ratifications with one central body – in nearly all cases this function is performed by the Secretariat of the United Nations.

4.3.6 Accessions and adhesions

When a state has not signed a treaty it can only accede or adhere to it. Accession indicates that a state is to become a party to the whole treaty, whereas adhesion only involves acceptance of part of a treaty. Strictly speaking states can only accede or adhere to a treaty with the consent of all the existing parties. In practice, the consent of existing parties to accession is often implied.

4.3.7 Entry into force

When a treaty is to enter into force depends upon its provisions, or upon what the parties may otherwise have agreed. Treaties may be operative on signature, or on ratification. Multilateral treaties usually provide for entry into force only after the deposit of a specific number of ratifications, for example, Article 19 of the International Convention on the Elimination of all Forms of Racial Discrimination 1986 provides:

> This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

VCT 1969 itself entered into force after the receipt by the Secretary General of the 35th ratification. Sometimes a precise date for the entry into force of a treaty is given irrespective of the number of ratifications received.

4.3.8 Registration and publication

Article 102 of the United Nations Charter provides that all treaties entered into by members of the United Nations shall 'as soon as possible' be registered with the Secretariat of the United Nations and be published by it. A similar provision was laid down in Article 18 of the League of Nations Covenant. Failure to so register and publish the treaty will mean that the treaty cannot be invoked in any UN organ. Most significantly this would mean that a state would be unable to rely on an unregistered treaty in proceedings before the ICJ. This provision was included to try to combat the use of secret treaties which were considered to have a detrimental effect on international relations. Article 80 of the VCT 1969 provides that treaties shall, after their entry into force, be transmitted to the Secretariat of the UN for registration or filing and recording, as the case may be, and for publication.

In fact a considerable proportion of treaties are not registered. Paul Reuter suggests that statistical research based on the League of Nations and the United Nations Treaty Series shows that 25% of treaties have not been registered. Although the effect of non-registration of treaties has been discussed on a number of occasions before the ICJ, it is not possible to draw any definite conclusions.

4.4 Reservations

It can frequently happen that a state, while wishing to become a party to a treaty, considers that it can do so only if it can exclude or modify one or more particular provisions contained in the treaty. Ideally, such a state will be able to

convince the other parties to amend the text of the treaty to incorporate its specific wishes. However, often this will not be possible and the regime of reservations allows a state, in certain circumstances, to alter the effect of the treaty in respect of its own obligations while preserving the original treaty intact as between the other parties.

4.4.1 Definitions

The growth of reservations to treaties coincides with the growth in multilateral conventions. With regard to bilateral treaties, the two parties to the treaty may disagree over the precise terms of the treaty which is to bind them. If this is the case, they may re-negotiate the terms until they achieve full agreement. There will be no treaty in existence until both sides agree on the terms. From this it follows that there can be no question of reservations to a bilateral treaty. In the case of multilateral treaties, it may not always be possible to get the full agreement of all the negotiating parties to every provision of the treaty. The general practice is for the text of such treaties to be adopted by two-thirds majorities. In the event of such a vote, those parties in the minority are in something of a dilemma: they can either refuse to become parties to the whole treaty, or they can accept the whole treaty even though they disagree with one or more of its provisions. The regime of reservations provides something of a compromise: those in the minority can become parties to the treaty without accepting all of the provisions therein.

Reservations should be distinguished from so-called 'interpretative declarations' whereby a state indicates the view which it holds about the substance of the treaty. Interpretative declarations are not intended as an attempt to derogate from the full legal effect of provisions of the treaty. In practice, the distinction between reservations and interpretative declarations may not always be clear cut. In *Belios v Switzerland* (1988) the European Court of Human Rights had to consider the nature of a declaration made by Switzerland when it ratified the European Convention on Human Rights. Switzerland argued against a finding of the Commission that the declaration was a mere interpretative declaration which did not have the effect of a reservation. The Court found that the declaration was a reservation and in the course of its judgment said:

> The question whether a declaration described as 'interpretative' must be regarded as a 'reservation' is a difficult one ... In order to establish the legal character of such a declaration, one must look behind the title given to it and seek to determine the substantive content.

4.4.2 Validity of reservations

The formerly accepted rule for all kinds of multilateral treaty was that reservations were valid only if the treaty concerned permitted reservations and if all the other parties accepted the reservation. On this basis a reservation constituted a counter-offer which required the acceptance of the other parties, failing which the state making the counter-offer would not become a party to the treaty.

During the period of the League of Nations the practice with regard to multilateral conventions was inconsistent. In 1927 the Committee of Experts for

the Progressive Codification of International Law, the League of Nations' equivalent of the International Law Commission, adopted a policy based on the absolute integrity of treaties and argued that reservations to treaties would not be effective without the full acceptance of all parties. At the same time, the members of the Pan-American Union (the forerunner of the Organisation of American states) adopted a more flexible policy including the following key elements:

(a) as between states which ratify a treaty without reservations, the treaty applies in the terms in which it was originally drafted and signed;

(b) as between states which ratify a treaty with reservations and states which accept those reservations, the treaty applies in the form in which it may be modified by the reservations; and

(c) as between states which ratify a treaty with reservations and states which, having already ratified, do not accept those reservations, the treaty will not be in force.

A small number of states, principally from Eastern Europe, adhered to the view that every state had a sovereign right to make reservations unilaterally and at will, and to become a party to treaties subject to such reservations, even if they were objected to by other Contracting States.

Matters came to a head following the unanimous adoption of the Convention on the Prevention and Punishment of the Crime of Genocide by the UN General Assembly in 1948. Article 9 of the Convention provided that disputes or cases arising under the Convention should be compulsorily within the jurisdiction of the ICJ. A number of states wished, for reasons of their own, to avoid being subject to the ICJ's compulsory jurisdiction, but the Convention contained no express provision allowing for reservations. The General Assembly therefore requested an advisory opinion from the ICJ on certain key questions:

1 Could a reserving state be regarded as being a party to the Convention while still maintaining its reservation if the reservation is objected to by one or more of the parties to the Convention but accepted by others?

2 If the answer to question 1 is in the affirmative, what is the effect of the reservation as between the reserving state and:
   (a) the parties which object to the reservation?
   (b) those which accept it?

The Court in the *Reservations to the Convention on Genocide* case (1951) ruled, by seven votes to five, in response to question 1 that a state which has made and maintained a reservation which has been objected to by one or more of the parties to the Convention but not by others, can be regarded as being a party to the Convention if the reservation is compatible with the object and purpose of the Convention; otherwise, that state cannot be regarded as being a party to the Convention.

In response to question 2, again by a seven:five majority, the ICJ found that:

(a) if a party to the Convention objects to a reservation which it considers to be incompatible with the object and purpose of the Convention, it can consider that the reserving state is not a party to the Convention;

(b) if, on the other hand, a party accepts the reservation as being compatible with the object and purpose of the Convention, it can in fact consider that the reserving state is a party to the Convention.

This judgment was not initially well-received. It was felt that the compatibility test was too subjective and that the result of the decision would be further uncertainty. The International Law Commission reported in 1951, after the Court had given its decision, and recommended a return to the traditional view that reservations required the unanimous consent of the parties to a treaty. However views did gradually change. By 1959 the UN General Assembly had adopted the ICJ's position and in 1962 the International Law Commission decided in favour of the compatibility test. That position was the one adopted by the VCT 1969 and represents customary international law. The relevant provisions are found in Articles 19–23. Article 19 provides that, in general, reservations are always permitted except in three instances:

(a) when the treaty explicitly forbids reservations;

(b) when the treaty does not permit the type of reservation being made;

(c) when the reservation is incompatible with the object and purpose of the treaty.

Some treaties provide mechanisms for deciding on compatibility of reservations – for example Article 20 of the Convention on the Elimination of Racial Discrimination 1966 provides that a reservation shall be considered incompatible if at least two-thirds of the state Parties to the Convention object to it.

Article 20 provides as follows:

1 A reservation expressly authorised by a treaty does not require any subsequent acceptance by the other Contracting States unless the treaty so provides.

2 When it appears from the limited number of negotiating states and the object and purposes of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3 When a treaty is a constituent instrument of an international organisation and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organisation.

4 In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance by another Contracting State of a reservation constitutes the reserving state a party to the treaty in relation to that other state if or when the treaty is in force for those states;

(b) an objection by another Contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving states unless a contrary intention is definitely expressed by the objecting state;

(c) an act expressing a state's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other Contracting State has accepted the reservation.

5 For the purposes of paras 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a state if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 21 spells out the legal effects of reservations and sets down three main rules:

1 A reservation modifies the provisions of the treaty to which it relates as regards the reserving state in its relations with other parties and as regards the other parties in their relations with the reserving state.

2 A reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3 When a state objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving state, the provisions to which the reservation relates do not apply as between the two states to the extent of the reservation.

Rule 3 was illustrated in the *English Channel Arbitration* (1979) between France and the UK. During the course of the arbitration it was necessary to consider the effect of reservations to Article 6 of the Continental Shelf Convention 1958 to which the UK had objected. VCT 1969 does not apply to the Continental Shelf Convention so the issue had to be decided in accordance with customary law. France argued that the combined effect of reservations and objections was to render Article 6 completely inapplicable as between Britain and France, whereas the UK sought to argue that the effect was to render the article applicable *in toto*. The Court of Arbitration rejected both arguments and held that the combined effect of the reservation and the objection to it was to render Article 6 'inapplicable as between the two countries to the extent, but only to the extent, of the reservations'.

VCT 1969 further provides that reservations and acceptances/objections to reservations must be in writing.

4.5 Application of treaties

4.5.1 The observance of treaties

The doctrine of *pacta sunt servanda*, the rule that treaties are binding on the parties and must be performed in good faith, is a fundamental principle of international law. The rule is included in the VCT 1969 by Article 26 which provides that 'every treaty in force is binding on the parties to it and must be performed in good faith'. As was mentioned in Chapter 1, the principle is derived from the *jus gentium* of the Roman legal system. There has been some discussion as to the question of whence the rule derives its authority and the precise status of the rule. The principle is certainly one of customary international law evidenced by widespread state practice and *opinio juris*. The fact that it is a recognised rule of customary international law enables the VCT 1969 itself to be binding. Arguably, *pacta sunt servanda* constitutes a higher rule of customary law since it is difficult to envisage how a system of international law could operate without it. In this sense it might be viewed as constituting

one of the true sources of international law in the sense of a *Grundnorm* as identified by Kelsen. It could also be validly claimed to constitute a rule of *jus cogens*.

4.5.2 Non-retroactivity

Article 28 of the VCT 1969 reflects the customary rule of non-retroactivity of treaties. The provisions of a treaty do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the treaty entered into force for that state, unless a different intention appears from the treaty or is otherwise established. The rule applies to the VCT 1969 itself which has no application to any treaty entered into before the VCT 1969 came into force. Where treaties are the subject of ratification it is necessary to remember the rule expressed in Article 18 of the VCT 1969 which provides that states, having signed a treaty, should not act in any way to defeat the object and purpose of the treaty until it has made a clear final decision with regard to ratification. It should also be noted that treaties can apply to continuing situations. Although a situation may have arisen before a treaty came into force, it will be governed by the provisions of the treaty if it continues to exist after the treaty comes into force.

4.5.3 Territorial application

The general rule, reflected in Article 29 of the VCT 1969, is that, unless some other intention is made clear, a treaty applies to the entire territory of each party. The issue of territorial application arises where parties to a treaty have overseas territorial possessions, and the presumption is that a treaty applies to all the territory for which Contracting States are internationally responsible. Thus, unless the contrary is explicitly indicated, treaties to which the UK is a party apply to the British colonies and all territory for which the UK is internationally responsible, for example the Channel Islands and the Isle of Man.

4.5.4 Successive treaties

The problem of a later treaty inconsistent with an earlier one is a complex issue, but Article 30 of the VCT 1969 sets out general rules that deal with the majority of cases. As far as UN members are concerned, the UN Charter prevails over any other international agreement which conflicts with it. Otherwise, the basic rules are:

(a) a prior treaty prevails over a later one in any instance of apparent disagreement when the later one specifies that it is subject to, or not incompatible with, the earlier one;

(b) where all the parties to the earlier treaty are also parties to the later treaty, the earlier (if still in effect) applies only to the extent that its provisions are compatible with those of the later treaty;

(c) when the parties to the two treaties are not identical, the earlier applies between states that are parties to both only to the extent that the earlier is not incompatible with the later, while as between a state which is party to both treaties and a state which is a party to only one of the treaties, the treaty to which both are parties governs their mutual rights and obligations.

4.5.5 *Treaties and third parties*

The general rule expressed in the maxim, *pacta tertiis nec nocent nec prosunt*, is that treaties cannot bind third parties without their consent. The rule is affirmed in Article 34 of the VCT 1969. However, situations in which the rights and duties of third parties are involved have occasionally been created by treaties which are said to establish objective regimes, creating rights and obligations valid universally (*erga omnes*). *Erga omnes* is not a term used in VCT 1969 but Article 36 does provide:

> 1 A right arises for a third state from a provision of a treaty if the parties to the treaty intend the provision to accord that right to a third state, or to a group of states ...

The International Law Commission considered that this provided the legal basis for establishing rights valid *erga omnes* and did not propose any special provision on treaties creating so-called objective regimes such as the Antarctic Treaty 1959. Certainly there is less difficulty where a treaty creates rights for third parties than the situation where a treaty purports to impose obligations on non parties. The subject of *erga omnes* obligations will be considered in more detail in connection with human rights law and environmental protection in Chapters 15 and 17. There are a number of examples of treaties establishing rights for third parties particularly with respect to rights over territory. The Constantinople Convention 1888 was for a long time considered to give a right of passage through the Suez Canal to states that were not parties to the agreement, as did the Treaty of Versailles 1919 with respect to the Kiel Canal.

> The Vienna Convention's five articles dealing directly with treaties and third parties are narrowly drawn and limited in their application. Article 34 commences with a restatement of the classic *pacta tertiis* rule which underscores principles of sovereignty and equality. There is no concession to the various claimed exceptions, nor do the subsequent articles shed any light on possible inroads to the rule. 'The principle enunciated in Article 34, namely that treaties did not have effects with respect to third states was thus absolute.'[23] The decision not to enunciate any exceptions meant that there was also no attempt to provide a juridical basis for any such exceptions.
>
> After the uncompromising stance of Article 34, the following articles deal separately with the imposition of obligations upon third states and the bestowal of rights. The connecting factors are the intentions of the parties and third party assent, which reinforce a narrow, contractual view of treaties. Articles 35 and 36 assume that the parties' intentions and the third party's consent can be accurately determined, and will coincide. If they do not, no obligation can have been imposed, nor right bestowed.
>
> A distinction is drawn between rights and obligations for the purpose of the means of manifesting third party consent. A third party must expressly consent in writing to an obligation, but may impliedly consent to the acceptance of a right. However, as has been seen through the examination of many of the claims, rights and obligations cannot be treated as invariably distinct for they are often interrelated. Rights and obligations are interlocked in the formation of a bargain where all involved have duties to perform and expectations arising. Especially is

23 P Reuter [1982] 1 *YBILC* 26.

this so where conditions are attached to the claiming of a right. There is no logical reason for according primacy to either concept; rather they should be treated together.

The International Law Commission, and subsequently the Conference at Vienna, preferred a rigid construction of treaty law so as more easily to gain agreement on a text. The inflexibility is repeated in the subsequent Vienna Convention on International Organisations which, apart form the inclusion of international organisations as parties and third parties to treaties, adopts the same starting point. The narrowness of Articles 34–38 in both Conventions might give the impression that international law has receded from its earlier acceptance of exceptions to the general rule. In fact, a closer examination of both the Conventions, and of developments external to the law of treaties, demonstrates that this has not been the case.

...

The effect of treaties on third parties cannot be determined merely by the formal application of specified rules of treaty law. Indeed, in some instances these rules are inadequate for the changing claims of both parties and non-parties. Instead third party claims must be analysed to determine their relevant factual context, the appropriate policies, and the applicable law. Certain exceptions to the *pacta tertiis* rule can be summarised as falling under the following heads: acquiescence in the conduct of parties and non-parties; application of a special principle of law outweighing the general third party rule; the existence of some situation that displaces the application of treaty law. There is a realisation that the *pacta tertiis* rule should not be applied inflexibly to produce inequity. While the *pacta tertiis* rule formally applies to all states and produces an appearance of equality, in fact it favours stronger states. Such states could conclude (and have concluded) agreements in their own interests which were presented as being to further overall community goals and, as such, binding on weaker states. A number of peace settlements and other territorial arrangements in the 19th and early 20th centuries can perhaps be categorised in this way. At the same time the rule could be cited against weaker powers.

The manipulation of the *pacta tertiis* rule by stronger states and the recognition that one of the major exceptions to it worked primarily to their benefit, has perhaps led to a current tendency to ensure as many states as possible are included in a treaty relationship rather than having more powerful states in effect dictate settlements in the name of the public benefit. Sensitivity to the sovereignty of weaker states favours the inclusion of all interested parties in a treaty arrangement. An example is the package of treaties constituting the Afghanistan settlement.[24] While the United States and the Soviet Union were parties to the arrangement through the Agreement on the Interrelationships for the Settlement of the Situation relating to Afghanistan, so too were Afghanistan and Pakistan. The settlement was not limited to the superpowers and imposed upon the others. The same is true of the Cambodia peace settlement. Devices to include as many parties as possible are also seen in widely phrased accession clauses, and in the use of Protocols allowing for adherence or accession. While presenting problems of juridical analysis, the aim is to provide certainty and stability by including interested or essential (state) participants in the treaty scheme. it may be that traditional treaty analysis which divides states into parties

24 Geneva, 4 April 1988 (1988) 27 *ILM* 581.

> and non-parties will not work with these devices whose operation should not be frustrated by the technicalities of international law.
>
> The mechanisms described above operate on the assumption of the *pacta tertiis* rule and use it to create interlocking treaty relationships. On the other hand this process disadvantages weaker states where stronger states refuse to accept the invitation to join a treaty regime. There is another development which impacts in the opposite way. There has been a growing use of less formal ways of creating international obligations, primarily through collective actions of international organisations as expressed through their resolutions. Although the formal position remains that General Assembly resolutions are not binding, it is now widely accepted that legitimate expectations as to future behaviour may be engendered by them, which only an unwise or excessively formalistic decision-maker would ignore. The *pacta tertiis* rule has become less relevant with this change: if even those voting in favour of a resolution are not formally bound by it, then 'third' parties are that much further removed form any commitments. However, in a practical sense, it may be very difficult for those states which abstained or dissented form a resolution (third parties) to remain aloof from its consequences. Developing states have favoured the passing of resolutions expressing their interests through their voting majority in the General Assembly and support claims as to their normative effect. Thus there may be a claim that the principles enunciated in General Assembly resolutions relating to the existence of a common heritage of peoples have become opposable even to third parties to a treaty in which the concept is incorporated, for example, the United Nations Convention on the Law of the Sea. Subsequent state conduct and acquiescence may once again play a decisive role in determining obligations flowing from General Assembly resolutions. In considering the current status of the *pacta tertiis* rule exclusive consideration of treaty-making processes distorts the current international prescriptive process. There are instrumentalities for change and development of international law which may not satisfy rigorous application of the traditional criteria for determining normative effect, and which consequently cause juridical inconsistency, but which cannot be disregarded. Any analysis of the classic third party rule is inevitably entwined with this change in the prescriptive process.[25]

It should not be forgotten that the provisions contained in treaties might bind non-parties as rules of customary international law either in situations where the treaty is itself a codification of existing international law or where the treaty leads to the gradual development of new rules of custom.

4.6 Amendment and modification

Prior to VCT 1969 the customary law rule was that a treaty could not be revised without the consent of all the parties, although there was evidence that by 1969 state practice had already begun to depart from the rule. The ILC, when considering the draft convention on treaties, noted the enormous increase in the number of multilateral treaties and the fact that obtaining the consent of all the parties would not always be possible (there are parallels here with the discussions about reservations). The VCT 1969 now draws a distinction between 'amendments' and 'modifications'. Amendment, covered by Article 40, denotes

25 C Chinkin, *Third Parties in International Law*, 1993, Oxford: Clarendon Press, at pp 134–35, 142–44.

a formal change in a treaty intended to alter its provisions with respect to all the parties. Modification, dealt with in Article 41, indicates an *inter se* agreement concluded between certain of the parties only, and intended to alter the provisions of the treaty between themselves alone. Modification is only allowed if:

(1) it is permitted by the treaty;

(2) it is not prohibited by the treaty;

(3) it does not affect the other parties to the treaty;

(4) it is not incompatible with the treaty.

More usually amendment or modification is achieved in the case of multilateral treaties by another multilateral treaty which comes into force only for those states which agree to the changes.

4.7 Treaty interpretation

> 23 The Court recalls that, according to customary international law as expressed in Article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. Under Article 32, recourse may be had to supplementary means of interpretation such as the preparatory work and the circumstances in which the treaty was concluded.[26]

4.7.1 Aims and goals of interpretation

There is a measure of disagreement among jurists as to the aims of treaty interpretation. There are those who assert that the primary, and indeed only, aim of treaty interpretation is to ascertain the intention of the parties – this is generally referred to as the *subjective approach*. On the other hand, there are those who start from the proposition that there must be a presumption that the intention of the parties are reflected in the text of the treaty which they have drawn up, and that the primary aim of interpretation is to ascertain the meaning of this text – generally referred to as the *objective* or *textual approach*. Finally, there are those who maintain that the decision-maker must first ascertain the object and purpose of a treaty and then interpret it so as to give effect to that object and purpose – the *teleological* or *object and purpose approach*.

It should be noted straight away that these three schools of thought are not mutually exclusive and a tribunal will probably draw on all three views to some extent when attempting to interpret a treaty. It should also be noted that some writers have argued that it is impossible to discern any general rules or principles governing treaty interpretation, instead what is found is a series of *ex post facto* rationalisations of decisions reached for other reasons.

26 *Case Concerning Oil Platforms (Islamic Republic of Iran v United States of America) (Preliminary Objection)* Judgment of ICJ of 12 December 1996.

4.7.2 The Vienna Convention on the Law of Treaties 1969 Section 3

Section 3 of the VCT 1969 adopts a composite position. Article 31 states that treaties '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 their object and purpose'.

4.7.2.1 Good faith

The principle of good faith underlies the most fundamental norm of treaty law – *pacta sunt servanda*. If the parties to a treaty are required to perform the obligations of a treaty in 'good faith', it is logical to interpret the treaty in 'good faith'.

4.7.2.2 Ordinary meaning

The ordinary meaning does not necessarily result from a strict grammatical analysis. In order to arrive at the ordinary meaning account will need to be taken of all the consequences which reasonably flow from the text. It is also clear that the ordinary meaning of a phrase cannot be ascertained divorced from the context the phrase has in the treaty as a whole. In the *Employment of Women During the Night* case (1932), Judge Anzilotti said:

> I do not see how it is possible to say that an article of a convention is clear until the subject and aim of the convention have been ascertained, for the article only assumes its true import in this convention and in relation thereto. Only when it is known what the contracting parties intended to do and the aim that they had in view is it possible to say either that the natural meaning of terms used in a particular article corresponds with the real intention of the parties, or that the natural meaning of the terms used falls short of or goes further than such intention.[27]

This view can be contrasted with the decision of the ICJ given in the advisory opinion in the *Competence of the General Assembly for the Admission of a State to the UN* case (1950)[28] where the Court said that:

> the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter.

4.7.2.3 Special meaning

Paragraph 4 of Article 31 provides that a special meaning shall be given to a term if it is established that the parties so intended. In the *Eastern Greenland* case, the PCIJ stated:

> The geographical meaning of the word 'Greenland', ie the name which is habitually used in maps to denote the whole island, must be regarded as the ordinary meaning of the word. If it is alleged by one of the parties that some unusual or exceptional meaning is to be attributed to it, it lies on that party to establish its contention.[29]

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27 PCIJ Ser A/B, No 50 (1932).

28 [1950] *ICJ Rep* at p 8.

29 PCIJ Ser A/B, No 53 (1933).