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**INTERPRETING TREATIES IN INTERNATIONAL LAW**- Saksham Gupta & Shranik Gupta<sup>1</sup>*Abstract*

This article examines the complex process of interpreting treaties in the context of international law, focusing specifically on the guidelines, procedures, and legal perspectives provided by the “Vienna Convention on the Law of Treaties (VCLT).” Examining the fundamental ideas of good faith, the article clarifies how important they are in directing the process of interpretation. It explores how techniques like textual, contextual, historical, and teleological interpretation are applied and analyses how they interact to resolve interpretive uncertainties. The article also looks into the value of additional methods, such as follow-up agreements, in revealing the genuine objectives and intentions of treaty parties. By the process of a comparative examination of judicial strategies utilised by eminent international courts and tribunals, the article evaluates the practical application of these concepts and techniques in various legal settings. This thorough analysis adds to the continuing conversation about the development and application of international legal norms by clarifying the practical difficulties state and global organisations confront when navigating the complexities of treaty interpretation. It also improves our understanding of the complexities surrounding treaty interpretation.

**Introduction**

At the conference of “*United Nations on Law of Treaties*” (1968-1969), states confirmed that in the interpretation of treaties in this present international law, the practical guidance accompanied by maxims, discretionary canons, and considerations of logic would not work alone. Still, they must also be followed by legal principles, i.e., general rules that have a

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regulating character. The rules for interpreting treaties in international law were codified under Articles 31 to 33 of the 1969 Vienna Convention on the law of treaties.<sup>2</sup>

Interpretation of treaties is a legal operation regulated by international law. The second codification convention, the Vienna Convention on treaties held between international organisations and states in 1986, confirmed the 1969 understanding of the interpretation of treaties. The development is of utmost importance for international courts and other international tribunals, such as the International Court of Justice, whose rulings must be made by international law.<sup>3</sup> It became effective on January 27, 1980, and as of 2008, 108 nations had ratified it. Determining the meaning of the treaty, as seen from the standpoint of the parties' current shared understanding, is the aim of treaty interpretation under the VCLT. VCLT's goal is to ensure treaty obligations are respected and to foster stability and clarity in international relations by offering a framework for treaty-making.<sup>4</sup> The Convention provides treaty negotiations and ratification procedures, defines essential words, and provides dispute resolution mechanisms. It improves the coherence and efficacy of the international legal system by applying to treaties signed by nations and international organisations.

### **Principles of treaty interpretation under the Vienna Convention**

Under the Vienna Convention (1969), the interpretation of the treaty is influenced by a set of principles intended to guarantee that the parties' objectives are understood relatively, consistently, and clearly. These guidelines offer a framework for settling disputes and construing clauses of treaties in a way that supports the rule of law and fosters global cooperation.<sup>5</sup>

#### **Principle of good faith-**

**Article 31(1)** of *VCLT* states that the law must be interpreted in good faith. To uphold the spirit and language of the agreement, parties must approach their commitments with honesty and sincerity, according to the principle of good faith in treaty interpretation. It necessitates a dedication to openness, collaboration, and consideration for the reasonable expectations of the other stakeholders. In the interpretation and application of treaties, good faith promotes

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<sup>2</sup>Steven R Ratner, 'International Law Rules on Treaty Interpretation' in Christopher McCrudden (ed), *The Law and Practice of the Ireland-Northern Ireland Protocol* (1st edn, Cambridge University Press 2022) <[https://www.cambridge.org/core/product/identifier/9781009109840%23CN-bp-7/type/book\\_part](https://www.cambridge.org/core/product/identifier/9781009109840%23CN-bp-7/type/book_part)>accessed 12 March 2024

<sup>3</sup>Treaty Interpretation | National Oceanic and Atmospheric Administration' <<https://www.noaa.gov/treaty-interpretation>>accessed 12 March 2024

<sup>4</sup>Vienna Convention on the Law of Treaties (1969)'.>

<sup>5</sup> Pat Bauer, 'Vienna Convention on the Law of Treaties | History & Summary | Britannica' <<https://www.britannica.com/topic/Vienna-Convention-on-the-Law-of-Treaties>> accessed 12 March 2024.

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stability and predictability by fostering confidence and trust among nations and other international players.<sup>6</sup>

**ORDINARY MEANING-** According to Article 31 of VCLT 1969, words used in treaties must be interpreted and referred to by their ordinary and customary meanings. Unless there is unmistakable evidence to the contrary, the ordinary meaning of the concept of the term emphasises reading treaty provisions in their natural and customary sense. Utilising a shared linguistic understanding to determine the parties' intents guarantees consistency and predictability in interpreting treaties.<sup>7</sup>

**Contextual interpretation-** Analysing treaty provisions within the larger framework of the treaty as a whole, including its preamble, annexes, and related instruments, is known as contextual interpretation under the VCLT 1969. This principle necessitates considering the surrounding circumstances, negotiations, and subsequent agreements to accurately ascertain the parties' intentions. Interpreters can ensure a thorough and nuanced interpretation that accurately reflects the overall objectives of the treaty as well as the parties' collective intentions regime by studying the context in which treaty provisions are situated. This helps them better grasp the purpose and objectives of the treaty.

**OBJECT AND PURPOSE OF THE TREATY-** The VCLT 1969 emphasises the need to use a treaty's object and purpose as a framework for interpretation. This concept instructs interpreters to determine the fundamental purposes and aims of the treaty. To make sure that the treaty's provisions are construed and used in a way that promotes the parties' intended goals, it is imperative to understand the treaty's object and purpose. Interpreters can avoid reading the treaty too literally or narrowly, which could reduce its effectiveness and undercut the parties' intents as a group. Instead, they should concentrate on the treaty's larger goals.<sup>8</sup>

### **Methods of Treaty Interpretation under the Vienna Convention**

A various number of methods are provided under VCLT 1969. These methods focus on achieving clarity and consistency in recognising the parties' goals. These include textual, systematic, teleological, and historical interpretations, providing unique methods for examining treaty clauses about their larger framework. In the past, academics have discussed three primary methods for interpreting treaties: (1) the textual method, which holds that

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<sup>6</sup>'Vienna Convention on the Law of Treaties (1969)' (n 3).

<sup>7</sup>'WTO | Appellate Body Repertory of Reports and Awards 1995-2013 - Interpretation' <[https://www.wto.org/english/tratop\\_e/dispu\\_e/repertory\\_e/i3\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/repertory_e/i3_e.htm)>accessed 12 March 2024

<sup>8</sup>Shai Dothan, 'The Three Traditional Approaches to Treaty Interpretation: A Current Application to the European Court of Human Rights' (2018) 42 Fordham International Law Journal 765.

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treaties should be read by their language; (2) the subjective method, which holds that the intent of the parties involved should read treaties; and (3) the teleological approach; (4) historical approach, which holds that treaties must be interpreted by the way they were formed. Divergent opinions exist among academics regarding the relative significance and practicality of various methods. Some believe that a given strategy ought to be the best. Some believe that different strategies ought to be used in multiple contexts.

**Textual interpretation-** The *VCLT* 1969 places a strong emphasis on textual interpretation, which involves examining the language and structure of treaty articles. This method entails analysing the treaty text's phrasing in light of its natural and usual meaning while taking the language's grammatical and syntactical composition into account. To comprehend the parties' intentions and guarantee clarity and consistency in the implementation of international agreements, textual interpretation focuses on identifying the precise rights, obligations, and conditions specified within the treaty provisions themselves.<sup>9</sup>

**Systematic Interpretation-** Analysing the provisions of the treaty in light of a larger body of international law is known as systematic interpretation under the *VCLT* 1969. This approach takes into account how the treaty interacts with other legal documents, such as subsequent accords, general legal principles, and customary international law. By taking into consideration pertinent legal rules and principles, systemic interpretation guarantees coherence and consistency in the application of treaties. In light of established legal concepts and practices, it highlights how treaties are interconnected within the global legal system, aiding interpreters in understanding the broader ramifications and significance of treaty provisions.<sup>10</sup>

**Teleological interpretation-** According to the *VCLT* 1969, teleological interpretation entails looking at a treaty's goals and purpose to ascertain the parties' intentions. This approach focuses on comprehending the treaty's overarching aims as well as its societal, economic, and political objectives. Interpreters can guarantee that treaty provisions are read in a way that achieves these overarching goals by considering the intended consequences and overall implications of the treaty. By coordinating the interpretation of treaties with their

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<sup>9</sup>ibid.

<sup>10</sup>'Interpreting the Customary Rules on Interpretation in: International Community Law Review Volume 19 Issue 1 (2017)' <[https://brill.com/view/journals/iclr/19/1/article-p126\\_6.xml?language=en](https://brill.com/view/journals/iclr/19/1/article-p126_6.xml?language=en)>accessed 12 March 2024

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fundamental goals, teleological interpretation fosters coherence and consistency in international law and facilitates the efficient implementation of treaties.<sup>11</sup>

**Historical interpretations-** By the VCLT 1969, *historical* interpretation entails analysing the preparatory efforts, discussions, and subsequent practice surrounding the treaty's conclusion. Using this approach enables interpreters to take into account the discussions, agreements, and compromises that took place between the parties during the drafting of treaty articles. Interpreters can learn a great deal about the intentions of the treaty parties by studying historical records and how treaty clauses have changed over time. A more precise understanding of the treaty's content and implementation is ensured by historical interpretation, which helps settle conflicts resulting from conflicting interpretations and clear up any misunderstandings.<sup>12</sup>

### **Judicial Approaches to Treaty Interpretation**

There has been debate about whether such theories are required at all, as Article 31-33 of VCLT 1969 clearly states a thorough set of guidelines for interpreting the treaty. Although many areas of treaty interpretation are regulated by these norms, which are recognised as customary international law, judges are nonetheless granted certain discretion. The interpreter is frequently accessible to interpret the treaty's language. However, there might not even be any discretion in some circumstances. A judge analysing the treaty should implement it if its text is unambiguous. These judicial bodies aim to implement and interpret international legal principles, including treaties, in a fair and unbiased manner; nevertheless, their jurisdiction, composition, and mandates differ.<sup>13</sup> States, international organisations, and individuals can seek redress for infringement of their rights or responsibilities under international law in international courts and tribunals.

#### Case studies of treaty interpretation by international courts and tribunals

**International Court of Justice (ICJ)-** The International Law Commission's work, which drew almost entirely from the jurisprudence of the then-developing International Court of

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<sup>11</sup>Dothan (n 7).

<sup>12</sup> Esme Shirlow, 'Celebrating 50 Years of the VCLT: An Introduction - Kluwer Arbitration Blog' <<https://arbitrationblog.kluwerarbitration.com/2019/12/02/celebrating-50-years-of-the-vclt-an-introduction/>> accessed 12 March 2024

<sup>13</sup>Katharina Berner, 'Judicial Dialogue and Treaty Interpretation: Revisiting the "Cocktail Party" of International Law' (2016) 54 Archiv des Völkerrechts 67.

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Justice(ICJ) and its predecessor, the Permanent Court of International Justice, elaborates the rules that eventually became Articles 31–33 of the *Vienna Convention on the Law of Treaties*, demonstrates the connection between the practice of the ICJ and the development of the rules of interpretation as enshrined in the VCLT.<sup>14</sup> The interpretation of treaties by the ICJ can be looked back on in the “Nicaragua v. United States” case, where the ICJ examined customary international law and treaties regarding the use of force in the “Nicaragua v. United States” decision. Nicaragua claimed that by arming the Contra rebels there, the US had broken international law. The International Court of Justice declared that by mining Nicaraguan harbours and assisting the Contras, the United States had violated customary international law. The case emphasised the need for treaty interpretation in maintaining the rule of law on a worldwide scale. It emphasised—the regulations against using force in international relations and the concept of non-intervention.

**International Tribunal for the Law of the Sea:** The “*Third United Nations Convention on the Law of the Sea*” established the International Tribunal for the Law of the Sea as an independent judicial body to settle disagreements over the interpretation and implementation of the Convention. ITLOS resolves issues about fisheries, environmental protection, and maritime boundaries by using the UNCLOS's principles and techniques of treaty interpretation. The interpretation of treaties by ITLOS can be traced back to *Malaysia v. Singapore*.<sup>15</sup> In the case concerning the land reclamation by Singapore in and around the Straits of Johor, the *International Tribunal for the Law of the Sea (ITLOS)* applied interpretations of UNCLOS provisions to settle disagreements regarding Singapore's land reclamation endeavours. ITLOS took into account UNCLOS clauses about the rights of coastal states, environmental preservation, and the maintenance of marine ecosystems. ITLOS emphasised the significance of upholding treaty obligations in maritime affairs by providing clarity on the legal obligations of both parties and facilitating the resolution of the dispute based on international law through the application of treaty interpretation techniques.<sup>16</sup>

**World Trade Organization (WTO) Dispute Settlement Bodies:** The VCLT 1969 general rule of interpretation, as stated in Article 31(1), has evolved into a universal international law

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<sup>14</sup>Sotirios-Ioannis Lekkas, Panos Merkouris and Daniel Peat, ‘The Interpretative Practice of the International Court of Justice’ (2023) 26 Max Planck Yearbook of United Nations Law Online 316.

<sup>15</sup>*Malaysia v. Singapore*, 2003 SCC OnLine ITLOS 2

<sup>16</sup>‘International Tribunal for the Law of the Sea: The Tribunal’ <<https://www.itlos.org/en/main/the-tribunal/the-tribunal/>>accessed 12 March 2024

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principle. Accordingly, it is a component of the "customary rules of interpretation of public international law" that the Appellate Body is mandated to employ to elucidate the terms of the General Agreement and the other "covered agreements" of the *Marrakesh Agreement Establishing the World Trade Organization*" (the WTO Agreement), as stated in Article 3(2) of the Dispute Settlement Understanding (DSU).<sup>17</sup>The interpretation of the treaty by WTO can be traced back to the *India - Patent Protection for Pharmaceutical and Agricultural Chemical Products dispute (DS50)*. In this case, India's challenge to specific sections of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was the focus of the WTO's *India - Patent Protection for Pharmaceutical and Agricultural Chemical Products dispute (DS50)*. India contended that TRIPS ought to give developing nations the latitude they need to enact patent protection policies that cater to their needs in agriculture and public health. Global intellectual property and public health policies, particularly those about access to inexpensive medications and agricultural innovations, are influenced by the interpretation of TRIPS provisions by the dispute panel and Appellate Body, which clarified the extent of patent protection and the flexibilities available to member states.

**International Criminal Court-** *The ICC applies the VCLT 1969 Articles 31–33* in interpreting treaties. These articles set forth guidelines for things like reading treaties with good faith (Article 31), taking terms' common meanings into account (Article 31), and analysing the context, goal, and object of the treaty (Article 31). In addition, as stated in Article 32, the ICC takes into account the parties' future practices (Article 31). By following these guidelines, the ICC guarantees a thorough and careful interpretation of treaties, which helps to ensure that international criminal law is effectively enforced.<sup>18</sup>

The interpretation of treaties by the ICC can be traced back to The International Criminal Court (ICC) interpreted Rome Statute clauses in the "*Prosecutor v. Lubanga*"<sup>19</sup> case to determine the elements of the offence of conscripting child soldiers. The Rome Statute's "*Article 8(2)(e)(vii)*" forbids recruiting or conscripting minors younger than 15 into the armed forces or other organisations or utilising them to take part directly in hostilities. By stressing the protection and safeguarding of children and minors in armed situations and

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<sup>17</sup>WTO | Disputes - Dispute Settlement CBT - WTO Bodies Involved in the Dispute Settlement Process - The Dispute Settlement Body (DSB) Page 1 <[https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_settlement\\_cbt\\_e/c3s1p1\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c3s1p1_e.htm)> accessed 12 March 2024

<sup>18</sup>Stewart Manley, Pardis Moslemzadeh Tehrani and Rajah Rasiah, 'Mapping Interpretation by the International Criminal Court' (2023) 36 *Leiden Journal of International Law* 771.

<sup>19</sup>*Prosecutor v. Thomas Lubanga Dyilo*, 2006 SCC OnLine ICC

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adding to the body of international criminal jurisprudence, the ICC's interpretation of this clause made clear the legal requirements surrounding the recruitment and employment of child soldiers under international law.

**Critical analysis of the Vienna Convention-** The Vienna Convention on the Law of Treaties provides a fundamental basis for interpreting treaties under international law. *There* are a few essential things to remember, even while it allows for helpful guidelines and techniques for fostering stability, coherence, and clarity in treaty relationships. The VCLT's emphasis on good faith and the ordinary meaning of phrases, which improves predictability and builds trust amongst treaty parties, is one of its main advantages. Furthermore, a comprehensive approach to interpretation is made possible by the convention's acknowledgement of the objective and purpose of treaties, guaranteeing that the terms of the agreements are in line with the intentions of the parties. However, because the VCLT relies so heavily on textual interpretation, it can occasionally cause treaty clauses to be taken too literally, missing important contextual details and broader policy implications. This method may lead to strict or limited interpretations that fall short of adequately addressing how international relations rules and conditions are changing. Furthermore, although the VCLT promotes the use of supplemental tools for interpretation, like preliminary research and subsequent practice, it offers no precise instructions on how to balance these sources against the treaty's wording.<sup>20</sup> This ambiguity can lead to subjective or conflicting interpretations, especially when treaty terms are interpreted differently by different parties. Furthermore, because the VCLT lacks robust enforcement tools to guarantee adherence to its terms, its effectiveness depends on state compliance and international cooperation. In the absence of a strong state commitment, this reliance on voluntary compliance may compromise the convention's ability to resolve disputes and protect the rule of law. The *VCLT* 1969 has greatly aided in the interpretation of treaties, but it is not without flaws. To keep the convention relevant and thriving in the dynamic field of international law, efforts must be made to rectify these weaknesses and adapt them to modern issues.

### **Conclusion**

To conclude, the VCLT has facilitated stability and collaboration in international relations by offering priceless principles for treaty interpretation. The VCLT encourages predictability

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<sup>20</sup>Uchechukwu Nwaokonko, 'Critical Analysis of 1961 Vienna Convention on Diplomatic Relations' (2022) 7 Modern Journal of Social Sciences and Humanities 43.

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and confidence between treaty parties by emphasising concepts like good faith and the customary meaning of phrases. Its strong dependence on textual interpretation, nonetheless, can occasionally result in extremely literal readings that miss crucial contextual subtleties. Furthermore, the convention's vague guidelines for weighing additional sources of interpretation could lead to erroneous or contradictory interpretations. Notwithstanding these drawbacks, the VCLT continues to be a pillar of international law, providing a framework for settling conflicts and preserving the rule of law.<sup>21</sup> To ensure its continued relevance and efficacy in the ever-changing field of international relations, efforts must be made to overcome its shortcomings and adapt to contemporary difficulties.



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<sup>21</sup>Alexander Orakhelashvili, 'Treaty Interpretation: Rules and Methods' in Alexander Orakhelashvili (ed), *The Interpretation of Acts and Rules in Public International Law* (Oxford University Press 2008) <<https://doi.org/10.1093/acprof:oso/9780199546220.003.0011>> accessed 12 March 2024.

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