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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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Suppose that the ordinary meaning of a word (W) used in a treaty provision has been found to be ambiguous: it can be interpreted in the sense of M_1 , but it can also be interpreted in the sense of M_2 . Furthermore, suppose that an applier shows that in another provision of the treaty the word W is used in the sense of M_1 . Obviously, Rule no. 2 would be good reason for adopting M_1 . But, of course, things would be different if the applier would go on to show that throughout the treaty the word W actually occurs more than twice, and that in a third provision of the treaty the word W bears the meaning M_2 . Then the usage of the word W cannot any more be considered consistent. Rule no. 2 would not any more be good reason for adopting M_1 . Neither would it be good reason for adopting M_2 . The validity of the one application of Rule no. 2 can be said to have cancelled the validity of the other.

In other cases, conflicts of this kind cannot be resolved. Whether this is because the construction of the first-order rule of interpretation does not invite conflicts of the kind just described, or because the interpretative situation is simply different, the fact remains that once again value judgments will be called for.

NOTES

1. 1 See *supra*, Chapter 1, Section 1.
2. *Ibid.*
3. *Ibid.*
4. *Ibid.*
5. *Ibid.*
6. See *supra*, Chapter 2, Section 5.
7. See *supra*, Chapter 3, Sections 3–5.
8. Cf. VCLT Article 31 § 2.
9. See *supra*, Chapter 4, Section 1.
10. *Ibid.*
11. Cf. VCLT Article 31 § 2(a).
12. See *supra*, Chapter 5, Section 1.
13. *Ibid.*
14. See *supra*, Chapter 5, Sections 1–2.
15. Cf. VCLT Article 31 § 2(b).
16. See *supra*, Chapter 5, Section 3.
17. *Ibid.*
18. Cf. VCLT Article 31 § 3(a).
19. See *supra*, Chapter 6, Section 1.
20. *Ibid.*
21. Cf. VCLT Article 31 § 3(b).
22. See *supra*, Chapter 6, Section 2.
23. Cf. VCLT Article 31 § 3(c).
24. See *supra*, Chapter 6, Section 4.

25. Ibid., Sections 4–5.
26. Cf. VCLT Article 31 § 1 (object and purpose) and the Rule of necessary implication (Article 32), respectively.
27. See *supra*, Chapter 7, Section 1.
28. Ibid., Section 2.
29. Ibid., Sections 1 and 2.
30. Cf. VCLT Article 31 § 1 (object and purpose) and the Rule of necessary implication (Article 32), respectively.
31. Cf. VCLT Article 32 (interpretation *per analogiam* and *per argumentum a fortiori*).
32. Cf. VCLT Article 32.
33. See *supra*, Chapter 8, Section 3.
34. Cf. VCLT Article 32 (using the context as a supplementary means of interpretation).
35. See *supra*, Chapter 4.
36. Ibid.
37. Ibid.
38. Ibid.
39. Ibid.
40. See *supra*, Chapter 5 and 6, respectively.
41. Ibid.
42. See *supra*, Chapter 5.
43. Ibid.
44. See *supra*, Chapter 6.
45. Ibid.
46. See *supra*, Chapter 7.
47. Ibid.
48. See *supra*, Chapter 8.
49. See *supra*, Chapter 9, Sections 1–3.
50. See *supra*, Chapter 9, Section 4.
51. Ibid.
52. Ibid., Sections 5–6.
53. See *supra*, Chapter 9, Section 8.
54. See *supra*, Chapter 10.
55. Cf. McCormick and Summers, p. 528.
56. See *supra*, Chapter 4, Section 5.

ANNEX

Rule no. 1

§ 1. 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.

§ 2. For the purpose of this rule, CONVENTIONAL LANGUAGE means the language employed at the time of the treaty's conclusion, except for those cases where § 3 applies.

§ 3. For the purpose of this rule, CONVENTIONAL LANGUAGE means the language employed at the time of interpretation, on the condition that it can be shown that the thing interpreted is a generic referring expression with a referent assumed by the parties to be alterable.

§ 4. 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. 2

§ 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 not only in the provision interpreted, but also in some other part of the text of said treaty, a word or phrase is included, the usage of which in one of the two possible ordinary meanings can be considered consistent, while in the other it cannot, then the former meaning shall be adopted.

§ 2. For the purpose of this rule, the TEXT of a treaty means any and all instruments, of which – considered from the point of view of the parties and with good reason – the treaty can be considered comprised.

§ 3. 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. 3

§ 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 somewhere in the text of said treaty a norm is expressed, which – in light of the provision interpreted – in one of the two possible ordinary meanings can be considered to involve a logical contradiction, while in the other it cannot, then the latter meaning shall be adopted.

§ 2. For the purpose of this rule, the TEXT of a treaty means any and all instruments, of which – considered from the point of view of the parties – the treaty can be considered comprised.

§ 3. For the purpose of this rule, the TEXT of a treaty means not only textual representations but also non-textual ones.

§ 4. 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. 4

§ 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 somewhere in the text of said treaty there is an expression, which – in light of the provision interpreted – in one of the two possible ordinary meanings can be considered a pleonasm, while in the other it cannot, then the latter meaning shall be adopted.

§ 2. For the purpose of this rule, the TEXT of a treaty means any and all instruments, of which – considered from the point of view of the parties – the treaty can be considered comprised.

§ 3. 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. 5

§ 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 in the provision interpreted, as well as in some other part of the text of said treaty, words or phrases are included, the usage of which in one of the two possible ordinary meanings can be considered to differ, while in the other meaning the usage does not, then the latter meaning shall be adopted, provided that the words or phrases, if not identical, can nevertheless be considered to be parts of the same lexical field.

§ 2. For the purpose of this rule, the TEXT of a treaty means any and all instruments, of which – considered from the point of view of the parties – the treaty can be considered comprised.

§ 3. 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. 6

§ 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 somewhere in the text of said treaty a norm is expressed, which – in light of the provision interpreted – in one of the two possible ordinary meanings can be considered to involve a logical tautology, while in the other it cannot, then the latter meaning shall be adopted.

§ 2. For the purpose of this rule, the TEXT of a treaty means any and all instruments, of which – considered from the point of view of the parties – the treaty can be considered comprised.

§ 3. 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. 7

§ 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 in connection with the conclusion of said treaty, the parties made an agreement, which relates to the treaty, and – in light of the provision interpreted – in one of two possible ordinary meanings can be considered to involve a logical contradiction, while in the other it cannot, then the latter meaning shall be adopted.

§ 2. For the purpose of this rule, AGREEMENT means any agreement governed by international law, whether written or not.

§ 3. For the purpose of this rule, the CONCLUSION of a treaty means the point in time when the treaty was established as definite.

§ 4. For the purpose of this rule, PARTIES means any and all states for which the treaty is in force at the time of interpretation.

§ 5. For the purpose of this rule, saying that an agreement RELATES TO a treaty is tantamount to saying that in the view of the parties, the agreement and the treaty are exceptionally closely connected.

Rule no. 8

§ 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 in connection with the conclusion of said treaty, the parties made an agreement, which relates to the treaty, and – in light of the provision interpreted – in one of two possible ordinary meanings can be considered to involve a logical tautology, while the other cannot, then the latter meaning shall be adopted.

§ 2. For the purpose of this rule, AGREEMENT means any agreement governed by international law, whether written or not.

§ 3. For the purpose of this rule, the CONCLUSION of a treaty means the point in time when the treaty was established as definite.

§ 4. For the purpose of this rule, PARTIES means any and all states for which the treaty is in force at the time of interpretation.

§ 5. For the purpose of this rule, saying that an agreement RELATES TO a treaty is tantamount to saying that in the view of the parties, the agreement and the treaty are exceptionally closely connected.

Rule no. 9

§ 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 in connection with the conclusion of said treaty, one or more parties

made an instrument, which was later accepted by the other parties as related to the treaty, and – viewed in the light of the provision interpreted – in one of two possible ordinary meanings can be considered to involve a logical contradiction, while the other cannot, then the latter meaning shall be adopted.

§ 2. 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. 10

§ 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 in connection with the conclusion of said treaty, one or more parties made an instrument, which was later accepted by the other parties as related to the treaty, and – viewed in the light of the provision interpreted – in one of two possible ordinary meanings can be considered to involve a logical tautology, while the other cannot, then the latter meaning shall be adopted.

§ 2. 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. 11

§ 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 subsequent to the conclusion of the treaty the parties made an agreement regarding the interpretation of the treaty or the application of its provisions, and the agreement – in light of the provision interpreted – in one of the two possible ordinary meanings can be considered to involve a logical contradiction, while in the other it cannot, then the latter meaning shall be adopted.

§ 2. For the purpose of this rule, AGREEMENT means any agreement governed by international law, whether written or not.

§ 3. For the purpose of this rule, an agreement was made SUBSEQUENT to the conclusion of a treaty, if (and only if) it was made after the point in time when the interpreted treaty was established as definite.

§ 4. For the purpose of this rule, PARTIES means any and all states for which the treaty is in force at the time of interpretation.

§ 5. For the purpose of this rule, an agreement is one REGARDING the interpretation of a treaty or the application of its provisions, if (and only if) the agreement was made with the purpose of either clarifying the meaning of said treaty, or of serving in some other manner as a guide for its application.

Rule no. 12

§ 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 subsequent to the conclusion of the treaty the parties made an agreement regarding the interpretation of the treaty or the application of its provisions, and the agreement – in light of the provision interpreted – in one of the two possible ordinary meanings can be considered to involve a logical tautology, while in the other it cannot, then the latter meaning shall be adopted.

§ 2. For the purpose of this rule, AGREEMENT means any agreement governed by international law, whether written or not.

§ 3. For the purpose of this rule, an agreement was made SUBSEQUENT to the conclusion of a treaty, if (and only if) it was made after the point in time when the interpreted treaty was established as definite.

§ 4. For the purpose of this rule, PARTIES means any and all states for which the treaty is in force at the time of interpretation.

§ 5. For the purpose of this rule, an agreement is one REGARDING the interpretation of a treaty or the application of its provisions, if (and only if) the agreement was made with the purpose of either clarifying the meaning of said treaty, or of serving in some other manner as a guide for its application.

Rule no. 13

§ 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 subsequent to the conclusion of the treaty a practice has developed, which with good reason can be said to establish the agreement of the parties regarding the interpretation of said treaty, so that the practice – in light of the provision interpreted – in one of the two possible ordinary meanings can be considered to a logical contradiction, while in the other it cannot, then the latter meaning shall be adopted.

§ 2. For the purpose of this rule, PRACTICE means any number of applications, one or many.

§ 3. For the purpose of this rule, the APPLICATION of a treaty means any and all measures based on the treaty.

§ 4. For the purpose of this rule, a practice is considered SUBSEQUENT to the conclusion of a treaty, if (and only if) it developed after the point in time when the interpreted treaty was established as definite.

§ 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.

§ 6. For the purpose of this rule, AGREEMENT means not only the concordance upon which the treaty was originally concluded, but also any possible concordance arrived at after the conclusion of the treaty, excluding, however, interpretative agreements governed by international law.

§ 7. For the purpose of this rule, a practice establishes agreement with regard to the INTERPRETATION of a treaty, only on the condition that practice agrees with the treaty, when interpreted in accordance with rule no. 1.

Rule no. 14

§ 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 a relevant rule of international law is applicable in the relationship between the parties, and the rule – considered in light of the provision interpreted – in one of the two possible ordinary meanings can be considered to involve a logical contradiction, while in the other it cannot, then the latter meaning shall be adopted.

§ 2. For the purpose of this rule, RULE OF INTERNATIONAL LAW means any and all rules whose origin can be traced to a formal source of international law.

§ 3. For the purpose of this rule, PARTIES means any and all states for which the treaty is in force at the time of interpretation.

§ 4. For the purpose of this rule, whether a rule of law is APPLICABLE or not is determined based upon the legal state-of-affairs that prevailed at the time when the treaty was concluded, unless otherwise applies according to § 5.

§ 5. For the purpose of this rule, whether a rule of law is APPLICABLE or not is determined based upon the legal state-of-affairs prevailing at the time of interpretation, provided that it can be shown that what is being interpreted is a generic referring expression with a referent assumed by the parties to be alterable.

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.

Rule no. 17

§ 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 by using the preparatory work of the treaty a concordance

can be shown to exist, as between the parties to the treaty, and with regard to the norm content of the interpreted treaty provision, so that the provision – in light of the preparatory work – in one of the two possible ordinary meanings can be considered to involve a logical contradiction, while in the other it cannot, then the latter meaning shall be adopted.

§ 2. For the purpose of this rule, *THE PREPARATORY WORK* of a treaty means any representation produced in the process of drafting the treaty, whether textual or not.

§ 3. 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. 18

§ 1. 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.

§ 2. For the purpose of this rule, *THE PREPARATORY WORK* of a treaty means any representation produced in the process of drafting the treaty, whether textual or not.

§ 3. 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. 19

§ 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 by using the circumstances of the treaty's conclusion a concordance can be shown to exist, as between the parties to the treaty, and with regard to the norm content of the interpreted treaty provision, so that the provision – in light of the circumstances of the treaty's conclusion – in one of the two possible ordinary meanings can be considered to involve a logical contradiction, while in the other it cannot, then the latter meaning shall be adopted.

§ 2. For the purpose of this rule, a *CIRCUMSTANCE OF THE TREATY'S CONCLUSION* means any state-of-affairs, whose existence at least partially can be said to have caused the conclusion, except for those cases where this state-of-affairs can be taken into account already for the application of the interpretation rules nos. 7–14 or 17–18.

§ 3. For the purpose of this rule, the *CONCLUSION* of a treaty means the point in time when the treaty was established as definite.

§ 4. 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. 20

§ 1. If, by using the circumstances of a treaty's conclusion, 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.

§ 2. For the purpose of this rule, a *CIRCUMSTANCE OF THE TREATY'S CONCLUSION* means any state-of-affairs, whose existence at least partially can be said to have caused the conclusion, except for those cases where this state-of-affairs can be taken into account already for the application of the interpretation rules nos. 7–14 or 17–18.

§ 3. For the purpose of this rule, the *CONCLUSION* of a treaty means the point in time when the treaty was established as definite.

§ 4. 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. 21

§ 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 by using any ratification work of the treaty, a concordance can be shown to exist, as between the parties to the treaty, and with regard to the norm content of the interpreted treaty provision, so that the provision – in light of the ratification work used – in one of the two possible ordinary meanings can be considered to involve a logical contradiction, while in the other it cannot, then the latter meaning shall be adopted.

§ 2. For the purpose of this rule, **RATIFICATION WORK** means any representation unilaterally produced by a state in the process of deciding whether to ratify the treaty.

§ 3. 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. 22

§ 1. If, by using any ratification 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.

§ 2. For the purpose of this rule, **RATIFICATION WORK** means any representation unilaterally produced by a state in the process of deciding whether to ratify the treaty or not.

§ 3. 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. 23

§ 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 by using a treaty *in pari materia* a concordance can be shown to exist, as between the parties to the treaty, and with regard to the norm content of the interpreted treaty provision, so that the provision – in light of the treaty *in pari materia* – in one of the two possible ordinary meanings can be considered to involve a logical contradiction, while in the other it cannot, then the latter meaning shall be adopted.

§ 2. For the purpose of this rule, a **TREATY IN PARI MATERIA** means a treaty whose subject matter is identical – at least partly – with the subject matter covered by the treaty interpreted.

§ 3. 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. 24

§ 1. If, by using a treaty *in pari materia*, a concordance can be shown to exist, as between the parties to the interpreted treaty, and with regard to the norm content of the interpreted treaty provision, then the provision shall be understood in such a way that it logically agrees with the concordance.

§ 2. 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. 25

§ 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 by using the context of the provision a concordance can be shown to exist, as between the parties to the treaty, and with regard to the norm content of the interpreted treaty provision, so that the provision – in light of the context – in one of the two possible ordinary meanings can be considered to involve a logical contradiction, while in the other it cannot, then the latter meaning shall be adopted.

§ 2. For the purpose of this rule, the **CONTEXT** of an interpreted treaty provision means any element that fits the description provided in article 31 §§2 and 3 of the 1969 Vienna Convention on the Law of Treaties.

§ 3. 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. 26

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

§ 2. For the purpose of this rule, the **CONTEXT** of an interpreted treaty provision means any element that fits the description provided in article 31 §§2 and 3 of the 1969 Vienna Convention on the Law of Treaties.

§ 3. 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. 27

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 provision contains an obligation, whose extension in one of the two possible ordinary meanings is comparably greater than it is in the other, then the latter meaning shall be adopted.

Rule no. 28

§ 1. If it can be shown (i) that the interpretation of a treaty provision in accordance with interpretation rule no. 1 leads to conflicting results, (ii) that the content of the treaty has a two-sided nature, (iii) that the treaty was concluded through one of the negotiating parties unilaterally proffering the treaty for acceptance by the other(s), and (iv) that the provision, in one of the two possible ordinary meanings, is of greater disadvantage for this active party than it is in the other, then the former meaning shall be adopted.

§ 2. For the purpose of this rule, saying that the content of a treaty has a TWO-SIDED NATURE is tantamount to saying that the treaty has two parties only, or – should there be more than two parties – that the treaty has been constructed in such a way, that one of the parties has rights and obligations toward each and every one of the others, and vice versa, but these other parties do not have corresponding rights and obligations toward each other.

§ 3. 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. 29

If it can be shown (i) that the interpretation of a treaty provision in accordance with interpretation rule no. 1 leads to conflicting results, (ii) that the provision contains an exception to a right or an obligation laid down in said treaty, and (iii) that the extension of the exception in one of the two possible ordinary meanings is comparably greater than it is in the other, then the latter meaning shall be adopted.

Rule no. 30

§ 1. If it can be shown that according to linguistics a meaning can be read into a treaty provision by implication, and that such an implication is necessary to avoid a situation where, by applying the provision a result is attained which is not among the *teloi* conferred on the treaty, then this meaning shall be adopted.

§ 2. For the purpose of this rule, TELOI means the state or states of affairs, which according to the parties should be attained by applying the interpreted provision.

§ 3. For the purpose of this rule, the TELOI of a treaty are 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 TELOI of a treaty are determined based upon the intentions held by the parties at the time of interpretation, granted 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. 31

If it can be shown that according to linguistics a meaning can be implicitly read into a treaty provision, and that such an implication is necessary to avoid a situation where, by applying the provision, another part of the treaty will be normatively useless, then this meaning shall be adopted.

Rule no. 32

§ 1. If it can be shown (i) that the interpretation of a treaty provision in accordance with interpretation rule no. 1 leads to conflicting results, (ii) that two states-of-affairs are analogous to one another, (iii) that the one state-of-affairs is governed by the interpreted treaty provision, and (iv) that in one of the two possible ordinary meanings the other state-of-affairs comes within the scope of application of the provision, whereas in the other meaning it does not, then the former meaning shall be adopted.

§ 2. For the purpose of this rule, saying that two states-of-affairs are ANALOGOUS to one another is tantamount to saying that in some significant respect they can be thought of as similar or comparable.

Rule no. 33

§ 1. If it can be shown that of two states-of-affairs, which are analogous to one another, the one comes within the scope of application of an interpreted treaty provision, then the provision shall be understood in such a way that the other comes within that scope of application, too.

§ 2. For the purpose of this rule, saying that two states-of-affairs are *ANALOGOUS* to one another is tantamount to saying that in some significant respect they can be thought of as similar or comparable.

Rule no. 34

§ 1. If it can be shown that a treaty provision permits an act or a state-of-affairs, which – from the point of view of the parties – can be considered less tolerable than another generically identical act or state-of-affairs, then the provision shall be understood to permit this second act or state-of-affairs, too.

§ 2. 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. 35

§ 1. If it can be shown (i) that the interpretation of a treaty provision in accordance with interpretation rule no. 1 leads to conflicting results, (ii) that the provision permits an action or a state-of-affairs, which – from the point of view of the parties – can be considered less tolerable than another generically identical action or state-of-affairs, and (iii) that in one of the two possible ordinary meanings, this other action or state-of-affairs comes within the scope of application of the interpreted provision, whereas in the other meaning it does not, then the former meaning shall be adopted.

§ 2. 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. 36

§ 1. If it can be shown that a treaty provision prohibits an act or a state-of-affairs, which – from the point of view of the parties – can be considered more tolerable than another generically identical act or state-of-affairs, then the provision shall be understood to prohibit this second act or state-of-affairs, too.

§ 2. 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. 37

§ 1. If it can be shown (i) that the interpretation of a treaty provision in accordance with interpretation rule no. 1 leads to conflicting results, (ii) that the provision prohibits an action or a state-of-affairs, which – from the point of view of the parties – can be considered more tolerable than another generically identical action or state-of-affairs, and (iii) that in one of the two possible ordinary meanings, this other action or state-of-affairs comes within the scope of application of the interpreted provision, whereas in the other meaning it does not, then the former meaning shall be adopted.

§ 2. 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. 38

If it can be shown that in a treaty provision there is an expression, which according to conventional language is used to refer to a smaller part of a larger, generically defined class, then the provision shall be understood in such a way that the extension of the expression comprises this smaller part only, and not any other part of the class.

Rule no. 39

If it can be shown (i) that in a treaty provision two expressions are included, of which the one (expression A), according to conventional language, can be considered related to the other (expression B), (ii) that all the referents of the former expression (A) can be considered to be members of a certain, generically defined class, and (iii) that, according to conventional language, all the members of this class are referents of the latter expression (B), then the provision shall be understood under the assumption that no referents to this second expression (B) belong to any other class.

Rule no. 40

§ 1. 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, 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.

§ 2. For the purpose of this rule, the meaning of a treaty provision shall be considered AMBIGUOUS OR OBSCURE, if interpreting the provision in accordance with any one of interpretation rules nos. 2–16 leads to a result, which is different than that obtained by interpreting the provision in accordance with any other of those fifteen rules.

§ 3. For the purpose of this rule, saying that the application of a rule of interpretation LEADS TO A RESULT WHICH IS MANIFESTLY ABSURD OR UNREASONABLE is tantamount to saying that the application of the two conflicting rules – the first being one among rules numbered 1 to 16, the other being one among the rules numbered 17 to 39 – is based on communicative assumptions, of which the assumption underlying the application of the former rule can be considered significantly weaker than the assumption underlying the application of the latter.

Rule no. 41

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 being understood in accordance 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.

Rule no. 42

If it can be shown that the interpretation of a treaty provision in accordance with interpretation rule no. 1 leads to a result, which is different from that obtained by interpreting the provision in accordance with any one of interpretation rules nos. 2–16, then the provision shall not be understood in accordance with interpretation rule no. 1.

Rule no. 43

If it can be shown (i) that a treaty has been authenticated in two or more languages, (ii) that two of the authenticated texts, by applying interpretation rules nos. 1–42, will still have to be understood in two different meanings, and (iii) that by applying the treaty in the one meaning, the object and purpose of the treaty will be realised to a greater extent than in the other, then the former meaning shall be adopted, except for those cases where interpretation rule no. 44 applies.

Rule no. 44

If it can be shown (i) that a treaty has been authenticated in two or more languages, (ii) that two of the authenticated texts, by applying interpretation rules nos. 1–42, will still have to be understood in two different meanings, and (iii) that the parties have agreed that in such cases a particular text shall prevail, then the treaty shall be understood in accordance with the meaning conveyed by that text.

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