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Commentary on the 1969
Vienna Convention
on the Law of Treaties

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The limits of this means of interpretation lie "in a meaning incompatible with the spirit, purpose and context of the clause or instrument in which the words are contained".⁴¹

Para. 1 envisages the ordinary meaning to be given to the terms of the treaty **in their context**. Treaty terms are not drafted in isolation, and their meaning can only be determined by considering the entire treaty text. The context will include the remaining terms of the sentence and of the paragraph; the entire article at issue; and the remainder of the treaty, *i.e.*, **its text, including its preamble (Preamble N. 5) and annexes (e.g., maps)** and the other means mentioned in paras. 2 and 3.⁴² The annexes to the Convention are listed in the *Final Act* (*q.v.*; see also *Article 85*, N. 1). Article 31 thus embodies the contextual or systematic means of interpretation which aims at avoiding inconsistencies of the individual term with its surroundings.⁴³ Reference to the context in para. 1 confirms the relativity of the ordinary meaning (N. 9).⁴⁴

3. Object and Purpose (Para. 1)

Next, the ordinary meaning of a term of the treaty will be determined **in the light of its (i.e., the treaty's) object and purpose**.⁴⁵ The terms are used as a combined whole⁴⁶ and include a treaty's aims, its nature and its end. Indeed, a treaty may have many objects and purposes.⁴⁷ One of the objects and purposes will certainly be to maintain the balance of rights and obligations created by the treaty.⁴⁸ Article 31 thus also entrenches the teleological or functional approach.⁴⁹ It enables consideration of the different aims of particular types of treaties.

For instance, the intentions of the parties are often emphasised when interpreting bilateral, "contractual" treaties. By contrast, teleological interpretation has traditionally played a part in the interpretation of constitutions of international organisations (and

⁴¹ *South West Africa (Preliminary Objections) Cases*, ICJ Reports 1962 335 f; JENNINGS/WATTS N. 632.

⁴² DELBRÜCK/WOLFRUM III 642; IOT BERNHARDT, ZaöRV 27 (1967) 498, reference to the "preamble and annexes" would not have been "absolutely necessary".

⁴³ BLECKMANN, Völkerrecht N. 354.

⁴⁴ Emphatically the ILC Report 1966, YBILC 1966 II 221, para. 12: "the ordinary meaning of a term is not to be determined in the abstract but in the context of the treaty".

⁴⁵ See on the topic CRIC-GROTIC, Asian YBIL 7 (1997) 155 ff; BUFFARD/ZEMANEK, AUSTRIAN RIEL 3 (1998) 311 ff, 322 ff; LINDERFALK, Nordic JIL 72 (2003) 429 ff; J. KLÄBBERS, Some Problems Regarding the Object and Purpose of Treaties, Finnish YBIL 8 (1997) 138 ff.

⁴⁶ YASSEEN, RC 151 (1976 III) 57; LINDERFALK, *ibid.* 433 ("perfectly synonymous"); CARREAU, Droit international public N. 363 ("difficile à préciser").

⁴⁷ See the statement by TUSURUOKA in the ILC 1966, YBILC 1966 I 326, para. 91 ("both singular and plural had the same meaning").

⁴⁸ TREVIRANUS, GYBIL 25 (1982) 520.

⁴⁹ O'CONNELL, International Law I 255.

their implied powers) and other multilateral, “legislative” conventions.⁵⁰ The object and purpose also plays a particular part in the interpretation of human rights treaties.⁵¹

- 12 Consideration of a treaty’s object and purpose together with good faith will ensure the effectiveness of its terms (*ut res magis valeat quam pereat*, the *effet utile*).

As the ILC Report 1966 expounded: “[w]hen a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted”.⁵²

- 13 Article 31 does not state where the object and purpose may be sought. Traditionally, the preamble (*Preamble*, N. 1–2) is resorted to, or a general clause at the beginning of the treaty. The structure of Article 31 as a General Rule leaves no doubt that all the elements of Article 31 as well as the supplementary means of interpretation in Article 32 contribute to this end.⁵³
- 14 Interpretation in the light of a treaty’s object and purpose finds its limits in the treaty text itself. One of the (originally many possible) ordinary meanings will eventually prevail. In other words, Article 31 avoids an extreme functional interpretation which may, in fact, lead to “legislation” or the revision of a treaty.⁵⁴

⁵⁰ *Nuclear Weapons Advisory Opinion*, ICJ Reports 1996 74 f, para. 18.

⁵¹ See the case-law of the European Court of Human Rights cited in VILLIGER, *Festschrift RISS* 325 f; the Inter-American Human Rights Court in the 1987 *Velasquez Rodriguez (Preliminary Objection) Case*, ILR 95 (1994) 243 f, para. 30 (“[the Inter-American Human Rights] Convention must . . . be interpreted so as to give it its full meaning”); and in the 1984 *Costa Rica Naturalization Provisions Advisory Opinion*, ILR 79 (1989) 292, para. 24 (“the interpretation to be adopted may not lead to a result that weakens the system of protection established by the [Inter-American Human Rights Convention]”).

⁵² YBILC 1966 II 219, para. 6.

⁵³ In the *Sovereignty Over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia) Case*, the ICJ had recourse to the “very scheme” of the convention at issue, ICJ Reports 2002 652, para. 51. See MÜLLER, *Vertrauensschutz* 130 f; similarly (but with emphasis on the text), YASSEEN, RC 151 (1976 III) 57, para. 6; BLECKMANN, *Völkerrecht* N. 362; the comment by VERDROSS in the ILC, YBILC 1966 I/2 186, para. 14. *Contra* McDUGAL, *AJIL* 61 (1967) 993 f.

⁵⁴ ILC Report 1966, YBILC 1966 II 219, para. 6, and 220, para. 11; the *Interpretation of Peace Treaties Advisory Opinion*, ICJ Reports 1950 229; also the statement in Vienna by JIMÉNEZ DE ARÉCHAGA of the *Uruguayan* delegation, OR 1968 CoW 170, para. 67; YASSEEN, RC 151 (1976 III) 57, para. 4.