Different models of incorporation
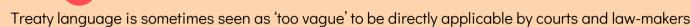
Direct incorporation

Direct incorporation means that a state enacts domestic law that gives effect to the treaty, using its original wording, and makes it binding upon public authorities and enforceable in domestic courts. The Human Rights Act 1998 is an example of direct incorporation in the UK.

Pros ✅

- Treaty itself acts as a reference point and it can be the sole basis for decision-making and case adjudication
  - High potential to function as a base for a comprehensive domestic legal and policy framework

- If the wording of treaty is unchanged in the incorporation legislation it leaves little doubt as to the rights provided
  - Mainstreaming international human rights language

- If properly tethered to the international treaty, it ensures human rights protections keep pace with international standards through interpretation using General Comments, treaty body jurisprudence, and comparable case law

- Allows for holistic approach to human rights law: intersectionality between treaties and interrelated rights

Cons ❌

- Treaty language is sometimes seen as 'too vague' to be directly applicable by courts and law-makers

- May been seen as requiring extensive resources
  - In order to effectively realise rights in everyday life the state must progressively devote resources - including economic, technical, and human - to the implementation of protected rights.

- Can take time to come into force due to extent of commitment
  - Success highly dependent on political will: requires significant buy-in from the entire community

Indirect incorporation

Indirect incorporation gives a treaty some effect in national law through another legal mechanism. For example, a provision in a national constitution may require that courts and public authorities take a human rights treaty into account in decision-making.

Pros ✅

- Allows for flexibility around how to incorporate
  - Some states may prefer to give effect to e.g. several treaties at once in their constitution in language that may not directly match that of the treaty itself

- Can appear a more politically appealing way to incorporate due to flexibility in wording and scope on which rights to include

- Can act as a precursor and a step-by-step way to increased incorporation
  - Can create awareness around and support for more extensive implementation among decision-makers as they become informed to the advantages of further incorporation.

Cons ❌

- Original meaning of the right risks being lost or misinterpreted
  - May not be as effective at mainstreaming language, as original treaty wording is not always followed
  - Risk of a lower standard of protection follows

- Ineffective if not followed by significant domestic reform in law, policy, and societal attitudes
  - Requires effort to maintain meaning and content of rights as those intended in international law

Piecemeal/sectoral incorporation

One or more individual treaty provisions are made part of domestic law, but often without specific reference to the treaty itself. This method only incorporates parts of a treaty, for example in relation to a specific right within a treaty, while ignoring other rights outlined in the treaty.

Pros ✅

- Useful accompaniment to other forms of incorporation, rather than a first step to incorporation
  - Fills in gaps and helps harmonise existing domestic human rights laws
  - Often a quicker and more flexible way to update human rights protections

- More effective and traceable to the international source when expressly referencing the part of the treaty which the law seeks to incorporate

- Currently the most common form of incorporation globally

Cons ❌

- Law remains at risk of not developing further, or being more easily repealed, without development of a wider framework

- 'Cherry-picking' of rights: insufficient when used as sole method of incorporation
  - Idea that human rights are indivisible, interdependent, and interrelated is lost
  - No holistic approach to domestic human rights framework based on international standards, detaching rights from each other, and breaking down the wider international human rights treaty framework