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The Vienna Conventions on the Law of Treaties

A Commentary

VOLUME I

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SECTION 3 INTERPRETATION OF TREATIES

1969 Vienna Convention

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.

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account the real intention of the parties (notably by placing the *travaux préparatoires* in the background or by placing the burden of proof upon the party invoking the 'special meaning of a term').[62] Vietnam and Ghana, for example, backed up the United States but the mighty struggle between the primacy of the text and that of the subjective intention of the parties was also raised by other representatives, some siding more or less openly with the 'camp' of the ILC *travaux*. The Ukrainian representative thus regretted that the text was expressly privileged,[63] whilst Uruguay (represented by Professor Jiménez de Aréchaga), Poland, Spain, Sweden, Argentina, and the United Kingdom, etc. declared themselves globally favourable to the ILC *travaux*.[64] Apart from these oppositions, there were also those who maintained that codification of interpretation was useless (such as Greece). France also declared itself favourable to the presented text for, no doubt recalling the words of Paul Valéry, it did not wish to give priority to subsequent motives.[65] In the face of this opposition which appeared irreconcilable, the Expert Consultant Sir Humphrey Waldock attempted to 'take the heat out of' the doctrinal debate by bringing the ILC *travaux* back onto the terrain of practice itself. He notably justified the intended absence of hierarchy between the different methods of interpretation, the non-inclusion of inter-temporal law as this was too vast a question which affected all the relationships between the law of treaties and customary law, and also indicated that the 'special meaning of a term' was ultimately no different from the 'natural meaning' in a special context, a skilful way of turning around the argument.[66]

26. The debate would barely move beyond that stage, except for several minor modifications, and the future Article 31 would correspond well to draft Article 27 as it had been defined. Finally, the three Articles on interpretation would be adopted unanimously during the second session of the Conference, on 6 May 1969.[67]

27. Following this chaotic elaboration, Article 31 leaves several aspects unclarified which have not been resolved in the meantime due to a lack of capacity or will. Effectiveness is not mentioned as it is considered implicit in good faith, as well as in the statement on interpretation in the light of the object and purpose of the treaty—an absence that leaves the possibility open for an interpretation with a teleological leaning. Inter-temporal law is also ousted to avoid presumption in favour of the rule in force at the time when the treaty was concluded or interpreted. Silence also surrounds the adage according to which 'restrictions to independence cannot be presumed', no doubt because its connotations were too strong despite a basis in case law. Otherwise, the ILC contented itself with following the paths signposted by case law and practice (the 'context', for example, clearly corresponds with case law trends). Perhaps its most significant innovation resides in its affirmation of the singular for the title of Article 31, a way of preventing the establishment of a hierarchy in favour of a single but complex operation. Nevertheless, the

[62] United Nations Conference on the Law of Treaties, 1st session, Vienna, 26 March–24 May 1968, Official Records, Summary Records, pp 181–2, paras 38–50.

[63] Ibid, p 183, para. 54.

[64] Lord Sinclair however was not opposed to a merger of the two Articles if the balance was maintained, ibid, p 193, para. 10.

[65] Ibid, p 190, para. 47. For Paul Valéry, 'Les seuls traités qui compteraient sont ceux qui se concluraient entre les arrière-pensées', *Regard sur le monde actuel* (Paris: Folio Essais re-edn, 1945), p 30.

[66] Ibid, pp 199–200, paras 66–74.

[67] United Nations Conference on the Law of Treaties, 2nd session, Vienna, 9 April–22 May 1969, 13th session, 6 May 1969, p 61.