

Ulf Linderfalk

Law and Philosophy Library 83

On the Interpretation of Treaties

*The Modern International Law as
Expressed in the 1969 Vienna
Convention on the Law of Treaties*



Springer

ON THE INTERPRETATION OF TREATIES

Law and Philosophy Library

VOLUME 83

Managing Editors

FRANCISCO J. LAPORTA, *Department of Law,
Autonomous University of Madrid, Spain*

ALEKSANDER PECZENIK[†], *Department of Law, University of Lund, Sweden*

FREDERICK SCHAUER, *John F. Kennedy School of Government,
Harvard University, Cambridge, Mass., U.S.A.*

Former Managing Editors

AULIS AARNIO, MICHAEL D. BAYLES[†], CONRAD D. JOHNSON[†],
ALAN MABE

Editorial Advisory Board

AULIS AARNIO, *Research Institute for Social Sciences,
University of Tampere, Finland*

ZENON BAŃKOWSKI, *Centre for Law and Society, University of Edinburgh*

PAOLO COMANDUCCI, *University of Genoa, Italy*

ERNESTO GARZÓN VALDÉS, *Institut für Politikwissenschaft,
Johannes Gutenberg Universität Mainz*

JOHN KLEINIG, *Department of Law, Police Science and Criminal
Justice Administration, John Jay College of Criminal Justice,
City University of New York*

NEIL MacCORMICK, *European Parliament, Brussels, Belgium*

WOJCIECH SADURSKI, *European University Institute,
Department of Law, Florence, Italy*

ROBERT S. SUMMERS, *School of Law, Cornell University*

CARL WELLMAN, *Department of Philosophy, Washington University*

On The Interpretation of Treaties

The Modern International Law as Expressed
in the 1969 Vienna Convention on the Law
of Treaties

by

ULF LINDERFALK

Lund University, Sweden

 Springer

A C.I.P. Catalogue record for this book is available from the Library of Congress.

ISBN 978-1-4020-6361-9 (HB)

ISBN 978-1-4020-6362-6 (e-book)

Published by Springer,
P.O. Box 17, 3300 AA Dordrecht, The Netherlands.

www.springer.com

This book is a revised and fully up-dated version of a Swedish manuscript entitled "Om tolkningen av traktater". This manuscript was translated into English by Peggy Oscarsson (Letrix), Malmö, Sweden, in close co-operation with Ulf Linderfalk, with the exception for Chapter 1, Section 1, and Chapter 12, which were originally written in English.

Printed on acid-free paper

All Rights Reserved

© 2007 Springer

No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work.

TABLE OF CONTENTS

List of Abbreviations.....	ix
Table of Cases.....	xi
List of Treaties	xxi
1 Introduction.....	1
1 Purpose and Topic.....	1
2 The Legal Regime for the Interpretation of Treaties as a System of Rules	6
3 Basic Concepts Defined.....	9
4 Method.....	13
5 Organisation of Work.....	19
6 Typographical Conventions Adhered to in this Work.....	20
2 The Rule of Interpretation.....	29
1 The Correct Meaning	29
2 How to Determine the Correct Meaning.....	33
3 How to Determine the Correct Meaning (cont'd).....	38
4 How to Determine the Correct meaning (cont'd).....	43
5 The Concept of a First-Order Rule of Interpretation	47
6 The Concept of a Second-Order Rule of Interpretation.....	52
3 Using Conventional Language (“the ordinary meaning”).....	61
1 Introduction; in Particular, Regarding the Problem Caused by Social Variation in Language.....	62
2 Regarding the Problem Caused by Social Variation in Language (Cont'd).....	67
3 Regarding the Problem Caused by Temporal Variation in Language	73
4 Regarding the Problem Caused by Temporal Variation in Language (cont'd).....	79
5 Regarding the Problem Caused by Temporal Variation in Language (cont'd).....	87
6 Conclusions.....	95

4	Using the Context: The “Text” of a Treaty	101
1	“[t]he text”	103
2	“[t]he text” Put to Use	105
3	“[t]he text” Put to Use: Different Words and Phrases Shall (sometimes) be Given Different Meanings	111
4	“[t]he text” Put to Use: No Logical Tautologies	117
5	Conclusions	124
5	Using the Context: The Elements Set Out in VCLT Article 31 § 2(A) and (B)	133
1	The Meaning of Subparagraph (a): Introduction	134
2	The Meaning of Subparagraph (a): “any agreement”	138
3	The Meaning of Subparagraph (b)	147
4	The “agreement” and the “instrument” Put to Use	151
5	Conclusions	154
6	Using The Context: The Elements Set Out in VCLT Article 31 § 3	161
1	Subparagraph (a)	162
2	Subparagraph (b): Introduction	165
3	Subparagraph (b): The Expression “agreement”	171
4	Subparagraph (c): Introduction	177
5	The Meaning of Subparagraph (c): “applicable”	182
6	The Contextual Elements Put to Use	189
7	Conclusions	192
7	Using the Object and Purpose	203
1	On the Meaning of “object and purpose” in General	204
2	“[o]bject and purpose” – one Concept or Two? Moreover, Regarding the Variation of an Object and Purpose Over Time ..	207
3	Treaties with Several Objects and Purposes	211
4	The “object and purpose” Put to Use	217
5	The “object and purpose” Put to Use (Cont’d)	221
6	Conclusions	227
8	Using the Supplementary Means of Interpretation	235
1	The Meaning of “supplementary means of interpretation”	238
2	“[t]he preparatory work of the treaty”	240
3	“[t]he circumstances of [the treaty’s] conclusion”	246
4	Other Supplementary Means of Interpretation: Ratification Work	249
5	Other Supplementary Means of Interpretation: Treaties <i>in Pari</i> <i>Materia</i>	255
6	Other Supplementary Means of Interpretation: The Context	259

7	The “supplementary means of interpretation” Put to Use	265
8	Conclusions	269
9	Using Supplementary Means of Interpretation (Cont’d)	279
1	The Rule of Restrictive Interpretation	280
2	The Principle of <i>Contra Proferentem</i>	284
3	Exceptions Shall be Narrowly Interpreted	286
4	The Rule of Necessary Implication	287
5	Interpretation <i>Per Analogiam</i>	294
6	Interpretation <i>Per Argumentum a Fortiori</i>	297
7	Interpretation <i>Per Argumentum e Contrario</i>	299
8	The Principle of <i>Ejusdem Generis</i>	303
9	Other Claimed Interpretation Rules	310
10	The Relationships Between Different Means of Interpretation	321
1	The Relationship Between Primary and Supplementary Means of Interpretation: an Introduction	322
2	The Relationship Between Primary and Supplementary Means of Interpretation: the Second-Order Rule as a Conclusive Reason or as a Reason <i>Pro Tanto</i>	326
3	The Expression “ambiguous or obscure”	331
4	The Expression “leads to a result which is manifestly absurd or unreasonable”	334
5	The Expression “leads to a result which is manifestly absurd or unreasonable” (Cont’d)	337
6	The Expression “leads to a result which is manifestly absurd or unreasonable” (Cont’d)	340
7	The Relationship Between Primary Means of Interpretation and Supplementary Means of Interpretation, Respectively	343
8	Conclusions	348
11	The Special Rule Regarding the Interpretation of Treaties Authenticated in Two or More Languages	355
1	General Observations on the Methods of Reconciliation	358
2	Regarding the Method Described in VCLT Article 33 § 4	361
3	Regarding the Method Described in VCLT Article 33 § 4 (cont’d)	364
4	Conclusions	369
12	Reflecting on the Outcome: International Law on a Scale Between Radical Legal Skepticism and the One-right-answer Thesis	373
1	Determining the Contents of the Means of Interpretation	375
2	Establishing Relationships Assumed in the Rules of Interpretation	379

3 Resolving Conflicts Occurring in the Application of the First-Order Rules of Interpretation	384
Annex	387
List of Sources	397
Index	409

LIST OF ABBREVIATIONS

Draft Articles With Commentaries (1966)	International Law Commission, “Draft Articles on the Law of Treaties with Commentaries”, Report to the United Nations General Assembly, on the work of the second part of its seventeenth session and on its eighteenth session (UN Dec. A/6309/Rev. 1), <i>ILC Yrbk</i> , 1966, Vol. 2, §§ 187ff.
Draft Articles With Commentaries (1964)	International Law Commission, “Draft Articles on the Law of Treaties”, with commentaries, Report to the United Nations General Assembly, covering the work of its sixteenth session, 11 May-24 July 1964 (UN Doc. A/5809), <i>ILC Yrbk</i> , 1964, Vol. 2, §§ 176ff.
ETS	European Treaty Series
HRLJ	Human Rights Law Journal
ICJ Reports	International Court of Justice, <i>Reports of Judgments, Advisory Opinions and Orders</i>
ILC Yrbk	Yearbook of the International Law Commission
ILR	International Law Reports
LNTS	League of Nations Treaty Series
PCIJ	Publications of the Permanent Court of International Justice
Publ. ECHR Ser.	Publications of the European Court of Human Rights Series
UNTS	United Nations Treaty Series
VCLT	Vienna Convention on the Law of Treaties, Opened for Signature on 23 March 1969

TABLE OF CASES

- “*AAPL v. Sri Lanka*”, Asian Agricultural Products Ltd v. Republic of Sri Lanka, International Centre for the Settlement of Investment Disputes, Arbitration Tribunal, Award of 27 June 1990, *ILR*, Vol. 106, p. 417 et seq.
- “*Abdulaziz, Cabales and Balkandali*”, Case of Abdulaziz, Cabales and Balkandali, European Court of Human Rights, Judgment of 28 May 1985, *Publ. ECHR*, Ser. A, Vol. 94
- “*Administrative Decision No. II*”, Administrative Decision No. II, Dealing with the Functions of the Commission and the Announcing Fundamental Rules of Decision, Mixed Claims Commission (United States and Germany), Decision of 1 November 1923, *American Journal of International Law*, Vol. 18 (1924), p. 177 et seq.
- “*Aegean Sea Continental Shelf*”, Aegean Sea Continental Shelf Case (*Greece v. Turkey*), Jurisdiction, International Court of Justice, Judgment of 19 December 1978, *ILR*, Vol. 60, p. 512 et seq.
- “*Air France v. Saks*”, United States, Supreme Court, Judgment of 4 March 1985, *ILR*, Vol. 96, p. 113 et seq.
- “*Air Transport Services Agreement Arbitration*”, Air Transport Services Agreement Arbitration (*United States of America v. France*), Arbitration Tribunal, Award of 22 December 1963, *ILR*, Vol. 38, p. 182 et seq.
- “*Al-Adsani v. United Kingdom*”, European Court of Human Rights, Grand Chamber, Judgment of 21 November 2001, *ILR*, Vol. 123, p. 24 et seq.
- “*Alberta Provincial Employees*”, Re Alberta Union of Provincial Employees *et al* and the Crown in Right of Alberta, Canada, Alberta Court of Queen’s Bench, Judgment of 25 July 1980, *ILR*, Vol. 90, p. 181 et seq.
- “*Ambatielos*”, Ambatielos Case (*Greece v. United Kingdom*), Preliminary Objection, International Court of Justice, Judgment of 1 July 1952, *ICJ Reports*, 1952, p. 28 et seq.
- “*Anglo-Iranian Oil*”, Anglo-Iranian Oil Co. Case (*United Kingdom v. Iran*), Preliminary Objection, International Court of Justice, Judgment of 22 July 1952, *ICJ Reports*, 1952, p. 20 et seq.
- “*Arbitral Award of 31 July 1989*”, Case Concerning the Arbitral Award of 31 July 1989 (*Guinea-Bissau v. Senegal*), Merits, International Court of Justice, Judgment of 12 November 1991, *ILR*, Vol. 92, p. 1 et seq.

- “*Arena Mexican Nationals*”, Case Concerning Avena and Other Mexican Nationals (*Mexico v. United States of America*), International Court of Justice, Judgment of 31 March 2004, available through the Court’s web-page: <<http://www.icj-cij.org>>
- “*Article 3, Paragraph 2, of the Treaty of Lausanne (Frontier Between Turkey and Iraq)*”, Permanent Court of International Justice, Advisory Opinion of 21 November 1925, *PCIJ*, Ser. B, No. 12
- “*Artico*”, Artico Case, European Court of Human Rights, Judgment of 13 May 1980, *Publ. ECHR*, Ser. A, Vol. 37
- “*Banković*”, Banković and Others v. Belgium and 16 Other Contracting States, European Court of Human Rights, Grand Chamber, Judgment of 24 October 2001, *ILR*, Vol. 123, p. 94 et seq.
- “*Beagle Channel Arbitration*”, Beagle Channel Arbitration (*Argentina v. Chile*), Court of Arbitration established by the British Government pursuant to the Argentina-Chile General Treaty of Arbitration, 1902, Award of 18 February 1977, *ILR*, Vol. 52, p. 93 et seq.
- “*Belgian Linguistics (Merits)*”, Case “Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium”, Merits, European Court of Human Rights, Judgment of 23 July 1968, *Publ. ECHR*, Ser. A, Vol. 6
- “*Border and Transborder Armed Actions*”, Case Concerning Border and Transborder Armed Actions (*Nicaragua v. Honduras*), International Court of Justice, Judgment of 20 December 1988, *ILR*, Vol. 84, p. 219 et seq.
- “*Bosnia Genocide*”, Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Merits, International Court of Justice, Judgment of 26 February 2006, available through the Court’s web-page: <<http://www.icj-cij.org>>
- “*Bouzari v. Islamic Republic of Iran*”, Bouzari and Others v. Islamic Republic of Iran, Canada, Ontario, Superior Court of Justice, Judgement of 1 May 2002, *ILR*, Vol. 124, p. 428 et seq.
- “*Brogan and Others*”, Case of Brogan and Others, European Court of Human Rights, Judgment of 29 November 1988, *Publ. ECHR*, Ser. A, Vol. 145-B
- “*Buchanan and Co. Ltd v. Babco Ltd.*”, James Buchanan and Co. Ltd. v. Babco Forwarding and Shipping (U.K.) Ltd., England, House of Lords, Opinions of 9 November 1977, *ILR*, Vol. 74, p. 574 et seq.
- “*Campbell and Fell*”, Case of Campbell and Fell, European Court of Human Rights, Judgment of 28 June 1984, *Publ. ECHR*, Ser. A, Vol. 80
- “*Canadian Agricultural Tariffs*”, In the Matter of Tariffs Applied by Canada to Certain US-origin Agricultural Products (CDA-95-2008-01), Arbitral

- Panel Established Pursuant to Article 2008 of the North American Free Trade Agreement, Award of 2 December 1996, *ILR*, Vol. 110, p. 543 et seq.
- “*Certain Expenses of the United Nations*”, Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter), International Court of Justice, Advisory Opinion of 20 July 1962, *ICJ Reports*, 1962, p. 151 et seq.
- “*Chamizal*”, In the Matter of the International Title to the Chamizal Tract (United States and Mexico), International Boundary Commission, Award of 15 June 1911, *American Journal of International Law*, Vol. 5 (1911), p. 785 et seq.
- “*Colozza*”, Colozza Case, European Court of Human Rights, Judgment of 12 February 1985, *Publ. ECHR*, Ser. A, Vol. 89
- “*Competence of the ILO for Agriculture*”, Advisory opinion given by the Court on August 12th 1922 upon the following question: “Has the International Labour Organisation the competence in regard to international regulation of the conditions of labour of persons employed in agriculture and to examine proposals for the organisation and development of the methods of agricultural production as well as other questions of a like character?”, Permanent Court of International Justice, *PCIJ*, Ser. B, No. 2–3
- “*Compulsory Membership*”, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Inter-American Court of Human Rights, Advisory Opinion of 13 November 1985, No. OC-5/85, *HRLJ*, Vol. 7, p. 74 et seq.
- “*Construction of a Wall*”, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, International Court of Justice, Judgment of 9 July 2004, available through the Court’s web-page: <<http://www.icj-cij.org>>
- “*Corfu Channel*”, The Corfu Channel Case, Merits, International Court of Justice, Judgment of 9 April 1949, *ICJ Reports*, 1949, p. 1 et seq.
- “*De Jong, Baljet and Van den Brink*”, European Court of Human Rights, Judgment of 22 May 1984, *Publ. ECHR*, Ser. A, Vol. 77
- “*Delcourt*”, Delcourt Case, European Court of Human Rights, Judgment of 17 January 1970, *Publ. ECHR*, Ser. A, Vol. 11
- “*De Wilde, Ooms and Versyp, De Wilde*”, Ooms and Versyp Cases (“Vagrancy Cases”), European Court of Human Rights, Judgment of 18 June 1971, *Publ. ECHR*, Ser. A, Vol. 12
- “*Diversion of Water from the Meuse*”, The Diversion of Water from the Meuse, Permanent Court of International Justice, Judgment of 28 June 1937, *PCIJ*, Ser. A/B, No. 70

- “*EC-Biotechnical Products*”, European Communities – Approval and Marketing of Biotechnical Products, complaint by the United States (WT/DS291), Canada (WT/DS292), and Argentina (WT/DS293), Report of a WTO Panel, Report adopted on 21 November 2006, available through the web-page of the WTO: <<http://www.wto.org>>
- “*EC-Beef Hormones*”, European Communities – Measures Affecting Livestock and Meat (Hormones), complaint by Canada (WT/DS26) and the United States (WT/DS48), Appellate Body of the WTO, Report adopted on 13 February 1998, available through the web-page of the WTO: <<http://www.wto.org>>
- “*EC-Poultry*”, European Communities – Measures Affecting Importation of Certain Poultry Products, complaint by Brazil (WT/DS69), Appellate Body of the WTO, Report adopted on 23 July 1998, available through the web-page of the WTO: <<http://www.wto.org>>
- “*El Salvador/Honduras*”, Case Concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Merits, International Court of Justice, Judgment of 11 September 1992, *ILR*, Vol. 97, p. 114 et seq.
- “*ELSI*”, Case Concerning Elettronica Sicula SpA (ELSI) (*United States v. Italy*), International Court of Justice, Chamber, Judgment of 20 July 1989, *ILR*, Vol. 84, p. 312 et seq.
- “*EMBL v. Germany*”, European Molecular Biology Laboratory Arbitration, Arbitration Tribunal, Award of 29 June 1990, *ILR*, Vol. 105, p. 1 et seq.
- “*European Commission of the Danube*”, Jurisdiction of the European Commission of the Danube Between Galatz and Braila, Permanent Court of International Justice, Advisory Opinion of 8 December 1927, *PCIJ*, Ser. B, No. 14
- “*E. v. Norway*”, Case of E. v. Norway, European Court of Human Rights, Judgment of 29 August 1990, *Publ. ECHR*, Ser. A, Vol. 181-A
- “*Fisheries Jurisdiction (Spain v. Canada)*”, Fisheries Jurisdiction Case, International Court of Justice, Judgment of 4 December 1998, *ICJ Reports*, 1998, p. 432 et seq.
- “*Fogarty v. United Kingdom*”, European Court of Human Rights, Grand Chamber, Judgment of 21 November 2001, *ILR*, Vol. 123, p. 54 et seq.
- “*Gabčíkovo-Nagymaros Project*”, Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), International Court of Justice, Judgment of 25 September 1997, *ILR*, Vol. 116, p. 2 et seq.
- “*Georges Pinson*”, Georges Pinson Case (France and Mexico), Mixed Claims Commission, Award of 19 October 1928, *ILR*, Vol. 4, passim
- “*Golder*”, Golder Case, European Court of Human Rights, Judgment of 21 February 1975, *Publ. ECHR*, Ser. A, Vol. 18

- “*Grimm v. Iran*”, *Grimm v. The Government of the Islamic Republic of Iran* (Case No. 71), Iran-United States Claims Tribunal, Decision of 18 February 1983, *ILR*, Vol. 71, p. 650 et seq.
- “*Groppera Radio AG*”, Case of *Groppera Radio AG and Others*, European Court of Human Rights, Judgment of 28 March 1990, *Publ. ECHR*, Ser. A, Vol. 173
- “*Guinea-Bissau v. Senegal*”, Arbitration Tribunal for the Determination of the Maritime Boundary, Award of 31 July 1989, *ILR*, Vol. 83, p. 1 et seq.
- “*Guinea – Guinea-Bissau Maritime Delimitation*”, Guinea – Guinea-Bissau Maritime Delimitation Case, Court of Arbitration constituted under an Agreement of 18 February 1983, Award of 14 February 1985, *ILR*, Vol. 77, p. 636 et seq.
- “*Guzzardi*”, *Guzzardi Case*, European Court of Human Rights, Judgment of 6 November 1980, *Publ. ECHR*, Ser. A, Vol. 39
- “*Habeas Corpus in Emergency Situations*”, Inter-American Court of Human Rights, Advisory Opinion of 30 January 1987, No. OC-8/87, *HRLJ*, Vol. 9, p. 94 et seq.
- “*Hagerman v. United States and Others*”, Canada, Court of Appeal, Judgment of 24 September 1990, *ILR*, Vol. 92, p. 719 et seq.
- “*Handyside*”, *Handyside Case*, European Court of Human Rights, Judgment of 29 April 1976, *Publ. ECHR*, Ser. A, Vol. 24
- “*Ijzeren Rijn*”, Arbitration Regarding the Iron Rhine (Ijzeren Rijn) Railway (The Kingdom of Belgium/The Kingdom of the Netherlands), Arbitration Tribunal, Award of 24 May 2005, available through the web-page of the Permanent Court of Arbitration: <<http://www.pca-cpa.org>>
- “*International Commission of the River Oder*”, Case Relating to the Territorial Jurisdiction of the International Commission of the River Oder, Permanent Court of International Justice, Judgment of 10 September 1929, *PCIJ*, Ser. A, No. 23
- “*International Status of South-West Africa*”, International Court of Justice, Advisory Opinion of 11 July 1950, *ICJ Reports*, 1950, p. 128 et seq.
- “*IMCO*”, Constitution of the Maritime Safety Committee of the Intergovernmental Maritime Consultative Organization, International Court of Justice, Advisory Opinion of 8 June 1960, *ICJ Reports*, 1960, p. 150 et seq.
- “*Iran-United States, Case A/I*”, Iran-United States Claims Tribunal, Decision of 3 August 1982, *ILR*, Vol. 68, p. 523 et seq.
- “*Iran-United States, Case No. A/18*”, Iran-United States Claims Tribunal, Decision of 6 April 1984, *ILR*, Vol. 75, p. 176 et seq.

- “*Italy-United States Air Transport Arbitration*”, Arbitral Tribunal, Advisory Opinion of 17 July 1965, *ILR*, Vol. 45, p. 393 et seq.
- “*James and Others*”, Case of James and Others, European Court of Human Rights, Judgment of 21 February 1985, *Publ. ECHR*, Ser. A, Vol. 98
- “*Japan-Alcoholic Beverages*”, Japan – Taxes on Alcoholic Beverages, Complaints by the EC (WT/DS8), Canada (WT/DS10), and the United States (WT/DS11), Appellate Body of the WTO, Report adopted on 1 November 1996, available through the web-page of the WTO: <<http://www.wto.org>>
- “*Johnston and Others*”, Case of Johnston and Others, European Court of Human Rights, Judgment of 18 December 1986, *Publ. ECHR*, Ser. A, Vol. 112
- “*Kasikili/Sedudu Island*”, Case Concerning Kasikili/Sedudu Island (Botswana/Namibia), International Court of Justice, Judgment of 13 December 1999, available through the Court’s web-page: <<http://www.icj-cij.org>>
- “*Kjeldsen, Busk Madsen and Pedersen*”, Case of Kjeldsen, Busk Madsen and Pedersen, European Court of Human Rights, Judgment of 7 December 1976, *Publ. ECHR*, Ser. A, Vol. 23
- “*Kronprins Gustaf Adolf*”, The Kronprins Gustaf Adolf; The Pacific (United States and Sweden), Borel, Arbitrator, Award of 18 July, 1932, *ILR*, Vol. 6, p. 372 et seq.
- “*La Bretagne Arbitration*”, Dispute Concerning Filleting within the Gulf of St Lawrence (“La Bretagne”) (Canada/France), Arbitral Tribunal established by Agreement of 23 October 1985, Award of 17 July 1986, *ILR*, Vol. 82, p. 591 et seq.
- “*La Grand Case*”, La Grand Case (*Germany v. United States of America*), International Court of Justice, Judgment of 27 June 2001, ICJ Reports, 2001, p. 466 et seq.
- “*Legal Status of Eastern Greenland*”, Permanent Court of International Justice, Judgment of 5 April 1935, *PCIJ*, Ser. A/B, No. 53
- “*Lithgow and Others*”, Case of Lithgow and Others, European Court of Human Rights, Judgment of 8 July 1986, *Publ. ECHR*, Ser. A, Vol. 102
- “*Loewen v. United States of America*”, The Loewen Group Inc. and Raymond L. Loewen v. United States of America, NAFTA Arbitration Tribunal, Award of 26 June 2003, *ILR*, Vol. 128, p. 359 et seq.
- “*Loizidou v. Turkey*”, Case of Loizidou v. Turkey, Preliminary Objections, European Court of Human Rights, Judgment of 23 March 1995, *Publ. ECHR*, Ser. A, Vol. 310

- “*Luedicke, Belkacem and Koç*”, Case of Luedicke, Belkacem and Koç, European Court of Human Rights, Judgment of 28 November 1978, *Publ. ECHR*, Ser. A, Vol. 29
- “*Maritime Delimitation: Jan Mayen*”, Case Concerning Maritime Delimitation in the Area Between Greenland and Jan Mayen (*Denmark v. Norway*), International Court of Justice, Judgment of 14 June 1993, *ILR*, Vol. 99, p. 396 et seq.
- “*Ministry of Defence v. Ergialli*”, Italy, Court of Venice, Judgment of 5 February 1958, *ILR*, Vol. 26, p. 732 et seq.
- “*Minority Schools in Albania*”, Permanent Court of International Justice, Advisory Opinion of 6 April 1935, *PCIJ*, Series A/B, No. 64
- “*Mondev v. United States*”, *Mondev International Ltd v. United States of America*, ICSID Arbitration Tribunal, Award of 11 October 2002, *ILR*, Vol. 125, p. 110 et seq.
- “*Müller and Others*”, Case of Müller and Others, European Court of Human Rights, Judgment of 24 May 1988, *Publ. ECHR*, Ser. A, Vol. 133
- “*Namibia*”, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), International Court of Justice, Advisory Opinion of 21 June 1971, *ILR*, Vol. 49, p. 3 et seq.
- “*National Union of Belgian Police*”, National Union of Belgian Police Case, European Court of Human Rights, Judgment of 27 October 1975, *ILR*, Vol. 57, p. 262 et seq.
- “*Nicaragua v. USA (Jurisdiction)*”, Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v. United States*), Jurisdiction, International Court of Justice, Judgment of 26 November 1984, *ILR*, Vol. 76, p. 5 et seq.
- “*Niemetz v. Germany*”, Case of Niemetz v. Germany, European Court of Human Rights, Judgment of 16 December 1992, *Publ. ECHR*, Ser. A, Vol. 251-B
- “*Nuclear Weapons – WHO Request*”, Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request by the World Health Organization for an Advisory Opinion), International Court of Justice, Decision of 8 July 1996, *ILR*, Vol. 110, p. 1 et seq.
- “*Oil Platforms*”, Case Concerning Oil Platforms (*Islamic Republic of Iran v. United States*), Preliminary Objection, International Court of Justice, Judgment of 12 December 1996, *ICJ Reports*, 1996 (II), p. 803 et seq.
- “*Oil Platforms (Merits)*”, Case Concerning Oil Platforms (*Islamic Republic of Iran v. United States*), International Court of Justice, Judgment of 6 November 2003, available through the Court’s web-page: <<http://www.icj-cij.org>>

- “*OSPAR*”, “Dispute Concerning Access to Information under Article 9 of the OSPAR Convention (*Ireland v. The United Kingdom*)”, Arbitration Tribunal, Award of 2 July 2003, available through the web-page of the Permanent Court of Arbitration: <<http://www.pca-cpa.org>>
- “*Pakelli*”, Pakelli Case, European Court of Human Rights, Judgment of 25 April 1983, *Publ. ECHR*, Ser. A, Vol. 64
- “*Plama*”, Plama Consortium Ltd. v. Republic of Bulgaria, International Centre for the Settlement of Investment Disputes, Arbitration Tribunal, Award of 8 February 2005, available through the web-page of ICSID: <<http://www.worldbank.org/icsid>>
- “*Pope & Talbot v. Canada*”, Arbitration Tribunal constituted under Chapter 11 of the North American Free Trade Agreement, Award on the Merits Phase 2, Award of 10 April 2001, *ILR*, Vol. 122, p. 294 et seq.
- “*Proposed Amendments*”, Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Inter-American Court of Human Rights, Advisory Opinion of 19 January 1984, No. OC-4/84, *HRLJ*, Vol. 5, p. 161 et seq.
- “*Prosecutor v. Blaskić*”, International Criminal Tribunal for the Former Yugoslavia, Trial Chamber, Judgment of 3 March 2000, *ILR*, Vol. 122, p. 2 et seq.
- “*Pulau Ligitan and Pulau Sipadan*”, Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Inonesia/Malaysia), International Court of Justice, Judgment of 17 December 2002, available through the web-page of the Court: <<http://www.icj-cij.org>>
- “*Quatar v. Bahrain*”, Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (*Quatar v. Bahrain*), International Court of Justice, Judgment of 1 July 1994, *ILR*, Vol. 102, p. 2 et seq.
- “*Quazi v. Quazi*”, England, House of Lords, Opinions of 22 November 1979, *ILR*, Vol. 74, p. 552
- “*R (Marchiori) v. Environment Agency*”, England, Court of Appeal, Judgment of 25 January 2002, *ILR*, Vol. 127, p. 620 et seq.
- “*Railway Traffic Between Lithuania and Poland (Railway Sector Landwarów-Kaisiadorys)*”, Permanent Court of International Justice, Advisory Opinion of 15 October 1931, *PCIJ*, Ser. A/B, No. 42
- “*Raimondo v. Italy*”, Case of Raimondo v. Italy, European Court of Human Rights, Judgment of 22 February 1994, *Publ. ECHR*, Ser. A, Vol. 281-A

- “*Rainbow Navigation Inc. v. Department of the Navy*”, United States, Court of Appeals, District of Columbia Circuit, Judgment of 24 August 1990, *ILR*, Vol. 96, p. 97 et seq.
- “*Rainbow Warrior Arbitration*”, Rainbow Warrior (*New Zealand v. France*), France-New Zealand Arbitration Tribunal, Award of 30 April 1990, *ILR*, Vol. 82, p. 500 et seq.
- “*Reparation for Injuries*”, Reparation for Injuries Suffered in the Service of the United Nations, International Court of Justice, Advisory Opinion of 11 April 1949, *ICJ Reports*, 1949, p. 174 et seq.
- “*Restrictions to the Death Penalty*”, Inter-American Court of Human Rights, Advisory Opinion of 8 September 1983, No. OC-3/83, *HRLJ*, Vol. 4, p. 339 et seq.
- “*Rights of Passage (Preliminary Objections)*”, Case Concerning Right of Passage Over Indian Territory (*Portugal v. India*), Preliminary Objections, International Court of Justice, Judgment of 26 November 1957, *ICJ Reports*, 1957, p. 125 et seq.
- “*Rights of US Nationals in Morocco*”, Case Concerning Rights of Nationals of the United States of America in Morocco (*France v. United States of America*), International Court of Justice, Judgment of 27 August 1952, *ICJ Reports*, 1952, p. 176 et seq.
- “*Riley and Butler v. The Commonwealth*”, Australia, High Court, Judgment of 18 December 1985, *ILR*, Vol. 87, p. 144 et seq.
- “*Salini*”, Salini Costruttori S.p.A. and Italstrade S.p.A. v. The Hashemite Kingdom of Jordan, International Centre for Settlement of Investment Disputes, Arbitration Tribunal, Award of 29 November 2004, available through the web-page of ICSID: <<http://www.worldbank.org/icsid>>
- “*Schiesser*”, Schiesser Case, European Court of Human Rights, Judgment of 4 December 1979, *Publ. ECHR*, Ser. A, Vol. 34
- “*S.D. Myers v. Canada*”, S.D. Myers Inc. v. Canada, NAFTA Arbitration Tribunal, Award of 13 November 2000 (Partial), *ILR*, Vol. 121, p. 73 et seq.
- “*Social Insurance (Alsace-Lorraine)*”, Arbitration Tribunal of Interpretation Created under the Provisions of Annex II to the London Agreement of August 9, 1924, Between the Reparation Commission and the German Government, Award of 24 March 1926, *American Journal of International Law*, Vol. 20 (1926), p. 566 et seq.
- “*Soering*”, Soering Case, European Court of Human Rights, Judgment of 7 July 1989, *Publ. ECHR*, Ser. A, Vol. 161
- “*Sovereignty over Pulau Ligitan and Pulau Sipadan*”, Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia),

- International Court of Justice, Judgment of 17 December 2002, available through the Court's web-page: <<http://www.icj-cij.org>>
- "S.S. 'Wimbledon' ", The P.P. Wimbledon, Permanent Court of International Justice, Judgment of 17 August 1923, *PCIJ*, Ser. A, No. 1
- "*Sunday Times (First)*", The Sunday Times Case, European Court of Human Rights, Judgment of 26 April 1979, *Publ. ECHR*, Ser. A, Vol 30
- "*Territorial Dispute (Libya/Chad)*", Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad), International Court of Justice, Judgment of 3 February 1994, *ILR*, Vol. 100, p. 1 et seq.
- "*United States-United Kingdom Arbitration Concerning Heathrow Airport User Charges*", Arbitration Tribunal, Award of 30 November 1992, *ILR*, Vol. 102, p. 216 et seq.
- "*U.S.-France Air Services Award*", Case Concerning the Air Services Agreement of 27 March 1946 (*United States v. France*), Arbitral Tribunal established by the *Compromis* of 11 July 1978, Award of 9 December 1978, *ILR*, Vol. 54, p. 304 et seq.
- "*US-Gasoline*", United States – Standards for Reformulated and Conventional Gasoline, Complaints by Venezuela (WT/DS2), and Brazil (WT/DS4), Appellate Body of the WTO, Report adopted on 20 May 1996, available through the web-page of the WTO: <<http://www.wto.org>>
- "*US-Shrimp*", United States – Import Prohibition of Certain Shrimp and Shrimp Products, Joint Complaint by India, Pakistan, and Thailand (WT/DS58), Appellate Body of the WTO, Report adopted on 12 October 1998, available through the web-page of the WTO: <<http://www.wto.org>>
- "*Van der Musselle*", Van der Musselle Case, European Court of Human Rights, Judgment of 23 November 1983, *Publ. ECHR*, Ser. A, Vol. 70
- "*Vidal v. Belgium*", Case of Vidal v. Belgium, European Court of Human Rights, Judgment of 22 April 1992, *Publ. ECHR*, Ser. A, Vol. 235-B
- "*Yaung Chi Oo Trading v. Myanmar*", Yaung Chi OO Trading Pte Ltd v. The Union of Myanmar, Arbitration Tribunal Constituted under Article X of the 1987 ASEAN Agreement for the Promotion and Protection of Investments, Award of 31 March 2003, *ILR*, Vol. 127, p. 42 et seq.
- "*Young Loan*", The Kingdom of Belgium, The French Republic, The Swiss Confederation, The United Kingdom and The United States of America v. The Federal Republic of Germany (Young Loan), Arbitral Tribunal for the Agreement on German External Debts, Award of 16 May 1980, *ILR*, Vol. 59, p. 495 et seq.
- "*Öztürk*", Öztürk Case, European Court of Human Rights, Judgment of 21 February 1984, *Publ. ECHR*, Ser. A, Vol. 73

LIST OF TREATIES

- Tratado de Límites, Argentina and Chile, Signed at Buenos Aires, on 23 July 1881. (It should be noted that the treaty is authenticated in the Spanish language only. The English translation used for this work is the one provided by the court. (See *ILR*, Vol. 52, pp. 127–131. For the authenticated text of the treaty, see *ibid.*)
- Convention on the Delimitation of French and Portuguese Possessions in West Africa, Signed on 12 May 1886. (It should be noted that the treaty is authenticated in the French and Portuguese languages only. The English translation used for this work is the one provided by the court. (See *ILR*, Vol. 77, pp. 659–661. For the authenticated French text of the treaty, see *Archives Diplomatiques*, Vol. 24 (1887), p. 5 et seq.)
- Anglo-German Agreement, Signed on 1 July 1890. (For those parts of the treaty discussed in this work, see ICJ Reports, 1999(II), p. 1060.
- Treaty of Peace with Germany (“the Treaty of Versailles”), Signed at Versailles, on 28 June 1919, *American Journal of International Law*, Vol. 16 (1922), Supplement, p. 1 et seq.
- Covenant of the League of Nations, Signed at Versailles, on 28 June 1919
- Convention Concerning the Territory of Memel, Signed at Paris, on 8 May 1924, LNTS, Vol. 29, p. 86 et seq.
- Convention and Statute on Freedom of Transit, Signed at Barcelona, on 20 April 1921, LNTS, Vol. 7, p. 11 et seq.
- General Act for the Pacific Settlement of International Disputes, Concluded at Geneva, on 26 September 1928, LNTS, Vol. 93, p. 343 et seq.
- Convention for the Unification of Certain Rules Relating to International Transportation by Air, Signed at Warsaw, on 12 October 1929, LNTS, Vol. 137, p. 11 et seq.
- Charter of the United Nations, Concluded at San Francisco, on 26 June 1946
- Statute of the International Court of Justice, Concluded at San Francisco, on 26 June 1945
- Treaty of Peace with Italy, Signed at Paris, on 10 February 1947, UNTS, Vol. 49, p. 3 et seq.
- American Treaty on Pacific Settlement (“the Pact of Bogotá”), Signed at Bogotá, on 30 April 1948, UNTS, Vol. 30, p. 55 et seq.
- European Convention for the Protection of Human Rights and Fundamental Freedoms, Concluded at Rome, on 4 November 1950, ETS, No. 5

- Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention, Concluded at Paris, on 20 March 1952, ETS, No. 9
- Agreement on German External Debts, Signed at London, on 27 February 1953, UNTS, Vol. 333, p. 4 et seq.
- Treaty of Amity, Economic Relations and Consular Rights, United States and Iran, Signed at Tehran, on 15 August 1955, UNTS, Vol. 284, p. 93 et seq.
- Exchange of Notes, between France and Portugal, on 26 April 1960, Concerning the Definition of the Maritime Frontier between the Republic of Senegal and the Portuguese territory of Guinea (It should be noted that the treaty is authenticated in the French and Portuguese languages only. The English translation used for this work is the one provided by the court. (See *ILR*, Vol. 92, p. 34. For the authenticated French text of the treaty, see *Revue générale de droit international public*, Vol. 31 (1960), p. 891 et seq.)
- Exchange of Notes between the United States of America and the Federal People's Republic of Yugoslavia, on 28 November 1962, UNTS, Vol. 460, pp. 192–194
- Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, Concluded at Strasbourg, on 16 September 1963, ETS, No. 46
- Final Act, Agreement and other Acts relating to the establishment and operation of the Iron Gates Water Power and Navigation System on the River Danube, Yugoslavia and Romania, All signed at Belgrade, on 30 November 1963, English translation, UNTS, Vol. 512–513
- International Covenant on Economic, Social and Cultural Rights, Adopted at New York, on 16 December 1966, UNTS, Vol. 993, p. 3 et seq.
- International Covenant on Civil and Political Rights, Adopted at New York, on 16 December 1966, UNTS, Vol. 999, p. 171 et seq.
- Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and other Celestial Bodies, Opened for Signature at London, Moscow and Washington, on 27 January 1967, UNTS, Vol. 610, p. 205 et seq.
- Vienna Convention on the Law of Treaties, Opened for Signature on 23 March 1969, UNTS, Vol. 1155, p. 331 et seq.
- Agreement between Canada and France on their Mutual Fishing Relations, Signed at Ottawa, on 27 March 1972, UNTS, Vol. 862, p. 209 et seq.

- Treaty Between the Hungarian People's Republic and the Czechoslovak Socialist Republic Concerning the Construction and Operation of the Gabčíkovo-Nagymaros System of Locks, Signed at Budapest, on 16 September 1977, English translation, UNTS, Vol. 1109, p. 236 et seq.
- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Sri Lanka for the Promotion and Protection of Investments, Signed on 13 February 1980. (For the parts relevant to this work, see *ILR*, Vol. 106, pp. 478–479.)
- Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (“the Claims Settlement Declaration”), Initialled on 19 January 1981, *Iran – United States Claims Tribunal Reports*, Vol. 1, pp. 9–12
- International Telecommunication Convention, Signed at Nairobi, on 6 November 1982
- Special Agreement between the Governments of Guinea and Guinea-Bissau, Signed at Bissau, on 18 February 1983. (It should be noted that the treaty is authenticated in the French and Portuguese languages only. The English translation used for this work is the one provided by the court. (See *ILR*, Vol. 77, pp. 642–645.)
- Memorandum of Understanding (“MoU”) between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Airport User Charges, Signed at Washington, on 6 April 1983. (See *ILR*, Vol. 102, pp. 561–564.)
- Vienna Convention on the Law of Treaties between States and International Organizations and between International Organizations, Opened for Signature on 21 March 1986, UN Doc. A/CONF.129/15 1994 års WTO Agreement on Agriculture. (For the parts relevant to this work, see *ILR*, Vol. 110, p. 557.)

CHAPTER 1

INTRODUCTION

1 PURPOSE AND TOPIC

We live in the age of treaties. Increasingly, bilateral and multilateral written agreements are used for the creation of new international legal standards. For political reasons, states are decreasingly less willing to rely upon customary international law for the regulation of legal matters. New technology and growing international exchange have established the need for an ever more precise and flexible international law – a need not satisfactorily met by customary law. In many fields of activity, we can seriously question whether the creation of a rule of custom is at all possible. Considering also that the number of states capable of drafting and concluding treaties seems to be growing, it is not surprising that treaties are concluded far more frequently than ever before. In several ways this is a development that should be met with approval. By entering into written agreements, states avoid the difficulties inherent in customary international law. At the same time, the increasing number of treaties should also be causing concern. The more treaties that are concluded, the more treaties that will have to be applied; and the more treaties that are applied, the more often the question will arise: To what extent, and under what specific conditions, should such an application occur? Naturally, this includes the question of how treaties should be interpreted.

Resolving issues of treaty interpretation demands the time and skills of many different authorities: national courts, police, immigration authorities, civil servants, military officials, diplomatic personnel, international courts and arbitration tribunals, international organisations, and so on – they will henceforth be referred to using the generic term APPLIERS (OF INTERNATIONAL LAW). In quantitative terms, few issues are more important for appliers than the interpretation of treaties.¹ At the same time, the interpretation of treaties is known to be one of the most difficult and contradictory issues on the appliers' agenda.² If nowhere else this is evident from the practice of international courts and tribunals. Surprisingly often, when an international court or arbitration tribunal is requested to settle a dispute between two or more states concerning the application of a treaty, it is

precisely because these states have different opinions about the meaning conveyed by that instrument. Similarly, it is precisely because judges and arbitrators so often disagree on matters of interpretation, that dissenting and separate opinions are so common in international judicature. To my mind, all such differences of opinion should be avoided. Disagreements between states should be avoided, since they tend to complicate the mutual dealings of states in general. Differences of opinion between judges and arbitrators should be avoided, since they are clearly detrimental to the legitimacy of the judicial decision.

Why is it that the interpretation of treaties causes such great concern among the appliers of international law? Obviously, part of the explanation is that different appliers tend to hold different opinions about the contents of the relevant legal regime currently upheld in international law. Arguably, the situation today is far better than the one prevailing during greater parts of the twentieth century. In retrospect, much of the lively debate on interpretation of treaties and related topics that infused the international law literature of the previous century up until 1960–1970 appears to have had its origin in the fact that for a long time there was no general treaty governing this field of activity.³ Since 1969, we benefit from the existence of the *Vienna Convention on the Law of Treaties*.⁴ The Convention includes among other things three articles on the interpretation of treaties, all drawn up with the ambition that they would codify the customary international law hitherto applied. They read:

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 connexion with the conclusion of the treaty;
 - (b) any instrument which was made by one or more parties in connexion 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.

Article 32. Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning