interpreter attempts to determine the meaning of the rule that is being interpreted. Every case brought before international courts and tribunals raises questions of interpretation. For written agreements between States, this process has been codified in Articles 31-33 of the Vienna Convention on the Law of Treaties (VCLT). Based on these articles, some of the elements that are taken into consideration are the text, the context of the treaty, and its object and purpose as evidence of the intention of the parties. However, a key issue is that these VCLT articles refer only to interpretation of treaties and not of customary international law (CIL).

CIL, in turn, is one of the formal and most important sources of international law and, together with treaties, creates binding rules of international law. Some of the most crucial rules of international law started out and continue to exist as CIL. Examples of CIL rules are: the prohibitions of genocide, torture, slavery and piracy, the rules on State responsibility, on immunity, on *non-refoulement* of refugees and the environmental no-harm rule, to name but a few. It is undeniable that all of these CIL rules have made and continue to make a vital contribution to international law and society. CIL's importance is further underlined by the fact that its rules (at least general customary international law) are binding on all States (whereas a treaty is binding only on its parties), that it covers areas not, or only partially, regulated by treaties and that it offers rules that can solve normative conflicts between rules of international law.

Whereas in the application of treaties the process of interpretation is one that always yields a solution, with respect to CIL these rules of interpretation have not been examined. To date, no in-depth discussion on the rules of interpretation of this source has occurred. This leaves CIL completely in the open and, by consequence, the manner in which CIL is being identified and interpreted remains couched in mystery; this raises grave concerns as to the proper function of this source of international law, and even more perilously as to the predictability/foreseeability of the international legal system.

TRICI-Law project (the acronym stands for “The Rules of Interpretation of Customary International Law”) thus aims to prove that even in the case of this unwritten source, i.e. CIL, there are rules of interpretation similar to those that exist for the interpretation of treaties, and to determine the content of these rules.

TRICI-Law is a 5-year ERC Starting Grant project, which currently involves five team-members. [Prof. Panos Merkouris](#) is the Principal Investigator (PI) of the project. As of November 1, 2019 the TRICI-Law research team will also consist of one post-doc researcher, Mr Sotirios-Ioannis Lekkas, and of two PhD researchers, [Ms. Marina Fortuna](#) and [Ms. Nina Mileva](#), who will be tackling various theoretical and practical aspects of the interpretability of CIL. [Ms. Tatiana Spijk Belanova](#) is the Project Manager of the project.

More information on the project can be found on the project’s [website](#), on [Facebook](#) and [Twitter](#).



Panagiotis (Panos) Merkouris is a Professor & holds a Chair on Interpretation and Dispute Settlement on International Law at the University of Groningen. He holds an LLB from the University of Athens, 2 LLMs on International Law from the University of Athens and UCL respectively, and a PhD from Queen Mary, University of London. He is the Co-Rapporteur of the ILA Study Group on Content and Evolution of the Rules of Interpretation, and a member of the Young Academy Groningen.

His research interests include public international law, law of treaties, sources of international law, dispute settlement and environmental law.