



TRICI-Law
RESEARCH PAPER SERIES

THE RULES OF INTERPRETATION OF
CUSTOMARY INTERNATIONAL LAW

*2023 TRICI-Law Draft Guiding Principles
on the Interpretation of Rules of
Customary International Law*

Paper No. 009/2023

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Marina Fortuna and Nina Mileva*



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2023 TRICI-LAW DRAFT GUIDING PRINCIPLES

ON THE INTERPRETATION OF RULES OF CUSTOMARY INTERNATIONAL LAW

*Panos Merkouris, Sotirios-Ioannis Lekkas, Marina Fortuna and Nina Mileva**

Guiding Principle 1

Scope

The present Guiding Principles concern the manner in which rules of customary international law are to be interpreted.

Guiding Principle 2

Interpretability of Rules of Customary International Law

Rules of customary international law are subject to interpretation.

Guiding Principle 3

Identification and Interpretation of Rules of Customary International Law

1. The identification of a rule of customary international law is a legal process distinct from the interpretation of that rule.
2. Identification focuses on determining the existence of a rule of customary international law on the basis of relevant general practice and its acceptance as law (*opinio juris*).

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Interpretation focuses on determining the content of the rule. Each of these processes is governed by different rules.

Guiding Principle 4

Interpretation as a Single Combined Operation

1. A rule of customary international law, as previously identified, shall be interpreted in good faith in accordance with its object and purpose, its normative context and in a manner that does not deprive it of its effectiveness, as set out in the present Guiding Principles.
2. The interpretation of a rule of customary international law is a single combined operation, which places appropriate emphasis on the various means of interpretation indicated in the present Guiding Principles.

Guiding Principle 5

Teleological Interpretation

1. A rule of customary international law shall be interpreted with reference to its object and purpose.
2. The interpretation of a rule of customary international law may also take into account the object and purpose of the branch of law to which the rule of customary international law belongs.

Guiding Principle 6

Principle of Systemic Integration

The interpretation of a rule of customary international law shall take into account any relevant rules of international law.

Guiding Principle 7

Principle of Effectiveness

A rule of customary international law shall be interpreted in such a manner that does not deprive it of its effectiveness.

Guiding Principle 8

Evolutionary Interpretation

A rule of customary international law may, where appropriate, be interpreted evolutionarily.

Guiding Principle 9

'By proxy' Textual Interpretation

1. Textual interpretation, in the strict sense, is not applicable to the interpretation of rules of customary international law.
2. In the interpretation of a rule of customary international law recourse may be had to a form of 'by proxy' textual interpretation, that is relying on the terms of a written text including, *inter alia*, provisions in treaties or other codifying instruments reflecting rules of customary international law.

Guiding Principle 10

Limits to Interpretation

1. There are limits to the interpretation of rules of customary international law.
2. Such limits include:
 - a) An interpretation of a rule of customary international law may not, as far as possible, lead to an outcome that conflicts with a *jus cogens* rule.
 - b) An interpretation of a rule of customary international law may not lead to an outcome that modifies the rule being interpreted.
 - c) An interpretation of a rule of customary international law may not go beyond the principles of interpretation, as set out in these Guiding Principles.
3. Guiding Principle 10 is without prejudice to the development of additional limits.

Guiding Principle 11

Lex specialis

These Guiding Principles shall be without prejudice to the interpretation of rules of customary international law that is governed by special rules of international law.