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Legal method and interpretation



Interpretation of texts

- Grammatical (literal) interpretation
- Historical and comparative interpretation
 - Preparatory materials etc
- Contextual (systematic) interpretation; treaty or statute as a whole
- Teleological interpretation: objective and purpose; values and principles



Article 31 VCLT

- 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.



Article 32 VCLT *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 resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
 - (a) leaves the meaning ambiguous or obscure; or
 - (b) leads to a result which is manifestly absurd or unreasonable.



International Court of Justice

- Ordinary meaning and intention of the parties

The Court considers it necessary to say that the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in **their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter. If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean when they used these words.**⁹

Second Membership Case, ICJ 1950



- Anglo-Iranian Oil Co Case, ICJ [1952]

[T]he Court cannot base itself on a purely grammatical interpretation of the text. It must seek the interpretation which is in harmony with a natural and reasonable way of reading the text, having due regard to the intention of the Government of Iran at the time when it accepted the compulsory jurisdiction of the Court.⁵⁷



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Group work with assignments





Dynamic interpretation

- “there are situations in which the parties’ intent upon conclusion of the treaty was, or may be presumed to have been, to give the terms used – or some of them – **a meaning or content capable of evolving**, not one fixed once and for all, so as to make allowance for, among other things, developments in international law” (*Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment of 13 July 2009, para. 64).



Multilingual treaty interpretation

- Art 33 VCLT
- When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language
- The terms of the treaty are presumed to have the same meaning in each authentic text



EU legal method

- Autonomous interpretation of EU law
 - «Community law uses terminology which is particular to it» *CILFIT*
- Multilingual texts: all language versions are equally authentic.
- Necessary to compare different language versions

Eiropas Savienība

Unia Europejska

Den Europæiske Union



- ...every provision of the Treaty must be placed in its context and interpreted in the light of the provisions of Community law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is applied (*CILFIT*)



Van Gend en Loos

JURISDIKTIONEN TIL DEN 24. APRIL 1962 — CILFIT 20/70

To ascertain whether the provisions of an international treaty extend so far in their effects it is necessary to consider the spirit, the general scheme and the wording of those provisions.



Bulmer v Bollinger [1974] L.R.Ch 411

- **Beyond doubt the English courts must follow the same principles as the European court.** Otherwise there would be differences between the countries of the nine...They [English courts] must look to the purpose or intent... They must devine the spirit of the Treaty and gain inspiration from it. If they find a gap, they must fill it as best they can. They must do what the framers of the instrument would have done if they had thought about it. So we must do the same. Those are the principles, as I understand it, on which the European court acts.



Stephen Gerard Brittain (2012)
it can be seen that object and purpose, as those terms are understood by the VCLT, refer to the object and purpose pursued by the framers of the Treaty,²⁵ as revealed by the *travaux préparatoires* - not to any object or purpose which an interpreter may deem to be immanent in the legal order, the latter being the sense in which object and purpose are understood in EU law.



Interpretation of contracts

- Subjective or objective interpretation?
- Common intention of the parties
 - Wording of the contract and commonly used terminology
 - Context of the conclusion
 - Subjective/individual conditions of the parties(statement of the parties, conduct, practices and usages between them)
 - Purpose of the contract
 - Declaratory rules of law
 - Good faith



- What is the standard for assessment if the common intention is unclear?
- Legitimate expectations/»reasonable» person-test
- Art 4.1 UNIDROIT Principles:
 1. A contract shall be interpreted according to the common intention of the parties.
 2. If such an intention cannot be established, a contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.