



The International Judiciary Impact on The Interpretation of International Treaties

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Abstract:

The international judiciary plays a pivotal role in the field of interpretation of international treaties and how to apply them, as the International Court of Justice is considered the main judicial body concerned with examining and interpreting treaties in preparation for adjudicating international disputes brought before it, in addition to providing advice and fatwas to the United Nations in its various branches. This role is also performed by international arbitration courts and regional courts based on the general principles and complementary means of interpretation stipulated by the Vienna Convention on the Law of Treaties.

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Introduction :

International treaties are at the forefront of the sources of public international law and thus enjoy a unique status, not only because they comprise the body of written international rules but also because they represent a means of communication and interaction among the components of the international community—a community that is multilingual, multicultural, multi-religious, and diverse in policies and ideologies, etc. It is not always easy or simple to combine all of these aspects. The written document may be ambiguous or unclear, and it may suffer from deficiency or error. Therefore, it is natural for disputes to arise between states over a particular text or provision. The mechanism of resorting to international judiciary is one of the most appropriate and effective ways to resolve international disputes in a peaceful and secure manner by presenting the disputed issues before a competent international court for adjudication or to provide fatwas and consultations to the body to which the court is affiliated. All of this is done with the aid of interpretive principles, rules, and methods as outlined in the Vienna Convention on the Law of Treaties, which emphasized the need to adopt and follow them when necessary to resolve any ambiguity or clarify any obscurity.

Accordingly, the central question becomes: **What is the impact of international judiciary in interpreting international treaties?**

To study this, we must first examine the principles of international treaties and their interpretive rules in the first section, followed by a second section on the international judicial bodies competent to interpret international treaties.

Chapter One: Principles of International Treaties and Their Interpretive Rules

The process of interpretation has been criticized in terms of its need for a set of principles, rules, and technical methods that assist in deriving and clarifying meanings. Some jurists believe that interpretation is governed purely by logic and that there is no need for all these principles and rules. However, no matter how skillful or experienced the interpreter is, the process of interpretation must rely on sound and clear evidence and acceptable legal arguments. Some jurists have acknowledged that these rules and principles possess some legal value as rules for



treaty interpretation, while others have denied them a binding nature, despite their usefulness in the task of interpretation. Regardless of these opinions, these principles and rules remain important and necessary. The Vienna Convention on the Law of Treaties referred to them in Articles 31, 32, and 33 due to their significance in interpretation.

Accordingly, the first requirement will address the **interpretive principles of international treaties**, while the second requirement will address the **methods used in interpreting international treaties**.

Section One: Interpretive Principles of International Treaties

Interpretive principles refer to the fundamental and primary rules upon which the process of interpretation is based at all its stages. They are considered the foundation and general rule of this process. Among the most important principles derived by international jurisprudence and judiciary in the field of interpreting international treaties are: the principle of **good faith**, alongside other principles such as the principle of **narrow interpretation**, and the principle of **no need to interpret what does not require interpretation**. Accordingly, the first subsection will address the **principle of good faith**, the second subsection will deal with the **principle of narrow interpretation**, and the third subsection will address the **principle of no need to interpret what does not require interpretation**.

Subsection One: The Principle of Good Faith

The principle of good faith is a well-established principle in public international law. It is an important principle connected to all branches of law. Article 31(1) of the Vienna Convention on the Law of Treaties of 1969 stipulates: "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." This means that the interpreter must perform their role in interpreting the treaty based on the good faith of its parties.

According to Article 31(1), interpretation must be based on the assumption that the parties to the treaty were acting in complete good faith when concluding it and intended to fulfill their obligations honestly. This is a logical outcome of



entering into a treaty; it cannot be imagined that a binding contract would be governed by bad faith.

If a treaty must be implemented in good faith, it must primarily be interpreted in good faith. Accordingly, Article 31 affirms this logical conclusion, which is the strong and inherent connection between interpretation and implementation.

With the Vienna Convention of 1969 coming into force, the principle of good faith became a codified rule of international law, especially in the field of interpretation and application.

Therefore, the principle of good faith also requires adherence to what the parties agreed upon and expressed sincerely and faithfully when entering into the treaty, without any attempt to interpret it according to the whims of one party or to create interpretive disputes despite the clarity of the text.

The International Court of Justice affirmed the application of the principle of good faith in its judgment dated 03/02/1994 regarding the **Libya-Chad** case, where it stated that the treaty must be interpreted in good faith according to the ordinary meaning of its expressions in their context and in light of its object and purpose.

Subsection Two: The Principle of Narrow Interpretation

The aim of following this principle is to preserve the integrity and unity of the treaty and not to undermine its provisions under the pretext of interpretation. The scope of international obligations stipulated in the treaty should be confined so as not to exceed the true intention of the state parties. This is what the interpreter must adhere to, without attempting to expand meanings or add obligations that were not among the original intentions of the parties. In cases of doubt or ambiguity, the interpretation that imposes the least burden on the obligated party should be favored.

International courts have applied this principle in many of their rulings, such as in the judgment of the **Permanent Court of International Justice** on 17/08/1923 regarding the case of the British steamship Wimbledon, where the ruling stated: "Since Germany exercises sovereignty over the Kiel Canal without



dispute, this suffices to say that any text limiting this sovereignty must be interpreted narrowly.”

Subsection Three: The Principle of No Need to Interpret What Does Not Require Interpretation

Excluding clear and explicit texts from interpretation is a general principle governing the interpretation of treaties by defining their scope and indicating what requires interpretation. This is perhaps reflected in the principle of “**no need to interpret what does not require interpretation**,” one of the earliest principles proposed by jurist **Vattel** for the process of interpretation.

However, the matter is not always that simple. The terms used are not always clear or carry a singular meaning. Most treaties are drafted in two or more languages. Not all texts are so clear as to eliminate the need for interpretation. The clarity of a text is also linked to the identification of its purposes and objectives. Therefore, many jurists rejected Vattel’s view. Some even argue that the mere act of judging a text as ambiguous or clear is, in itself, an act of interpretation.

Section Two: Methods Used in Interpreting International Treaties

There are several methods used in interpretation referred to by the Vienna Convention on the Law of Treaties, and all of them are confined to the text of the treaty, its parties, and its purpose. These methods include:

Subsection One: Textual Interpretation

Textual interpretation means relying on the text of the treaty and the words contained in it as the basis for the process of interpretation, as the text of the treaty is the truthful expression of the will of its parties. It interprets itself, and the task of interpretation is manifested through a clear reading of the text, taking into account the ordinary meaning of the words used in it and their relationship to one another.

The concept of the text includes all that is related to the core of the treaty in addition to the preamble and annexes attached to it. The interpreter should not fragment the treaty or separate one provision from another; they are required to take all these matters into account. The International Court of Justice adopted this method since its advisory opinion



concerning the General Assembly's authority to admit members to the United Nations, where it decided that the Court must first apply the natural and ordinary meaning of the words, taken in the context in which they appear when asked to interpret a treaty and how to apply it.

Subsection Two: Subjective Interpretation

According to this method, the essential basis for interpretation is to search for the actual or presumed intent of the parties to the treaty. This can be deduced through the use of preparatory works that precede the conclusion of the treaty, such as minutes of meetings, exchanged memoranda, speeches, and the positions taken by the parties before or upon signing the treaty. However, this method involves difficulty in determining the common intent of the parties, and therefore it has not gained much traction in practice.

Subsection Three: Functional Interpretation

This method of interpreting treaties is based on understanding their main purpose and function. Accordingly, the treaty is studied and interpreted in light of the goals it was originally established for and the mission it was assigned. The importance of this method appears in the interpretation of international charters to determine the competencies of their organs according to the functional purpose for which they were created.

Chapter Two: International Judicial Bodies Competent to Interpret International Treaties

International judicial bodies generally include the International Court of Justice, international arbitration courts, and regional courts. All of them are competent to interpret international treaties within the scope of the cases submitted to them for adjudication or to provide opinions and fatwas.

The following discusses, in the first requirement, the interpretation of international treaties in light of the International Court of Justice, and in the second requirement, the role of international arbitration and regional courts in interpreting international treaties.



Section One: Interpretation of Treaties in Light of the International Court of Justice

Article 1 of the Statute of the International Court of Justice states: “The International Court of Justice shall be established by the Charter of the United Nations as the principal judicial organ of the United Nations and shall function in accordance with the provisions of the present Statute.” Thus, the International Court of Justice is the main judicial body of the United Nations. Its competence lies in adjudicating legal disputes between states and providing advisory opinions on legal matters referred to it by United Nations bodies and specialized agencies. The Court's competence to interpret international treaties is at the heart of its duties, which align with its role in resolving international disputes and providing advisory opinions to the United Nations and its organs and agencies.

The International Court of Justice has played an important role in this regard since its establishment following World War II, having handled many cases brought before it for adjudication or for the issuance of opinions and advice, whether on a compulsory or optional basis. Accordingly, this requirement includes two subsections:

- **Subsection One:** The Court's competence in interpretation when adjudicating international disputes

- **Subsection Two:** The Court's competence in interpretation when issuing advisory opinions

Subsection One: The Court's Competence in Interpretation When Adjudicating International Disputes

The task of interpreting international treaties is a core function of the International Court of Justice. Article 36(2) of the Statute of the Court affirms this competence and states: "States parties to this Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes



concerning:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation."

Thus, the Court's competence is to adjudicate legal disputes arising between states and to determine responsibilities and potential reparations. However, its jurisdiction is limited in two respects: First, it considers only legal issues that are the subject of dispute between states; Second, it cannot issue a binding judgment unless the disputing states agree to submit to its jurisdiction, which means the Court's jurisdiction is optional. Therefore, no member state of the United Nations or party to the Court's Statute can be compelled to appear before it upon being sued.

The Court's optional jurisdiction becomes compulsory in two cases:

- The first is when the parties agree to submit the dispute to the Court. This agreement can take the form of a provision in the treaty in which the parties agree to refer any dispute regarding its interpretation or application to the International Court of Justice, or a prior agreement signed by the disputing parties. The acceptance may also be implicit in the absence of any objection to the Court's jurisdiction, which is interpreted as consent.

- The second case is when a state party to the Court's Statute issues a declaration recognizing the Court's jurisdiction at any time without the need for a special agreement to adjudicate all legal disputes between it and other states that accept the Court's jurisdiction.

Thus, the Court has both compulsory and optional jurisdiction to interpret treaties and resolve disputes brought before it. Compulsory jurisdiction is realized when there is a special agreement between disputing states to bring the case before the Court or under a treaty provision that obliges the contracting states to refer



their disputes to the Court. Optional jurisdiction, on the other hand, depends on the states' willingness to accept the Court's jurisdiction in resolving the dispute, in accordance with Article 36(1) of the Statute of the International Court of Justice, which states:

"The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force."

Compulsory jurisdiction is limited to states that have accepted it and the Court's competence to interpret the treaty at the request of one party, regardless of the other party's stance.

Some parties have included in their treaties a provision naming the International Court of Justice as the competent body to resolve future disputes over the interpretation and application of those treaties. These include the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Article 22), the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (Article 22), and the Convention on the Prevention and Punishment of the Crime of Genocide (Article 9).

Article 59 of the Court's Statute provides that the binding force of interpretation and the judgment issued by the International Court of Justice applies only to the parties to the case, while Article 63 of the Statute stipulates that states parties to the convention subject to interpretation and not party to the case must be notified without delay and are entitled to intervene in the case. If they do intervene, the interpretation rendered by the judgment becomes binding on them as well.

Subsection Two: The Court's Competence in Interpretation When Issuing Advisory Opinions

The International Court of Justice undertakes the task of issuing fatwas and advisory opinions on matters referred to it by United Nations bodies and its specialized agencies. In doing so, it plays the role of legal adviser to the United Nations and performs its function in the field of interpreting international treaties and how they are applied in a clearer manner. Paragraphs 1 and 2 of Article 96 of



the United Nations Charter state that the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question. The same applies to other organs of the United Nations and its specialized agencies that may be so authorized. This was confirmed in Article 65(1) of the Statute of the International Court of Justice, which states:

"The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."

Accordingly, all United Nations specialized agencies are entitled to request advisory opinions from the International Court of Justice, with the exception of the Universal Postal Union, whose charter stipulates recourse to arbitration in the event of disputes regarding its provisions.

Looking at the interpretations provided, we find that on 17/11/1947, the United Nations General Assembly requested the International Court of Justice to interpret Article 4 of its Charter to determine the conditions required for states to become members of the United Nations. In its response dated 28/05/1948, the Court confirmed that it was indeed competent to interpret the Charter's provisions.

Section two: The Role of International Arbitration and Regional Courts in Interpreting International Treaties

This requirement includes two sections: the first on international arbitration in interpreting international treaties, and the second on the role of regional courts in interpreting treaties.

Subsection One: Interpretation of International Treaties through Arbitration

International arbitration was defined in Article 37 of the 1907 Hague Convention on the Pacific Settlement of International Disputes as follows:

"The object of international arbitration is the settlement of disputes between States by judges of their own choice, and on the basis of respect for law. Recourse to arbitration implies an engagement to submit in good faith to the award."



Arbitration is an old principle predating the establishment of international courts. The establishment of the Permanent Court of Arbitration dates back to the Hague Conference, where its jurisdiction was made optional. The court was not composed of appointed, permanent judges; instead, there was a list of legal experts elected by the states for renewable six-year terms, from which disputing states selected a tribunal of 15 arbitrators. Its seat was in The Hague.

Disputing states have full freedom to choose the arbitration body. They may resort to the Permanent Court of Arbitration or choose a special arbitral tribunal, which is typically composed of five arbitrators: each state appoints two, and the four then elect a fifth, who acts as the president. The arbitration decision is issued by majority vote, is binding on both parties, has the force of judicial rulings, and is final with no right of appeal.

Issues submitted to arbitration usually involve disputes over the interpretation of a treaty or the application of a rule of international law, or border disputes and the like. The dispute is submitted to arbitration based on an agreement between the disputing parties. In principle, arbitration is optional, but it is noted that states have shown a tendency toward mandatory arbitration. Many treaties stipulate that disputes concerning their interpretation or application must be submitted to arbitration. There has also been a trend to conclude treaties specifically for arbitration, in which states commit to submitting all legal disputes to arbitration through arbitration agreements or submission agreements.

One example is the Taba case, involving the treaty signed between the Egyptian government and Israel on 26/03/1979 to end the war between them and for Israel to withdraw from Sinai, thus restoring Egypt's full sovereignty in accordance with the permanent borders recognized between Egypt and Palestine under the mandate. Article 4 of the treaty stipulated that disputes arising from the application and interpretation of the treaty should be referred to negotiation and may be submitted to arbitration. This did indeed occur. The parties agreed on an arbitration tribunal based in Geneva, Switzerland, and on 29/09/1988, the decision was issued in favor of Egypt.



Subsection Two: Regional Courts and the Interpretation of International Treaties

Regional courts play a major role in interpreting international treaties at the regional level. The most prominent and active of these are:

First: The European Court of Human Rights

The European Court of Human Rights was established in 1959 under the European Convention on Human Rights, signed in Rome on 04/11/1950 and entered into force on 03/09/1953. The court is located in Strasbourg, France. According to Article 45 of the European Convention, its judicial competence extends to all cases involving the interpretation and application of the treaty itself, submitted to it by the High Contracting Parties or the European Commission of Human Rights under the specified conditions. This means that individuals did not initially have the right to bring cases directly before the Court. However, Protocol No. 9 annexed to the Convention granted individuals the right to litigate directly before the Court without resorting to the European Commission. Since 1950, the Court has adopted 13 protocols that have introduced fundamental changes to its structure and procedures. For instance, Protocol No. 2 granted the Court the power to issue advisory opinions.

Article 46 of the Convention added that any High Contracting Party may declare at any time its recognition of the binding force of the Court's judgments in all matters concerning the interpretation and application of the Convention, without the need for a special agreement. According to Article 48, the parties entitled to bring a case before the Court are the contracting states (one or more), subject to the Court's compulsory jurisdiction or with the consent of the concerned parties (one or more).

Therefore, it is not sufficient for a state to be a party to the Convention for it to be possible to bring a case against it before the Court; a declaration by the state accepting the Court's compulsory jurisdiction must also be made. This declaration may be simple or conditional. The Court's ruling on disputes over interpretation and application of the Convention is final, binding, and must be implemented in accordance with Article 53 of the Convention.



Second: The European Court of Justice

The European Court of Justice is part of the European Union, established under the Maastricht Treaty signed on 07/02/1992, and headquartered in Luxembourg. Its competence is to ensure respect for European law in the interpretation and application of European treaties, particularly the Paris, Rome, and Maastricht Treaties of 1992, as well as the founding charters of the European Economic Communities and the European Atomic Energy Community.

The European Court of Justice has been defined as:

“The supreme court of the European Union that supervises the application of the EU treaties, decides the validity and meaning of European Community legislation, and determines whether an act or omission by the European Council or a member state constitutes a breach of European Community law.”

The Court ensures compliance with the law concerning the interpretation and application of the current treaty according to Article 164 of the Rome Treaty of 1957. In addition to its power to interpret this treaty, it also has the power to interpret other associated agreements. Article 177 grants national courts in each state the right to request interpretation from the Court in matters they encounter, particularly regarding European citizens' rights. Article 177 of the Maastricht Treaty of 1992 confirms the jurisdiction of the European Court of Justice over the following matters:

1. Interpretation of the current treaty.
2. Validity and interpretation of acts issued by the Union's institutions and the European Central Bank.
3. Interpretation of the statutes of institutions established by a Council decision when such statutes provide for it.

Third: The Inter-American Court of Human Rights



This court was established under the San José Convention signed on 22/11/1969, drafted within the framework of the Organization of American States. It is headquartered in San José, Costa Rica. As stated in Article 1 of its 1980 Statute, it is an independent judicial body aimed at applying and interpreting the American Convention on Human Rights. It exercises its functions according to its Statute and the provisions of the Convention, carrying out both judicial and advisory functions. Article 2 of its Statute stipulates that its judicial jurisdiction is governed by Articles 61, 62, and 63 of the Convention, while its advisory jurisdiction is governed by Article 64.

Article 61 of the Convention states that only the state parties and the Commission have the right to bring cases before the Court. Article 62 affirms that the Court's jurisdiction includes all matters related to the interpretation and application of the Convention's provisions submitted to it, provided that the states involved in the case have recognized its jurisdiction—either by a special declaration as outlined in the Convention or through a special agreement. Article 64 of the Convention states that member states of the Organization may consult the Court regarding the interpretation of the Convention or any other treaties concerning the protection of human rights in the Americas. Bodies referred to in Chapter Ten of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may also request opinions from the Court within the scope of their competence.

The Court may, at the request of a member state of the Organization, provide opinions on the consistency of its domestic laws with the aforementioned international instruments.

Fourth: The African Court on Human and Peoples' Rights

The court was established under the protocol of the African Charter on Human and Peoples' Rights, which was adopted by the member states of the Organization of African Unity (OAU) in Ouagadougou, Burkina Faso, in June 1998. It came into force on January 25, 2004. Thirty-four member states have ratified the protocol establishing the African Court, with only eight countries accepting the court's jurisdiction as stipulated in Article 34/6, which allows



individuals and non-governmental organizations to file cases directly before the African Court.

The court exercises both judicial and advisory jurisdiction. According to Article 3 of the protocol attached to the African Charter on Human and Peoples' Rights, the court has judicial jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the Charter, the protocol, and any human rights agreements ratified by the concerned states.

The court also exercises advisory jurisdiction under Article 4 of the protocol, allowing it to provide opinions on any legal matter related to the Charter or other human rights agreements, provided that the subject of the opinion is not already under consideration by the Commission. This is done at the request of an African Union member state, any African Union organ, or any organization recognized by the African Union.

Conclusion:

Interpretation is of great importance to understand the true meanings of treaty texts and their purposes. International judiciary has played an equally important role in revealing the content of these texts and analyzing them within the context in which they were concluded and the objectives of the parties, guided by principles of interpretation, rules, and methods outlined by the Vienna Convention on the Law of Treaties, as well as judicial precedents, without prioritizing one over the other. Thus, the task of interpreting treaties and how they are applied is at the heart of the work of international courts responsible for resolving international disputes presented to them, issuing binding judgments, or providing advisory opinions to the bodies they follow. This process is indispensable, as it serves as the driving force of international justice, a light by which judicial decisions and international rulings are made.

Results:

- The interpretation of treaties and their application is a central focus of international judicial work.
- The principles and rules of interpretation cannot be disregarded, regardless of differing opinions on them.



- Interpretation of treaties leads to peaceful resolution of international disputes through international courts.

Suggestions:

- Propose interpretations for areas that may be ambiguous or in disagreement, or suggest interpretation methods to be followed in the treaty itself.
- Clarify the actual meaning of translations when multiple languages have been used in a treaty, particularly concerning certain terms that are in dispute.
- Add some interpretive annexes to treaties to facilitate their interpretation by referring to them in the future when necessary.

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