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On the Interpretation of Treaties

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

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we could say that the experiences of World War II and Nazi Germany were the cause, when in 1949 the Council of Europe decided to draft a European Convention for the protection of human rights.[16] The cause for a treaty is not included in the extension of the "object and purpose" of a treaty, in the sense of VCLT article 31. All means of interpretation listed in article 31 relate to the interpreted treaty – or rather the agreement expressed by the treaty – as it stands either at the point in time when the treaty is established as definite, or subsequent to that point.[17] Clearly, the cause for a treaty does not fit this description. If the cause for a treaty can be determined, then it shall be used according to the provisions of VCLT article 32, as part of "the circumstances of its [i.e. the treaty's] conclusion".[18]

2 "OBJECT AND PURPOSE" – ONE CONCEPT OR TWO? MOREOVER, REGARDING THE VARIATION OF AN OBJECT AND PURPOSE OVER TIME

It is a conspicuous fact that VCLT article 31 speaks both of a treaty's "object" (Fr. *"objet"*; Sp. *"objeto"*) and a treaty's "purpose" (Fr. *"but"*; Sp. *"fin")*. In everyday language, the words OBJECT (Fr. OBJET; Sp. OBJETO) and PURPOSE (Fr. BUT; Sp. FIN) are quite clearly synonymous. Hence, as long as we stay within the bounds of everyday language, and everyday language only, it is an utter tautology to speak of a treaty's "object and purpose".[19] Of course, the parties to the Vienna Convention might have used the expressions "object" *("objet"*, *"objeto")* and "purpose" *("but"*, *"fin")* in a special or some sort of technical meaning. In French (public) law, the distinction is sometimes made between the OBJET and BUT of a legal transaction.[20] L'OBJET D'UN ACTE is then understood to be the direct and immediate consequence of the performance of a legal transaction.

> [L]'objet d'un acte réside dans les droits et les obligations auxquels il donne naissance. L'objet d'un acte, c'est donc la norme qu'il crée.[21]

LE BUT D'UN ACTE, on the other hand, is the result achieved through L'OBJET.

> [L]es droits et les obligations crées par l'acte ne constituent pas une fin en eux-mêmes. Il ne sont que le moyen d'atteindre un résultat donné. Et c'est ce résultat qui forme, pour le ou les auteurs de l'acte, le but recherché.[22]

There are authors in the French international law literature who maintain that a parallel distinction should be valid for international law as well, and especially so for the application of VCLT article 31.[23] The problem is that no matter how elucidative the terminology of the French legal doctrine might seem, this assertion does not agree with the way the words OBJECT (OBJET, OBJETO) and PURPOSE (BUT, FIN) are generally used by actors of

international law.[24] English authors can at one point speak of a treaty's OBJECT, then jump to the treaty's PURPOSE, and in the next breath speak of the treaty's OBJECT AND PURPOSE, without any evidence of a consistent semantic pattern.[25] The same applies to German authors who interchangeably speak of the ZIEL of a treaty, the ZWECK of a treaty, and the ZIEL UND ZWECK of a treaty.[26] Symptomatic are the abundance of variants used. In addition to the phrases OBJECT AND PURPOSE and ZIEL UND ZWECK, respectively, the literature offers a number of similar words and word combinations: in the English literature, AIM, PURPOSE AND OBJECTIVE, PURPOSE AND AIM, FUNCTION, PURPOSES AND FUNCTIONS, TARGET, END ... [27] in the German, GEGENSTAND, SINN UND ZWECK, ... [28] I fail to see that by using these terms, actors in international law intend something new.

Equally indeterminate is the language that comes forth in the Vienna Convention itself. Several provisions mention the OBJECT AND PURPOSE (OBJET ET BUT, OBJETO Y FIN) of a treaty, one such provision being article 18.[29] Up to the conclusion of the Vienna Conference's first session in 1968, the text of article 18 – then discussed as (draft) article 15 – read as follows: "acts tending to frustrate the object of a treaty". The Drafting Committee, however, later changed it to read: "acts which would defeat the object and purpose of a treaty". The Committee explains the revision in the following manner:

> The Drafting Committee had replaced the words "acts tending to frustrate the object of a treaty" by the words "acts which would defeat the object and purpose of a treaty". It wished to emphasize that that was a purely drafting change, made in the interests of clarity. It had added the word "purpose" to the word "object" because the expression "[the treaty's] object and purpose" was frequently used in the convention. The absence of the word "purpose" in the introductory phrase of article 15 might lead to difficulties in interpretation. The change in no way affected the substance of the provision and did not widen the obligation imposed on States by article 15.[30]

Article 60 § 3(b) speaks disjunctively about a treaty's "object or purpose" *("objet ou but", "objeto o fin")*:

> A material breach of a treaty, for the purpose of this article, consists in... (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

It is true that this could be understood to mean that, according to Vienna terminology, OBJECT and PURPOSE are two different things. The more reasonable reading, however, is to regard article 60 as yet another indication of the fact, that in drafting the text of the Vienna Convention – regardless of what the text itself might suggest – the authors were acting under the belief that there would be no difference at all between the meaning of a treaty's OBJECT (OBJET, OBJETO) and the meaning of its PURPOSE (BUT, FIN). For how can we possibly say that a breach of a treaty is material, simply because it consists of a violation of a provision essential to the accomplishment

of the treaty's object, and the treaty's object alone, if we simultaneously claim that a treaty's OBJECT is those rights and obligations expressed by the treaty? Are not all breaches of a treaty *by definition* such that they thwart the accomplishment of the treaty's OBJECT in this sense?

All things considered, there are convincing reasons to believe, what even many French authors have been compelled to admit: the distinctions made in the French legal doctrine between OBJET and BUT cannot explain the way these words are used in VCLT article 31.[31] This result might seem to discourage. However, the question is if we really need to expend more energy on trying to establish the meaning of the words OBJECT and PURPOSE, in the sense of VCLT article 31, given the assumption that each of the two words OBJECT and PURPOSE could be dealt with separately from the other. My answer to this question is in the negative. The reason is that we can quite easily establish the meaning of the expression "object and purpose", as long as we regard it as a single lexical unit – in the terminology of linguistics, it would be called an idiomatic phrasal lexeme. As we noted, when the two words OBJECT and PURPOSE are considered independently of each other, they cannot be said to stand for what the French legal doctrine denotes with the two terms OBJET and BUT, respectively. However, when THE OBJECT AND PURPOSE is considered as a phrasal lexeme, then the meaning of that lexeme plainly corresponds to the *computed meanings* ascribed to those terms in the French legal doctrine. When an applier interprets a provision of a treaty using the treaty's "object and purpose", he can understand the provision in two different ways – this is evident from the literature.[32] First, the applier can understand the provision in light of the rights and obligations expressed in the treaty. Second, he can understand the provision in light of the state-of-affairs (or states-of-affairs) which the parties to the treaty expect to attain through applying said rights and obligations.

Hence, it seems we are left with two alternatives. Either we understand the expression "object and purpose" in such a way that the two words OBJECT andPURPOSE each come off as synonymous with the sum total of OBJET and BUT in the sense of the French legal doctrine. Or, we draw the conclusion that the two words OBJECT and PURPOSE, considered independently from each other, carry no intelligent meaning at all – the expression "object and purpose" is synonymous with OBJET and BUT in the sense of the French legal doctrine, not because this comes off as the result when the individual meanings of the two words OBJECT and PURPOSE are computed in a grammatically correct manner, but because this is the meaning of the expression when considered as a single lexical unit.[33] Of course, the first alternative does not agree with interpretation rule no. 4:

If it can be shown that the interpretation of a treaty provision in accordance with interpretation rule no. 1 leads to conflicting results, and that somewhere in the text of said treaty an expression is included, which – in light of the provision interpreted – in one of the two possible ordinary meanings of the interpreted treaty provision can be considered a pleonasm, while in the other it cannot, then the latter meaning shall be adopted.[34]

However, from a purely practical standpoint, I cannot see how the choice of interpretation alternative would really make a difference. If we know the meaning of the expression "object and purpose", then there are no reasons other than purely semantic ones for determining the merits of each respective alternative. Hence, whatever the individual meanings of the two words OBJECT andPURPOSE might be (if such meanings even exist), I have chosen to leave the issue as it stands.

Earlier, we observed how the conventions of human language change over time, and how this predicament shall be approached by appliers when they interpret a treaty using conventional language. Similarly, we observed how appliers shall approach temporal variations in the context, more particularly in the contextual element set out in VCLT article 31 § 3(c). Conventional language and the context are not, however, the only means of interpretation whose contents may vary. Another means prone to variation is the object and purpose of a treaty – more specifically, the state-of-affairs (or states-of-affairs), which the parties to the treaty expect to attain through applying the treaty. For the sake of clarity, this state-of-affairs will henceforth be termed in Greek as the *telos*, or – if the plural is intended – the *teloi*, of the treaty. Of course, the parties to a treaty may *ab initio* already have stated its *telos* to permit an alteration – using a generic referring expression with a referent assumed to be alterable.[35] This is, however, not the situation I am referring to. What I wish to address – let it be clear – is the situation where the parties to a treaty, despite the fact that at the time of concluding the treaty they might have had a completely clear picture of what the treaty's *telos* was to be,[36] later changed their minds. There are several reasons for why such a considerable change of heart may occur. Assume for example that the *telos* of a treaty is something the parties expect to attain, not only through the means represented by the treaty itself, but through the combined effect of the treaty and some other means, and that these other means undergo change, so that the treaty's original *telos* can no longer be attained.[37] Or assume that the instrumental relationship that holds between the treaty and its *telos* was not completely defined at the start, but in part is created, so to speak, by the later use of the treaty, and that the norm contents of the treaty gradually undergo changes.[38]

Obviously, the concept represented by the "object and purpose" of a treaty is not such that it must necessarily exist at a specific point in time. It is the general view held among authors that an applier – depending on the

circumstances – shall have the possibility of taking into consideration, not only the *telos* that the treaty assumedly may have had at its conclusion, but also the *telos* that the treaty assumedly has at the time of interpretation.[39] As noted earlier, the decisive factors for determining the "object and purpose" of a treaty are the intentions held by its parties.[40] The crux of the matter is that these intentions – depending on the circumstances – might not only be the intentions held at the time when the treaty was concluded, but also the intentions held at the time of interpretation. Evidently, the literature is cause for further questions. When shall the *telos* of a treaty be determined based on the intentions held at the time of its conclusion? And when shall it be determined based on the intentions held at the time of interpretation? The literature does not provide us with a definitive answer.

Personally, I see no other possible solution to this issue than to use the criteria that we have earlier defined for resolving the issue of temporal variations in language and law.[41]

> If it can be shown that the thing interpreted is a generic referring expression with a referent assumed by the parties to be alterable, then the *telos* of a treaty shall be determined based on the intentions held by the parties at the time when the treaty is interpreted. In all other cases, the *telos* shall be determined based on the intentions held at the time when the treaty was concluded.

Of course, the principle source of support for this proposition is the context. The parallel between these different groups of issues – the issues concerning variations in the *telos* of a treaty, and those concerning variations in language and law, respectively – is simply so obvious that any other solution appears unthinkable. In addition, functional links exist between the different means of interpretation, provoking the need for a comprehensive solution. For how do appliers go about determining the *telos* of a treaty? I would argue that in one way or another, the *telos* of a treaty is always determined based on the text of said treaty understood in accordance with the ordinary meaning to be given to its terms. Considering this, it would surely cause difficulties if some other criterion determined the *telos* of a treaty, than that which determines the contents of "the ordinary meaning". All things considered, I will regard the issue as settled.

3 TREATIES WITH SEVERAL OBJECTS AND PURPOSES

It is a well-known fact that normally, not only one *telos* is conferred on a treaty by its parties. When a treaty is concluded, it is often with the intention that several *teloi* be attained, all at the same time. First of all, it is generally

the case that a specific *telos* is conferred on each and every provision. These *teloi* are typically relatively concrete. Normally, however – assuming that the scope of the treaty is not exceptionally small – one can count on also finding a number of *teloi*, which relate to several provisions in combination or to the treaty as a whole. These *teloi* are typically relatively abstract. To illustrate, it seems that in the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, the *telos* of article 6 paragraph 3(d) is to ensure the accused criminal of a full equality of arms throughout the criminal process,[42] while the combined *telos* of article 6 paragraphs 1, 2 and 3 is to ensure that the accused is given a fair trial[43] and the *telos* conferred on the convention as a whole is to promote and defend the ideal of a democratic society.[44]

Considering this background, the text of the Vienna Convention indeed looks peculiar. Article 31 § 1 does not speak of the objects and purposes of a treaty in the plural, but of its "object and purpose" in the singular. All things considered, however, I find it difficult to see how we could possibly treat as correct an interpretation of the text in accordance with its wording. It is the general view held among authors, that when appliers interpret a treaty using its object and purpose, they really cannot leave out any of the *teloi* that the parties assumedly intended to attain.[45] Among the range of authors having addressed this issue, either in connection with the adoption of the Vienna Convention or subsequent to it, I have found only one who hints at anything else – namely, professor Jacobs. He writes:

> The change from "objects and purposes" to "object and purpose" in the final draft may have been intended to give greater certainty, on the ground that there was less likely to be controversy on what was the principal object and purpose of a treaty than on which of several possibly conflicting objects and purposes should determine the meaning of a disputed term.[46]

What the author appears to be saying is that when appliers interpret a treaty using its object and purpose, they would have only one single *telos* to consider; and this, in the terminology of Jacobs, is "the principal object and purpose of the treaty". In my judgment, this is a reading that does not agree with the rules of interpretation laid down in international law.

According to international law, two first-order rules of interpretation are applicable *prima facie* , when appliers set out to determine whether they shall understand the expression "object and purpose" as a reference to the *telos* of a treaty in the singular, or as a reference to the *teloi* of the treaty in the plural. Let us call these rules numbers 1 and 18. Interpretation rule no. 1 states:

If it can be shown that in a treaty provision, there is an expression whose form corresponds to an expression of conventional language, then the provision shall be understood in accordance with the rules of that language.[47]

Interpretation rule no. 18 provides as follows:

If, by using the preparatory work of a treaty, a concordance can be shown to exist, as between the parties to said treaty, and with regard to the norm content of an interpreted treaty provision, then the provision shall be understood in such a way that it logically agrees with the concordance.[48]

These two rules are in conflict with one another.

As observed earlier, applying interpretation rule no. 1 leads us to the conclusion that we shall understand the "object and purpose" of a treaty to refer to the *telos* of the treaty in the singular. Applying interpretation rule no. 18 leads us to the conclusion that we shall understand the "object and purpose" of a treaty to refer to the *teloi* of the treaty in the plural. As noted by professor Jacobs, up to the point in 1966, when the International Law Commission finally presented its proposed text to the ILC Drafting Committee, it carried the wording "objects and purposes"; this was subsequently changed by the committee to "object and purpose".[49] The implication is that this fact alone would be sufficient reason for us to believe that when appliers interpret a treaty, they would only have one single *telos* to consider. (The assumption is that when modifications are made in the draft of a treaty this typically involves a modification of the treaty as well, from the perspective of its meaning.) Personally, I would like to suggest that as a matter of fact, the preparatory work of the Vienna Convention is uncommonly strong support for the exact opposite. During the eighteenth session of the ILC, members repeatedly and consistently spoke of "objects and purposes" – in accordance with the draft then existing – and no opposition to this language seems to have been voiced.[50] However, when the Drafting Committee presented its revised text at the close of the session, no reason was given for why the expression "objects and purposes" had been changed to "object and purpose".[51] It is not the Drafting Committee's place to introduce, on its own volition, anything of substance in those texts discussed earlier among the members of the ILC in plenary session.[52] As a consequence, it is difficult to believe that the expression "object and purpose", in the revised draft presented by the ILC Drafting Committee, should mean anything other than the "objects and purposes" is was meant to replace. If the expression "objects and purposes" shall be read as a reference to the *teloi* of a treaty in the plural, then the expression "object and purpose" must be read in the same way.

Under international law, two second-order rules of interpretation govern the conflict between interpretation rules nos. 1 and 18.[53] Let us call them numbers 40 and 41. Interpretation rule no. 40 states:

> If it can be shown that the interpretation of a treaty provision in accordance with any one of interpretation rules nos. 1–16 leads to a result, which is different from that obtained by interpreting the provision in accordance with any one of interpretation rules no. 17–39, and that the application of the former rule either leaves the meaning of the interpreted treaty provision ambiguous or obscure, or amounts to a result which is manifestly absurd or unreasonable, then the provision shall not be understood in accordance with this former rule.

Interpretation rule no. 41 provides as follows:

> If it can be shown that the interpretation of a treaty provision in accordance with any one of interpretation rules nos. 1–16 leads to a result, which is different from that obtained by interpreting the provision in accordance with any one of interpretation rules nos. 17–39, then, rather than with the latter of the two rules, the provision shall be understood in accordance with the former, except for those cases where interpretation rule no. 40 applies.

In my judgment, the latter of these two rules is the one that determines the relationship between interpretation rules nos. 1 and 18, in the situation where an applier sets out to determine whether he shall understand the expression "object and purpose" in article 31 as a reference to the *telos* of a treaty in the singular, or as a reference to the *teloi* of the treaty in the plural: if it can be shown that the interpretation of the expression "object and purpose" in accordance with interpretation rule no. 1 leads to a result, which is different from that obtained by interpreting the expression in accordance with rule no. 18, then the expression shall not be understood in accordance with interpretation rule no. 1. It would then be up to me to establish that the application of interpretation rule no. 1 either leaves the meaning of the interpreted provision ambiguous or obscure, or that it leads to a result which is manifestly absurd or unreasonable. Evidently, the application of interpretation rule no. 1 does not leave the meaning of the interpreted treaty provision ambiguous or obscure. Now, the question is whether I can establish that the application leads to a result which is manifestly absurd or unreasonable.

In the situation at hand, saying that the application of interpretation rule no. 1 leads to a result which is manifestly absurd or unreasonable is tantamount to saying that interpretation rules nos. 1 and 18 are based on communicative assumptions, arguably of which the assumption underlying an application of the former rule is significantly weaker than the assumption underlying an application of the latter.[54] Interpretation rule no. 1 is based on the assumption, that parties to a treaty express themselves in such a way that every expression in the treaty, with a form corresponding to an expression of conventional language, bears a meaning that agrees with the rules of that

language.[55] Translated to the interpretation of the expression "object and purpose", the idea could be expressed as follows:

> The parties to the Vienna Convention have expressed themselves in such a way that the meaning of the expression "object and purpose" agrees with the rules of conventional language.

For the sake of simplicity, let us term this as the assumption underlying the application of rule no. 1. Interpretation rule no. 18 is based on the assumption that parties to a treaty express themselves in such a way that the treaty and its preparatory work are logically compatible, insofar and to the extent that, by using the preparatory work, good reasons can be provided showing a concordance to exist, as between the parties to the treaty, with regard to its norm content.[56] Translated to the interpretation of the expression "object and purpose", the idea could be expressed in the following manner:

> The parties to the Vienna Convention have expressed themselves in such a way, that the meaning of VCLT article 31 § 1 logically agrees with the preparatory work of VCLT, insofar and to the extent that by using the preparatory work, good reasons can be provided showing a concordance to exist, as between the parties to the Vienna Convention, and with regard to the norm content of article 31 § 1.

Let us term this as the assumption underlying an application of rule no. 18.

As far as I can see, there are only two ways of showing that an assumption A is substantially weaker than an assumption B. First, arguments may be presented undermining the assumption A. Second, arguments may be presented reinforcing the assumption B. I will now present two arguments, which undermine the assumption underlying the application of rule no. 1.

First, it is evident that reading the Vienna Convention in the way suggested by professor Jacobs would lead to severe practical problems. In making his suggestion, Jacobs assumes that treaties always have a single, principal, and all-embracing *telos*, to which every other *telos* of the treaty can be said to be subordinate. They do not. Many treaties have several principal *teloi*;[57] I dare say most have.[58] When appliers interpret a treaty "in light of its object and purpose", and they find that the treaty has more than one principal *telos*, then appliers – having embraced Jacobs's reading – are faced with two alternatives. Either appliers conclude that for the interpretation of the treaty in question the object and purpose cannot be used at all, since it is apparent that the interpreted treaty bears more than one single, principal, and all-embracing *telos*. Or, appliers postulate that a treaty – even though in general terms it cannot be said to have a single, principal, and all-embracing *telos* – always bears a single, principal, and all-embracing *telos* in each

specific case; and they then proceed to determine which of the treaty's several principal *teloi* is the weightiest. Both alternatives seem equally dubious. The first alternative raises serious doubts, since it greatly reduces the significance of the object and purpose in the process of interpretation. If only those treaties that bear a single, principal *telos* were to be interpreted using the object and purpose, then the use of this means would be more the exception than the rule. This is counter to the idea of the object and purpose as a "principal means of interpretation".[59] The second alternative raises doubts since it makes interpretation excessively labour-intensive. If a treaty has more than one principal *telos*, and by the "object and purpose" of a treaty we mean all those *teloi* that the treaty assumedly has, then clearly there is the possibility that using the object and purpose will lead to different results, depending upon which of the treaty's principal *teloi* is actually used. Then, but only then, must the relative weight of the *teloi* be established. If, however, by the "object and purpose" of a treaty we were to understand its single, principal, and all-embracing *telos*, then the relative weight of the *teloi* must always be established. The question whether appliers, by using different *teloi* will be faced with conflicting results, appears entirely irrelevant; for it is only after the point when the relative weights of the *teloi* have been established, that we can say whether the use of object and purpose leads to an intelligible result at all.

Second, I can see no good reason why, for the purpose of interpretation, appliers should be free to use the single, principal *telos* of a treaty, but have to completely ignore all *teloi* of a lower degree of abstraction. The reason Jacobs gives is that typically, a single, principal *telos* is easier to determine than the relative weight of the less abstract *teloi*.[60] The basis for this claim is somewhat unclear. As far as I can see, it must be based on one of the following three assumptions:

(1) A treaty never has more than one principal *telos*, but it always has different *teloi* of a lower degree of abstraction, and when the latter are used to interpret a treaty, it typically leads to conflicting results.
(2) A treaty may have more than one principal *telos*, but the relative weight of these different principal *teloi* is typically easier to determine than the relative weight of the less abstract *teloi*.
(3) A treaty may have more than one principal *telos*, but it is more frequently the case that by using the less abstract *teloi* of a treaty, appliers will be faced with conflicting results.

The first assumption is obviously wrong. As observed, many treaties have two or more principal *teloi*, out of which we cannot comfortably consider one to be weightier than the others. Hence, the assumption that treaties never have more than one principal *telos* does simply not stand up to reality. The

second assumption is certainly dubious. I can see no support whatsoever for the idea that the relative weight of the principal *teloi* of a treaty typically would be easier to determine than the relative weight of its less abstract *teloi*. As a matter of fact, there is considerable reason to believe the situation to be quite the opposite. The more concrete a *telos*, the easier it should be to determine; and the easier a *telos* is to determine, the easier it should be to determine its relative weight. The third assumption must also be seriously called into question. It is true that a treaty may have more than one *telos*, but this is not at all rare; on the contrary. I dare say it is very rare indeed that a treaty does *not* have more than one *telos*.[61] It does not seem a plausible suggestion that the less abstract *teloi* of a treaty would lead to conflicting results with such a great frequency. All things considered, it seems we have little reason to embrace what Jacobs argues, namely that the principal *telos* of a treaty is typically easier to determine than the relative weight of the less abstract *teloi*. Along with these two arguments we may note the absence of counter-arguments. I can see no single argument that either supports the assumption underlying the application of rule no. 1, or that undermines the assumption underlying the application of rule no. 18. Of course, it is a matter of judgment whether this means that the assumption underlying the application of rule no. 1 is *significantly* weaker than the assumption underlying the application of rule no. 18. Personally, I find it difficult to arrive at any other conclusion. In my judgment, for the interpretation of the expression "object and purpose", the application of interpretation rule no. 1 can indeed be shown to lead to a result, "which is manifestly absurd or unreasonable", in the sense of interpretation rule no. 40. If the interpretation of the expression "object and purpose" in accordance with interpretation rule no. 1 leads to a result, which is different from that obtained by interpreting the expression in accordance with interpretation rule no. 18, then in my judgment, the expression shall not be understood in accordance with rule no. 1. The expression shall be understood in accordance with rule no. 18 – it shall be considered a reference to the *teloi* of a treaty in the plural.

4 THE "OBJECT AND PURPOSE" PUT TO USE

What communicative standard or standards shall the parties to a treaty be assumed to have followed, when an applier interprets the treaty using its "object and purpose"? When appliers interpret a treaty using its object and purpose, the following communicative standard must be taken for granted:

> If a state produces an utterance taking the form of a treaty provision, then this provision should be drawn up so that, by applying the provision, the *teloi* of the treaty are attained to the greatest possible extent.[62]

According to what some authors imply, this is the only standard that should be taken into account.[63] Personally, I assert the opposite. Support for this position can be found in the literature taken at large. According to the great majority of authors, appliers have two ways to proceed when they interpret a provision of a treaty using its "object and purpose". First, they can understand the provision in light of the rights and obligations expressed in the treaty; second, they can understand the provision in light of its *teloi*.[64] However, with the standard established above, appliers will be limited to interpreting a treaty in light of its *teloi*. Hence, if we take the majority of authors to be right, then obviously further communicative standards need to be taken into consideration. The question is what standard or standards we are talking about. On this point, the literature can no longer provide us with a clear answer.

One way of answering the question is to consult the preparatory work of the Vienna Convention. It is indeed remarkable that in the provisions of the Convention we find no reference whatsoever to the PRINCIPLE OF EFFECTIVENESS, in the literature interchangeably referred to as THE PRINCIPLE UT RES MAGIS VALEAT QUAM PEREAT OR LA RÈGLE D'EFFET UTILE.[65] The fact is that an express inclusion of the principle of effectiveness was the subject of serious discussion in the ILC already at a first round of drafting, provoked by a proposal of the Special Rapporteur, Sir Humphrey Waldock. Waldock had proposed an article along the following lines:

> *Article 72. – Effective interpretation of the terms* (ut res magis valeat quam pereat)
> In the application of articles 70 and 71 a term of a treaty shall be so interpreted as to give it the fullest weight and effect consistent –
> (a) with its natural and ordinary meaning and that of the other terms of the treaty; and
> (b) with the objects and purposes of the treaty.[66]

The proposal never garnered any significant support, however,[67] and it was later unanimously rejected.[68] A particularly interesting observation is the grounds given for the rejection.

First of all, it was thought that Waldock had formulated the principle of effectiveness in excessively broad terms, so that his text ran the risk of being misused to support a so-called extensive interpretation.[69] Waldock himself had warned about giving the principle of effectiveness too much significance. There is a tendency, Waldock had stated in his report, to equate effective with extensive or liberal interpretation, by which the principle of effectiveness is stretched to its extreme.[70] The importance given to the principle of effectiveness in international law is considerably less.

> Properly limited, it does not call for "extensive" or "liberal" interpretation in the sense of an interpretation going beyond what is expressed or necessarily implied in the terms.[71]

These reservations, the ILC marked, should have been more clearly set forward in the draft article that Waldock had proposed. Second – and more importantly – there were reasons to question whether draft article 72 was not in effect actually redundant.[72] If it is indeed the case, the Commission explained, that the principle of effectiveness does not carry more import than Waldock had suggested, then the principle was merely a repetition of what the Rapporteur had already put to words in other draft articles. All things considered, then, draft article 72 had little to contribute.[73]

> [I]n so far as the maxim *Ut res magis valeat quam pereat* reflects a true general rule of interpretation, it is embodied in article 69, paragraph 1 [later to be adopted as VCLT article 31 § 1], which requires that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in the context of the treaty and in the light of its objects and purposes.[74]

What the ILC says is of course highly interesting: some aspects of the principle of effectiveness are already included by the ILC Draft Articles adopted in 1964 – more specifically, in the provisions recognising the context and the object and purpose of a treaty as acceptable means of interpretation. There is reason to believe the same link exists between the principle of effectiveness and the provisions drawn up on the use of these same means in the 1969 Vienna Convention.[75]

Evidently, we have reason to examine the principle of effectiveness more closely. Two things need to be observed with regard to the meaning of the principle of effectiveness. The first is the import of the principle. Taken to the extreme, the principle of effectiveness stands for the concept of a treaty being an instrument of greatest possible effectiveness.[76] Applied within the limits of international law, however, the principle must be balanced against a number of other ideals – this was observed by Waldock in 1964,[77] and it still applies today. Therefore, seen in its proper context, what the principle of effectiveness is really all about is not that appliers shall attempt to interpret a treaty to make it as effective as possible, but that appliers shall attempt to make sure that the treaty is not *ineffective*.[78]

> [W]here a text is ambiguous or defective, but a possible, though uncertain, interpretation of it would give the agreement some effect, whereas otherwise it would have none, a court is entitled to adopt that interpretation, on the legitimate assumption that the parties must have intended their agreement to have some effect, not none.[79]

The second thing that must be observed is the meaning of the word effectiveness. The effectiveness of a phenomenon is not something that can be said to exist *in abstracto*. It is pure nonsense to state, concerning the interpretation of a treaty, that it shall be performed avoiding results that make the treaty ineffective, if we cannot at the same time identify the measure used

to determine the effectiveness of the treaty. To better clarify matters, let us seek the assistance of international legal doctrine. It is a view generally held in the literature that if the principle of effectiveness can be applied to interpret a treaty, then this is because the treaty is assumed to be effective (1) from the point of view of its meaning, (2) from the point of view of its norm content, or (3) from the point of view of its *teloi*; the treaty is assumed to be linguistically, normatively and teleologically effective, respectively.[80]

In other words, if appliers interpret a treaty in accordance with the principle of effectiveness, the communicative standards assumed would be the following:

- If a state produces an utterance taking the form of a treaty provision, then the provision should be drawn up so that in the context there will be no instance of a pleonasm.
- If a state produces an utterance taking the form of a treaty provision, then the provision should be drawn up, so that by applying the provision a result is not obtained, which is not among the *teloi* conferred on the treaty.
- If a state produces an utterance taking the form of a treaty provision, then the provision should be drawn up so that in applying the provision, no other part of the treaty becomes normatively useless.

The first standard on the list may be identified with an act of interpretation using the context; it is comprised by the communicative standard designated by the letter C.[81] The second standard may be identified with an act of interpretation using the object and purpose of a treaty; it is comprised by the following standard – henceforth to be termed as communicative standard F – outlined at the beginning of this section:

> If a state produces an utterance taking the form of a treaty provision, then this provision should be drawn up so that, by applying the provision, the *teloi* of the treaty is attained to the greatest possible extent.[82]

Only the last of the three standards included in the list above – henceforth to be termed as communicative standard G – can be said to imply something new. It may not be identified with an act of interpretation using the context, and it cannot be considered included in the communicative standard F. With this observation in mind, it seems we can arrive at conclusions.

We have ventured earlier the assumption that aspects of the principle of effectiveness are comprised in the interpretation of treaties using the context and the object and purpose in accordance with VCLT article 31 § 1. We have shown standard G to be one of the communicative standards assumed by an applier, when he interprets a treaty in accordance with the principle of effectiveness. And we noted about the communicative standard G that it cannot be identified with an act of interpretation using the context. Given

these premises, it is obvious that the communicative standard G must be identified with an act of interpretation using the object and purpose. When appliers interpret a treaty using the object and purpose of that treaty, this shall be done not only on the basis of the communicative standard F, but also on the basis of standard G. As further support for this proposition, I would like to cite the practice of international courts and tribunals.[83] This is what I will do in Section 5.

5 THE "OBJECT AND PURPOSE" PUT TO USE (CONT'D)

Among the tier of opinions included in the practice of international courts and tribunals, three cases in particular may be noticed. A first case is the judgment of the International Court of Justice in the case concerning *Border and Transborder Armed Actions*.[84] The facts of this case have already been reported earlier in this work,[85] and I see no reason for unnecessary repetition. As we know, Nicaragua and the Honduras were of different opinions as to the meaning of the following articles XXXI and XXXII in the *1948 American Treaty on Pacific Settlement ("the Pact of Bogotá").*

Article XXXI
In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:
(a) The interpretation of a treaty;
(b) Any question of international law;
(c) The existence of any fact which, if established, would constitute the breach of an international obligation;
(d) The nature or extent of the reparation to be made for the breach of an international obligation.

Article XXXII
When the conciliation procedure previously established in the present Treaty or by agreement of the parties does not lead to a solution, and the said parties have not agreed upon an arbitral procedure, either of them shall be entitled to have recourse to the International Court of Justice in the manner prescribed in Article 40 of the Statute thereof. The Court shall have compulsory jurisdiction in accordance with Article 36, paragraph 1, of the said Statute.[86]

The Honduras had advanced the argument that article XXXI could only be read correctly if placed in relation to the article XXXII. According to the Honduras, the International Court of Justice would have no jurisdiction to settle a dispute under the provisions of article XXXI, in the cases covered by that article, if there had not previously been recourse to conciliation, according to the provisions of article XXXII. According to Nicaragua, each

article should be read independently. The Hague Court would have jurisdiction to settle a dispute under the provisions of article XXXI, in the cases covered by that article, regardless of whether there had previously been recourse to conciliation, according to the provisions of article XXXII. As stated earlier, the Court concurred with the latter interpretation, invoking among other things the following argument:

> It is, moreover, quite clear from the Pact that the purpose of the American States in drafting it [i.e. Article XXXI] was to reinforce their mutual commitments with regard to judicial settlement. This is also confirmed by the *travaux préparatoires*: the discussion at the meeting of Committee III of the Conference held on 27 April 1948 has already been referred to in paragraph 37 above. At that meeting, furthermore, the delegate of Colombia explained to the Committee the general lines of the system proposed by the Sub-Committee which had prepared the draft; the Sub-Committee took the position "that the principal procedure for the peaceful settlement of conflicts between the American States had to be judicial procedure before the International Court of Justice" *(translation by the Registry)*. Honduras's interpretation would however imply that the commitment, at first sight firm and unconditional, set forth in Article XXXI would, in fact, be emptied of all content if, for any reason, the dispute were not subjected to prior conciliation. Such a solution would be clearly contrary to both the object and the purpose of the Pact.[87]

Clearly, two different acts of interpretation are described by the Court. First, reference is made to an act of interpretation using the *telos* of the interpreted treaty. The *telos* conferred on article XXXI by the American States ...

> ...[is] to reinforce their mutual commitments with regard to judicial settlement.

In the case at hand, this *telos* would never be attained by applying article XXXI, if the treaty were to be given the interpretation suggested by the Honduras. Hence, this interpretation cannot be considered correct. Second, reference is made to an act of interpretation using the norm content of the interpreted treaty. If a reading like the Honduras's were to be accepted – if it had indeed been the case, that the Court had no jurisdiction, according to the provisions of article XXXI, until conciliation had first been attempted, according to the provisions of article XXXII – then article XXXI would clearly have no practical meaning at all. Indeed, in a case where conciliation *has* been attempted (without however succeeding), then the remedies to be applied are those of article XXXII. The disputing parties shall first make attempts to conclude a special agreement; if they do not succeed, then each party shall be entitled to bring the dispute before the International Court of Justice, which of course they already have, given the provisions of article XXXI. Consequently, the interpretation suggested by the Honduras cannot be considered correct. The two acts of interpretation may be plainly stated as follows. In the former line of reasoning, it is the assumption of the Court that the American States have expressed themselves in accordance with the

communicative standard F. In the latter line of reasoning, it is the assumption that the American States have expressed themselves in accordance with the communicative standard G.

A second case to be noted is the judgment of the European Court of Human Rights in the *Colozza* case.[88] In November 1974, an Italian investigating judge had issued a warrant for the arrest of Italian citizen Giacinto Colozza; in addition to this, two warrants were later issued, in May and June 1975, respectively. However, since Colloza was not easily located, on no occasion had it been possible to arrest him. Quite obviously, Colozza no longer lived at the address he had last given, and his new address remained unknown. Therefore, in accordance with Italian law, he was declared *latitante*, that is to say he was declared a person wilfully evading the execution of a court warrant. Colozza was charged, and in May 1976, in his absence and after a trial about which he evidently had had no knowledge at all, an Italian court sentenced him to six years in prison. There was no possibility for appeal. The question arose as to whether Italy, through these decisions, had acted in violation of article 6 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. This gave the Court occasion to comment on the meaning of this article:

> Although this is not expressly mentioned in paragraph 1 of Article 6, the object and purpose of the Article taken as a whole show that a person "charged with a criminal offence" is entitled to take part in the hearing. Moreover, subparagraphs (c), (d) and (e) of paragraph 3 guarantee to "everyone charged with a criminal offence" the right "to defend himself in person", "to examine or have examined witnesses" and "to have the free assistance of an interpreter if he cannot understand or speak the language used in court", and it is difficult to see how he could exercise these rights without being present.[89]

The cited reasoning bears parallels to that presented by the ICJ in the case concerning *Border and Transborder Armed Actions*. The thing examined by the European Court is the content of 6 § 1 and § 3(c), (d) and (e). I cite:

> 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
> ---
> 3. Everyone charged with a criminal offence has the following minimum rights: …
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Two different acts of interpretation are described. The first is an act of interpretation using the *telos* of the interpreted treaty. The *telos* conferred on article 6 § 1 is to ensure the person charged with a criminal offence of a fair trial.[90] For a person charged with a criminal offence, this *telos* would never be attained if the person were not given the right as well to take part in the court hearings. Consequently, such a right must be considered included in the scope of article 6 § 1. The second act of interpretation described by the court is one using the norm content of the interpreted treaty. If a person charged with a criminal offence would not have the right to take part in the court hearings, nor would he be able to exercise the rights provided in article 6 § 3(c), (d), and (e). Again, a right to take part in the court hearings must be considered to follow from the provisions of article 6 § 1. In the former line of reasoning, it is an assumption of the Court that the parties to the European Convention have expressed themselves in accordance with the communicative standard F. In the latter line of reasoning, it is the assumption that the parties have expressed themselves in accordance with the communicative standard G.

My third example of the practice established by international courts and tribunals is once again a case chosen from the repertoire of the European Court for Human Rights; it is the *Belgian Linguistic* case.[91] The decision bears a significant difference from the two already cited. In the case concerning *Border and Transborder Armed Actions*, as well as the *Colozza* case, a treaty provision is interpreted using the norms contained in other provisions of the treaty. However, nothing prevents an applier from also using the norm contents of the very provision interpreted. When an applier interprets a treaty provision, it is because she is uncertain about the meaning of the provision vis-à-vis a specific case. The issue is whether, on the basis of the text of the provision, the applier may be justified in asserting the existence of a specific norm that can then be applied for solving the case. This does not necessarily mean that the applier is uncertain about the meaning of the provision vis-à-vis its entire extension. In fact, the case is usually the opposite. Even if an applier happens to be uncertain whether, on the basis of the text of a treaty provision, he may be justified in asserting the existence of a certain concrete norm, the applier is often completely certain about the existence of a number of other concrete norms assertable on the exact same basis. Of course, these other norms can be used for interpreting the treaty provision, in quite the same way as the applier would normally use the norm content expressed in other parts of the treaty. This is exactly the strategy practiced by the European Court in *Belgian Linguistic*.

The case originated from the education policy practiced in Belgium during the 1960's. Between June 1962 and January 1964, a total of six complaints of

alleged human rights violations were lodged with the European Commission. The applicants – all Belgian nationals – were all residents of a region that Belgian language laws categorised as exclusively Flemish-speaking. They, for their part, had French as their first language, and they wanted their children to attend schools where they would be taught in French. However, according to Belgian language laws, all compulsory education in exclusively Flemish-speaking areas was to be performed in Flemish. Certain exceptions were permitted. Special education in French could be provided during an interim period, if local authorities decided that there was a need for it. In the areas where the applicants lived, however, no such decision had been taken. As a result, no government-financed education in French was provided; and this was exactly the subject matter of the complaints. In addition, complaints were made about the sanctions entailed by Belgian language laws. For example, school-leaving certificates would not be given official recognition, if it was established that language law regulations had not been followed at the issuing school. The question arose whether this Belgian policy should be seen to amount to a violation of article 2 of the European Convention, Protocol No. 1. The article reads:

> No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Since the European Court had never before been given opportunity to address the contents of this article, it apparently felt it an appropriate occasion for uttering a few general comments. First, the Court noted that the text of article 2 was indeed formulated in a negative manner. However, this was not cause to reject the fact that the right to education could also entail certain "positive" obligations:

> The negative formulation indicates ... that the Contracting Parties do not recognise such a right to education as would require them to establish at their own expense, or to subsidise, education of any particular type or at any particular level. However, it cannot be concluded from this that the State has no positive obligation to ensure respect for such a right as is protected by Article 2 of the Protocol.[92]

It remained to be seen whether the right could be defined more precisely:

> To determine the scope of the "right to education", within the meaning of the first sentence of Article 2 of the Protocol, the Court must bear in mind the aim of this provision. It notes in this context that all member States of the Council of Europe possessed, at the time of the opening of the Protocol to their signature, and still do possess, a general and official educational system. There neither was, nor is now, therefore, any question of requiring each State to establish such a system, but merely of guaranteeing to persons subject to the

jurisdiction of the Contracting Parties the right, in principle, to avail themselves of the means of instruction existing at a given time.

The Convention lays down no specific obligations concerning the extent of these means and the manner of their organisation or subsidisation. In particular the first sentence of Article 2 does not specify the language in which education must be conducted in order that the right to education should be respected. It does not contain precise provisions similar to those which appear in Articles 5 (2) and 6 (3) (a) and (e). However the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be.

4. The first sentence of Article 2 of the Protocol consequently guarantees, in the first place, a right of access to educational institutions existing at a given time, but such access constitutes only a part of the right to education. For the "right to education" to be effective, it is further necessary that, inter alia, the individual who is the beneficiary should have the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which he has completed.[93]

Clearly, the means of interpretation used by the Court is the object and purpose of the treaty. This is indicated at the very beginning of the Court's line of reason:

To determine the scope of the "right to education", within the meaning of the first sentence of Article 2 of the Protocol, the Court must bear in mind the aim of this provision.

Even clearer on this point is the authentic French version of the Court's findings:

Pour dégager la portée du "droit à l'instruction", au sens de la première phrase se l'article 2 du Protocole, la Cour doit tenir compte de l'objet de cette disposition.

To be more exact, what the reasoning of the Court indicates is an act of interpretation using the norm content of article 2, Protocol No. 1. Article 2, the Court observes, provides a right for any individual residing in the territory of a state party to avail herself of the existing educational system. Using this observation as a basis, further conclusions can be made. A first conclusion is that a person residing in the territory of a state party, according to article 2 of Protocol No. 1, has the right to require that education is provided in at least one of the national languages. This line of reason can be described in the following manner:

> Article 2 provides a right for each and every individual residing in the territory of a state party to avail himself of the existing educational system. If it were the case, that a person residing in the territory of a state party could not require that education be provided in at least one of the national languages, then that person would not be able to exercise the right to avail himself of the existing educational system.

> Therefore, a person residing in the territory of a state party, according to article 2 of Protocol No. 1, has the right to require that education be provided in at least one of the national languages.

A second conclusion drawn by the court is that a person residing in the territory of a state party, according to article 2 of Protocol No. 1, has the right to require that studies completed receive official recognition. The reasoning can be described in the following way:

> Article 2 provides a right for each and every individual residing in the territory of a state party to avail herself of the existing educational system. If it were the case, that a person residing in the territory of a state party could not require that studies completed receive official recognition, then that person would not be able to exercise the right to avail herself of the existing educational system. Therefore, a person residing in the territory of a state party, according to article 2 of Protocol no. 1, has the right to require that studies completed receive official recognition.

In both cases, it is clearly the assumption of the court that the parties to the European Convention have expressed themselves in accordance with the communicative standard G.

6 CONCLUSIONS

According to VCLT article 31 § 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 the light of its object and purpose". It is the purpose of this chapter to describe what this means. Based on the observations above, the following two rules of interpretation can be established:

Rule no. 15
§ 1. If it can be shown that the interpretation of a treaty provision in accordance with interpretation rule no. 1 leads to conflicting results, and that the treaty has a certain *telos*, which in one of the two possible ordinary meanings, by applying the provision, will be realised to a greater extent than in the other, then the former meaning shall be adopted.
§ 2. For the purpose of this rule, TELOS means any state-of-affairs, which according to the parties should be attained by applying the interpreted provision.
§ 3. For the purpose of this rule, the TELOS of a treaty is determined based upon the intentions held by the parties at the time of the treaty's conclusion, except for those cases where § 4 applies.

§ 4. For the purpose of this rule, the TELOS of a treaty is determined based upon the intentions held by the parties at the time of interpretation, provided it can be shown that the thing interpreted is a generic referring expression with a referent assumed by the parties to be alterable.
§ 5. For the purpose of this rule, PARTIES means any and all states for which the treaty is in force at the time of interpretation.

Rule no. 16
If it can be shown that the interpretation of a treaty provision in accordance with interpretation rule no. 1 leads to conflicting results, and that somewhere in the text of that treaty a norm is expressed, which – in light of the provision interpreted – in one of the two possible ordinary meanings can be considered in practice normatively useless, while in the other it cannot, then the latter meaning shall be adopted.

NOTES

1. Cf. Ch. 1, Section 3, of this work.
2. This is also evident from the preparatory work of the Vienna Convention. In the ILC Commentary of 1966, we read the following passage: "*Paragraph 1* [of draft article 27, later to be adopted as VCLT article 31] contains three separate principles. The first – interpretation in good faith – flows directly from the rule *pacta sunt servanda*. The second principle is the very essence of the textual approach: the parties are to be presumed to have that intention which appears from the ordinary meaning of the terms used by them. The third principle is one of both common sense and good faith; the ordinary meaning of a term is not to be determined in the abstract but in the context of the treaty and in the light of its object and purpose." (Draft Articles With Commentaries (1966), *ILC Yrbk*, 1966, Vol. 2, p. 221, § 12.)
3. See e.g. Villiger, p. 321; Vitányi, p. 56; Yasseen, p. 55; Rousseau, p. 272; Pessou, at the ILC's sixteenth session, 765th meeting, *ILC Yrbk*, 1964, Vol. 1, p. 278, § 45.
4. See e.g. McRae, p. 221; Amerasinghe, p. 195; Seidl-Hohenveldern, 1992, p. 93; Ost, pp. 292–293; Villiger, pp. 343–344; Bernhardt, 1984, p. 322; Bos, 1984, p. 147; Verdross and Simma, p. 492; Briggs, p. 708. Note, however, that some authors use the phrase TELEOLOGICAL INTERPRETATION in a more restricted sense, to denote what I will later be calling OBJECTIVE TELEOLOGICAL INTERPRETATION. (See e.g. Thirlway, 1991, p. 38; Brownlie, p. 631; Sinclair, 1984, p. 131; Jacobs, p. 336; Fitzmaurice, 1957, pp. 207–209.)
5. See e.g. Peczenik, 1995, pp. 364–365; Larenz, pp. 328–339; Bydlinski, pp. 449–463.
6. It should be noted that the terminology is not entirely consistent. Sometimes an interpretation is called objective teleological because the law interpreted is completely dissociated from the original lawmaker. Sometimes an interpretation is called objective teleological because the object and purpose put to use is not the one conferred on the law by the original lawmaker, but only a rational construction of that object and purpose. In my opinion, the latter usage of language must be considered somewhat peculiar. Just as with the utterance meaning of a treaty, the object and purpose of a law can never be determined with complete certainty; it can only be assumed. (The object and purpose conferred on a law by the

original lawmaker can only be determined through the assumption that the lawmaker drew up the law expressing "himself" in a rational manner (that is, in accordance with certain communicative standards). Even in the simple case where the object and purpose of a law is expressly stated in the text of the law itself, the object and purpose can be determined only on the assumption that the lawmaker uses conventional language to convey this piece of information.) If the interpretation of a law is defined as OBJECTIVE TELEOLOGICAL, merely because the object and purpose used is not the one conferred on the law by the original lawmaker, but rather is a rational construction of that object and purpose, and yet we know that a law cannot – under any circumstances – be interpreted using the object and purpose *with full certainty* conferred on the law by the original lawmaker, then I fail to see what a subjective teleological interpretation could possibly denote. Hence, if the distinction between objective and subjective teleological interpretation is to be at all meaningful, the term OBJECTIVE TELEOLOGICAL INTERPRETATION can be used only in the sense stated here.

7. Ost, p. 292; Sinclair, 1984, p. 131; Bos, 1984, p. 153; Vitányi, p. 57; Yasseen, pp. 55, 57; Köck, p. 88; Haraszti, pp. 112–113; Cot, pp. 648–649; De Visscher, 1963, p. 64; Favre, 1974, pp. 82–83.
8. See Ch. 2, Section 1, of this work.
9. Loc. cit.
10. A commonly debated topic in the literature is the method to be used for determining the object and purpose of a treaty. (See e.g. Farer, p. 25; Haraszti, p. 112; Jacobs, p. 337; Sinclair, 1984, p. 135; Villiger, pp. 343–344; Jiménez de Aréchaga, pp. 43–44; Yasseen, p. 57; Köck, p. 39; Müller, pp. 130–131; Gottlieb, pp. 124, 126; Bernhardt, 1963, p. 89; Hogg (II), pp. 49–50.) As far as I can see, however, we must leave this debate without comment. In the rules of interpretation laid down in the Vienna Convention we are told only how to determine the meaning of a treaty with regard to its norm content. Therefore, the issue of how to determine the object and purpose of a treaty would seem to fall outside the framework established for this work.
11. See Bos, 1984, p. 153; Sur, p. 228.
12. Cf. e.g. Sur, pp. 223, 231–232; Jacqué, 1972, p. 169, n. 190. Cf. also Anscombe, pp. 144–152.
13. Cf. Sur, p. 223, cit. Bonnard, pp. 369, 371, and Vedel, p. 530, and Sur, pp. 227–231; Jacqué, 1972, p. 141, cit. Dehaussy, § 81; Rousseau, p. 272.
14. See e.g. *Kjeldsen*, *Busk Madsen and Pedersen*, *Publ. ECHR*, Ser. A, Vol. 23, p. 27, § 53.
15. Cf. Sur, p. 223, cit. Bonnard, pp. 369, 371, and Vedel, p. 530, and Sur, pp. 227–231; Jacqué, 1972, p. 141, cit. Dehaussy, § 81, and Jacqué, p. 169, n. 190, cit. Laubadère, p. 479; Rousseau, p. 272.
16. See Robertson and Merrills, pp. 1ff.
17. Cf. Draft Articles With Commentaries (1966), *ILC Yrbk*, 1966, Vol. 2, p. 220, § 10; Elias, 1974, p. 79; Jennings, p. 550; Reuter, 1989, pp. 75–76.
18. See Ch. 8, Section 3, of this work.
19. My emphasis.
20. See e.g. Vedel, pp. 517–538; Duguit, pp. 316–325; Bonnard, pp. 363–393. See also *Vocabulaire Juridique*, 1987, under the entry **But**, "Objectif; fin poursuivie. Ex. but d'une loi, d'un acte juridique, d'un groupement", and under the entry **Objet** – du contrat, "(b) En un sens technique, l'ensemble des droits et obligations que le contrat est destiné à faire naître".
21. Jacqué, 1972, p. 142.

22. Loc. cit.
23. See e.g. Tchivounda, p. 634; Vitányi, pp. 56–57; Favre, 1960, p. 83.
24. This is not to say that exceptions do not exist. One oft-cited decision is *Minority Schools in Albania*, PCIJ, Ser. A/B, No. 64, p. 17. From more recent times, an authority to be noted is *Border and Transborder Armed Actions*: "Such a solution would be clearly contrary to both the object and the purpose of the Pact" (*ILR*, Vol. 84, p. 244, § 46).
25. See e.g. Davidson, p. 131; Thirlway, 1991, pp. 38–42; Merrills, pp. 76–77; Bernhardt, 1984, p. 322; Haraszti, p. 112, n. 98; O'Connell, p. 255.
26. See e.g. Verdross and Simma, p. 492; Hilf, pp. 101–102; Köck, pp. 88–89. The official German translation of the VCLT – BGBl. 1985 II 925 – article 31 § 1 reads as follows: "Ein Vertrag ist nach Treu und Glauben in Übereinstimmung mit der gewöhnlichen, seinen Bestimmungen in ihrem Zusammenhang zukommenden Bedeutung und im Lichte seines Zieles und Zweckes auszulegen."
27. See e.g. Ost, pp. 292–295; von Glahn, pp. 504–505; Bernhardt, 1984, p. 322; Vitányi, p. 56; Haraszti, pp. 112–113; O'Connell, p. 255.
28. See e.g. Verdross and Simma, p. 492; Hilf, pp. 101–102; Müller, pp. 130–131.
29. The OBJECT AND PURPOSE (OBJET ET BUT, OBJETO Y FIN) of a treaty is mentioned also in articles 18, 19, 20 § 2, 33 § 4, 41 § 1 and 58 § 1. However, in none of these instances is the meaning of the phrase clearer than in article 31. (With regard to articles 19 and 20, cf. Lijnzaad, pp. 39–40; Teboul, pp. 695–696; Coccia, p. 23.)
30. Yasseen, Speaking as Chairman of the Drafting Committee, at the Vienna Conference's first session, 61st meeting of the Committee of the Whole, *Official Records*, p. 361, § 101.
31. See e.g. Jacqué, 1991, p. 381; Sur, p. 228; Rousseau, p. 272; Voïcu, p. 33; Dehaussy, § 81; Berlia, p. 308; De Visscher, 1963, p. 62, n. 1.
32. It seems we have reason to recall the observation made earlier: according to some authors, the two words OBJECT and PURPOSE, in the sense of the expression "the object and purpose", are synonymous with the meanings ascribed to OBJET and BUT in the French legal doctrine; according to others, they are not. However, no one author seems to question the fact that the extension of "the object and purpose" comprises the meaning of the word OBJET as well as that of the word BUT.
33. This alternative has indeed been suggested by others. See e.g. Reuter, 1989, p. 628; Villiger, pp. 343–344, n. 176; Bos, 1984, pp. 153–154; Yasseen, p. 57.
34. See Ch. 4 of this work.
35. Cf. e.g. *Canadian Agricultural Tariffs*, *ILR*, Vol. 110, pp. 579–583, §§ 134–145; *Loizidou v. Turkey*, *Publ. ECHR*, Ser. A, Vol. 310, pp. 25–28, §§ 67–77; *Namibia*, *ILR*, Vol. 49, pp. 20–22, §§ 49–54.
36. Note: it need not necessarily be the case that the drafters of a treaty, at the time of conclusion, have a completely clear vision of what shall be considered the *telos* of that treaty. Such a clear vision may develop later, for example in connection with the application of the treaty. (Cf. Cot, pp. 648–649.)
37. For an excellent article on the different relationships that can exist between a law and its *telos*, see Summers, 1982, pp. 60–80.
38. Concerning this phenomenon of a law, so to speak, defining its own *telos*, see ibid., pp. 69–70.
39. See e.g. Thirlway, 1991, p. 41, cit. *Namibia*, *ICJ Reports*, 1971, p. 31, § 53, and Thirlway, 1989, pp. 135–143; Villiger, pp. 343–344, § 513, n. 176; Karl, 1983, p. 185;

Ganshof van der Meersch, pp. 114–116; Yasseen, p. 59; Jacobs, pp. 337–338; Cot, p. 649. See also, although in the context of another provision, Lijnzaad, pp. 39–40; Teboul, p. 697.

40. See Section 1 of this chapter.
41. See Chapters 3 and 5 of this work, respectively.
42. See e.g. *Vidal*, *Publ. ECHR*, Ser. A, Vol. 235-B, p. 32, § 33.
43. See e.g. *Campbell and Fell*, *Publ. ECHR*, Ser. A, Vol. 80, p. 43, § 91.
44. See e.g. *Kjeldsen*, *Busk Madsen and Pedersen*, *Publ. ECHR*, Ser. A, Vol. 23, p. 27, § 53.
45. See, more or less expressly, Villiger, pp. 321–322; Yasseen, p. 58; Rest, p. 144, n. 6; Gottlieb, pp. 124, 126. See also, implicitly, Merrills, p. 76; Ost, pp. 292–293; Amerasinghe, p. 195; Brownlie, pp. 631–632; von Glahn, pp. 504–505; Bernhardt, 1984, p. 322; Sinclair, 1984, p. 134, cit. diss. op. Fitzmaurice, *National Union of Belgian Police*, *ILR*, Vol. 57, pp. 293–294; Verdross and Simma, p. 492; Haraszti, p. 112, n. 99.
46. Jacobs, p. 337. (Footnote omitted.)
47. See Ch. 3 of this work.
48. See Ch. 8 of this work.
49. See p. 212 of this work.
50. See various members at the ILC's eighteenth session, 869th meeting (§§ 52–70), 870, 871 and 872 (§§ 1–24), *ILC Yrbk*, 1966, Vol. 1. Part 2, pp. 183–200.
51. See Yasseen, speaking as Chairman of the Drafting Committee, at the ILC's eighteenth session, 883rd meeting, *ILC Yrbk* , 1966, Vol. 1. Part 2, p. 267, §§ 90–91. The statement reads as follows: "The words 'in the context of the treaty and in the light of its object and purpose' had been taken from paragraph 1(a) of the new text proposed by the Special rapporteur in his report (A/CN.4/186/Add.6)." However, strangely enough, the specified report still mentioned "objects and purposes" in the plural.
52. Cf. Report of the International Law Commission covering the work of its tenth session, 28 April-4 July 1958, *ILC Yrbk*, 1958, Vol. 2, p. 108, § 65.
53. See Ch. 10 of this work.
54. For a more detailed treatment of the expression "leads to a result that is manifestly absurd or unreasonable", see Ch. 10 of this work.
55. See the introduction to Ch. 3 of this work.
56. See Ch. 8 of this work.
57. I have assumed it to be clear what is meant by "the principal object and purpose of a treaty". It is not. (Cf. Summers, 1977, pp. 129–130.)
58. Cf. ibid., with regard to the *teloi* of laws: "Legal goal structures are inherently complex in the following way: it is always possible to differentiate several levels of goals along an ascending means-end continuum in which the realization of lower-level goals (often explicitly formulated in the law) serves higher-level goals (often not so formulated). Thus, for any law we can identify one or more 'immediate'-level goals, one or more 'intermediate'-level goals, and one or more 'higher or ultimate'-level goals — [A]t each of the three (there might be more) 'goal levels' so far identified, we will usually find more than one intended goal". (p. 128). See also Summers, 1982: "An effective legal rule is like a scarce economic resource: it cannot be had without giving up other things, in part or in whole. Thus, a legal rule reflects some effort to accommodate conflicting goals in an optimal way. Rarely does a single goal rank so far ahead of others that the others can be considered simply dispensable in event of conflict. Instead, the overall aim will be to maximize the realization of conflicting goals in accord with some implicit or explicit scheme of priorities. A full description of the constellation of