NATIONAL JUDGE'S INTERPRETATION OF INTERNATIONAL TREATIES

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Abstract

National judges find themselves facing a difficult task in determining the scope of the treaty and the boundaries within which it must be applied. It is the interpretation stage which is crucial in the application of international treaties in national courts .Interpretation is a mental process undertaken by judges aiming to clarify the meaning of a text and define its scope. By its very nature, it is an explanatory process that explores what was, without reviewing it. It stops at its limits, without adding any meaning to it.

It is self-evident that the application of any legal text is linked to its interpretation. Interpretation problems only arise in connection with its application. If the facts are the basis for the text, then its meaning is the responsive one. Interpretation of the text is the initial logical premise for its application .Interpretation is present everywhere in international legal practice and in international legal doctrine. All arguments and disagreements regarding certain rules of international law have a posterior interpretation.

The methodology chosen for this work primarily involves the analytical approach to analyze constitutional principles, and the comparative approach to compare national and foreign constitutional principles. The study of legal jurisprudence will be the subject of the article.

Keywords : *international treaties; treaty interpretation ;national judge; international law ;national courts.*

ملخص:

مرحلة غاية في الأهمية من مراحل تطبيق المعاهدات الدولية في المحاكم الوطنية، يجد القاضي الوطني نفسه في مواجهة صعبة في تحديد المجال الخاص بها، والحدود الواجب الوقوف عندها في تطبيق المعاهدات الدولية وهي مرحلة التأويل.

التأويل هو عملية ذهنية يقوم بها القاضي يهدف بها استجلاء معنى النص وتحديد نطاقه ، وهو بحسب طبيعته عمل توضيحي يستكشف ما كان ولا يراجعه وعند حدوده يقف فلا يضيف إليه معنى ما، ومن البداهة أن يرتبط تطبيق أي نص قانوني بتفسيره، ومشاكل التأويل لا تظهر إلا بمناسبة التطبيق، لأنه إن كانت الوقائع هي داعي النص، فمعناه هو المستجيب فتأويل النص هو المقدمة المنطقية الأولية لتطبيقه، والتأويل موجود في كل مكان في الممارسة القانونية الدولية وفي عقيدة القانون الدولي، فجميع الحجج والاختلافات حول بعض قواعد القانون الدولي لها تأويل بعدي.

الكلمات المفتاحية: المعاهدات الدولية؛ تأويل المعاهدات؛ القاضي الوطني؛ القانون الدولي؛المحاكم الوطنية.

Introduction

According to the jurist Charles Rousseau, treaty interpretation is a special form of exercising legal and judicial functions, consisting of an intellectual process that determines the meaning of a legal fact. He also describes it as a process of legal art. Some jurists, however, believe that interpretation is an intellectual process based on determining the meaning of a legal act and clarifying its true meaning and the legislator's inten [1](The jurist Kelsen states that the principles related to legal interpretation also apply in general to the interpretation of treaties [2] .

Interpretation is also defined as determining the meaning contained in the texts of an international agreement, viewed as a whole or individually, in preparation for their correct application, i.e., searching for the meaning of the texts of the agreement. Interpreting the latter involves extracting the precise meaning of the applicable rule and its content[3]. Interpretation is a predetermined method aimed at achieving the application of legal texts. This means that the role of the interpreter is to uncover the true meaning intended and contained within the text, since interpreting the texts that were its source is the logical premise for application. There is an opinion that calls for the interpretation of treaties. In search of the meaning most consistent with its purpose [4], taking into account the circumstances of the moment and social need.

While the traditional view, which is accepted by the majority,[5], states that the judge's primary objective should seek to decipher the true intent of the text, or the agreement between the parties, two concepts arise from this: the common objective and the objective concept of the treaty. This is what we can infer from the text of the agreement demarcating the maritime borders between Algeria and Tunisia[6].

The will of the parties is relevant only to the extent that it is reflected in the text of the treaty[7]. The text of the treaty is only one rule, but it is not the only one[8]. Nor is it the prevailing rule to determine the will, which can be distinguished by paying attention to other means, especially the preparatory work for the text)The Government of Algeria considered that it was not bound by paragraph 1 of Article 29, which stipulates that any dispute arising between two or more States Parties concerning the interpretation or application of this Convention, which is not settled by negotiation, shall be submitted to arbitration, at the request of one of these States, or referred to the International Court of Justice. The Government of the People's Democratic Republic of Algeria considers that no such dispute may be submitted to arbitration or to the International Court of Justice except with the consent of all parties to the dispute[9].

The Islamic jurisprudence view point holds that if honesty, frankness and good faith are their in herent character, and Muslims deal with others in concluding treaties, then the problem of interpreting treaties observed between countries with deceit and trickery does not arise, and if the treaty is interpreted legally and religiously by agreement of the parties to the treaty there is no agreement on interpreting the texts of the treaty, the neach country has the right to interpret without obligating other countries.

This interpretive process must be inspired by the principle of good faith,. At this point there is consensus. But depending on what concept one has, this will be the way one practices it. By preferring objectivity and grammatical or textual and logical methods; supporters of the final concept, through teleological and social methods and comparative methods, and accordingly we find before us two problems: namely: the specialization of interpretation, and: the methods of interpretation.

On the internal level.All nation all egal systems grant domestic courts general jurisdiction to interpret the texts they will apply, up on the entry into force of treaties. This activity is considered a special frame work for the application of a recognized aspect of international law, especially treaties, where interpretation is strongly intertwined and intersects with the application of the legal rule, to the point that international practice and doctrine appear to be the same term at the same time as they confront each other. In order to arrange the influences surrounding the aspects of the subject, it was necessary to define the meaning, determine the scope and clarify the ambiguous points through a study of the interpretation of international treaties by the national judge - methods and rules - **(the first section)**, and the practical foundations of the interpretation of the national judge **(the second section).**

sectionOne: Interpretation of International Treaties by National Judges - Methods and Rules

The content of a treaty is verified when there are ambiguities, gaps, or contradictions in the text of the treaty. In relation to the general international legal order, this is achieved only through

interpretation of the text or further elaboration thereof. Certain rules of interpretation are set forth in the 1969 Vienna Convention on the Law of Treaties, which entered into force on January 27, 1980 [10]. These rules contain methods, standards, tools, principles, or means for interpreting international treaties, but they are not exhaustive[11]. At the international level, the function of international jurisdiction has not reached a level of development, despite the characteristics that distinguish international judges, as is the case in domestic law. Therefore, with regard to interpretation, there is jurisdiction, firstly, for the drafters of the treaty, and secondly, for other cases, such as states, international organizations, and international judges (the International Court of Justice or arbitration), according to Article 36 of the Statute of the Court. A true interpretation is one that results from an agreement between all parties to a treaty, which may have been concurrent with the conclusion of the treaty, or it may have been unilateral but tacitly accepted by the other states[12]. It may also be a subsequent agreement between all the parties, in which case it only binds the states that have accepted it. This is based on the unilateral interpretation of each party, based on good faith. Of course, it is not opposed by the other states. If there is no prior agreement, it must be resolved through the peaceful settlement of disputes[13]. The rule is that there is no need to interpret what does not need interpretation. This is a summary of the theory of clear action. The judge must always ensure that his interpretation leaves no room for doubt[14].

According to this theory[15], resorting to interpretation is only in the case of serious ambiguity, and the French State Council has previously applied these principles[16]. Also, whenever there is a matter of the existence of an official interpretation of the state or an international judicial interpretation, the national judge loses any role in including in international texts a meaning that is contrary to what international jurisprudence has established; meaning that he refrains from interpretation in the presence of these interpretations[17].

It is common to consider methods of interpretation as rules, and actual and applied practice confirms that methods of interpretation are a rule-based approach to interpretation. According to such an approach, the doctrine of interpretation is defined as consisting of formal rules, especially those stipulated in the Vienna Convention on the Law of Treaties[18] and perhaps customary international law[19].

This may also be due to the customary nature of these rules[20]. In the same context, most studies on treaty interpretation in recent years have recognized that the principle of interpretation is a set of rules found in the 1969 and 1986 Vienna Conventions on the Law of Treaties[21]. This is what international courts and tribunals have adopted [22] . This may be a reason for interpreting legal acts of an international nature[23], which seek to formalize methods of interpretation[24] . Interpretation of a treaty should be noted when interpretation is limited to identifying ambiguous or non-specific terms in the treaty text, while further elaboration of the treaty text is undertaken if the interpreting judge's diagnostic procedure goes beyond the text of the treaty to fill its gaps or correct any other deficiencies in light of the spirit of the treaty.

International courts (the International Court of Justice in The Hague, the International Court of Justice for the Law of the Sea, judicial offices operating under the auspices of the World Trade Organization, and the International Court of Justice) may have jurisdiction to interpret and draft an international treaty (such as the former Court of Justice of the European Communities[25]; the European Court of Human Rights, the Permanent Court of International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, etc.), international arbitration tribunals, bodies of international organizations (the Security Council when implementing Chapter VII of the UN Charter, the Human Rights Committee of the 1966 International Covenant on Civil and Political Rights, etc.), and national courts and ministries of foreign affairs, when called upon to resolve, negotiate disputes arising from bilateral international treaties[26]. First, we must first consider the provisions of Articles 31 to 33 of the Vienna Convention on the Law of Treaties, to be followed by appropriate commentary.

A: The general rule for interpreting treaties

As dictated by Article 31:

1. A treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their overall context and in the light of its object and purpose.

2. For the purposes of treaty interpretation, the general framework of the treaty's terms shall include, in addition to the text, the preamble, and the annexes, the following: (a) any agreement relating to the treaty concluded between all parties; (b) any instrument drawn up by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument relating to the treaty.

3. The general framework of the treaty's terms shall take into account: (a) any subsequent agreement reached between the parties concerning the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the implementation of the treaty; and (c) any relevant rules of international law applicable to the relations between the parties. 4 - A special meaning is given to the term if it is proven that this was the intention of the parties.

The Tunisian Constitutional Council adopted the Protocol to the African Charter on Human and Peoples' Rights establishing an African Court on Human and Peoples' Rights as the reference for determining the constitutionality of ratification of this Protocol. In this opinion, the Constitutional Council was able to reconcile the provisions of the Tunisian Constitution in force at the time with the requirements for ratification of the aforementioned Protocol, given Article 5 of the Constitution, which stipulates that the Tunisian Republic shall guarantee fundamental freedoms and human rights in their universality, comprehensiveness, integration, and interdependence. Thus, the protocol concerned with ratification falls within the framework of achieving these objectives without undermining the sovereignty of the state. This, in fact, falls within the framework of the positive expansion in the interpretation of constitutional texts by the Tunisian Constitutional Council, which affirms the role of constitutional oversight in the implementation of international agreements[27].

B: Supplementary Means and Preparatory Work for the Interpretation of International Treaties

1 - Supplementary Means:

Recourse to additional means of interpretation will only be possible under the conditions of Article 32, i.e., to confirm or determine the meaning resulting from the application of Article 31, when interpretation in accordance with Article 31 leaves the meaning ambiguous (or difficult to understand)What may lead to a clearly inappropriate[31] or irrational result will be considered a supplementary means of interpretation andwill be understood in the following pages (interpretive arguments such as the analogous argument and application, teleological expansion, teleological contraction of an international treaty, the principle of proportionality, etc., which constitute forms of further legal formulation). While, by definition, all methods and forms of interpretation available to him should be understood as such, interpreter or implementer of the law on the basis of customary international law or the general principles of law recognized by all civilized nations (states)[28].

However, additional means of interpretation explicitly refer to the preparations for a treaty and the circumstances of its conclusion, i.e., correspondence exchanged between governments, memoranda, and minutes of meetings that highlight the positions of each delegation. When drafting the text of the treaty, etc. Additional means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, may be used to confirm the meaning of the application of Article 31 or to define the meaning, when an interpretation under Article 31: a) leaves the meaning unclear (or ambiguous or difficultto understand) or b) leads to a result that is clearly inappropriate or illogical.

2 - Preparatory work:

Reviewing the preparatory work for a treaty and the circumstances of its conclusion will mean attempting to diagnose the true meaning of the treaty text in the context of breaching the historical will of the drafters of the treaty (historical interpretation[29]. This refers to the discussions that take place between the negotiating states, including the observations and clarifications they provide, documents, correspondence, and minutes of the negotiation, as well as the opinions of the states that were accepted and those that were not, and the reasons for that, as well as the justifications for and against positions up to the final procedures by which the treaty was concluded [30].

If a treaty has more than one original text in two or more languages, the provisions of Article 33 apply. National courts, as well as other state bodies, will be obligated to apply the provisions of Articles 31 to 33 of the Vienna Convention on the Law of Treaties. However, they must take into account one or all of the original texts when linguistic or semantic differences arise, avoiding the trap of translation and interpretation that is always associated with the law of ratification of an international treaty.[31]

3: The authenticity of the interpretation of treaties drafted in two or more languages,

according to the text of Article 33:

- When a treaty becomes an original in two or more languages, its text shall be equally authentic in each language, unless the treaty provides otherwise or the parties agree. In the event of semantic deviation, a particular text shall prevail[32].

- The translation of the treaty must be into a language other than the one in which the original text was written. An original text may not be used unless the treaty so provides or the parties agree.

- The terms of the treaty shall give the same meaning to any authentic text.

- Except in cases where a particular provision prevails in accordance with paragraph 1, and where a comparison of the original texts reveals a difference in meaning which the application of Articles 31 and 32 cannot eliminate, the meaning given to it shall be adopted by reconciling the texts as best as possible, taking into account the object and purpose of the treaty[33].

First and foremost, it should be noted that these provisions are a codification of rules of customary law, implemented by the International Law Commission of the United Nations. This means, as the International Court of Justice (The Hague) has accepted, that they are not only binding on states that have ratified or acceded to the Vienna Convention on the Law of Treaties and thus become states parties[34].

When interpreting an international treaty, in accordance with Article 31, taking into account and without any hierarchy, superiority or priority of an element, the following must be taken into account by interpreters [(35)]:

3-1-The usual meaning of the terms in the text of the treaty

the literal meaning: that is, the possible linguistic meaning, which is found based on an analysis of the words used (grammatical interpretation, literal interpretation, or textual approach. ([36]) .

The general principle is that phrases in any text must be understood according to their apparent meaning, unless these phrases express special terms that do not match their common meaning. In this case, the phrase should be understood according to its technical and scientific meaning. ([37]) As long as the text is sound, the interpreter's role is limited to applying this text based on these clear phrases, as they indicate the material without interpretation. If the text is open to interpretation, that is, it indicates a specific meaning, then the text must be applied according to its apparent meaning until evidence is established that requires action other than its apparent meaning. If the text is general, then it applies to every case in which it applies. If it is absolute, then the absolute is applied according to its absolute meaning([38]) .

3-2 - The general framework of the treaty's terms (39)

It includes the text of the treaty, its preamble and annexes, as well as any agreement between the parties in relation to the treaty and any document drafted by one or more parties in connection with the conclusion of the treaty and prepared and accepted by the other parties as a document relating to the treaty. In fact, in addition to the general framework of the treaty's terms, any subsequent agreement reached between the parties regarding the interpretation of the treaty or the application of its provisions, any subsequent practice in implementing the treaty with which the parties agree on its interpretation and any relevant rules of international law applicable to the relations between the parties (40).

Systematic interpretation (41) can take into account principles, decisions, and evaluative rules from the general system of international law (international agreements, international customs, general principles of law recognized by states or civilized nations, resolutions of the United Nations Security Council, resolutions of bodies of international organizations, unilateral acts of states, etc.) (42), which we find in other terms such as logical interpretation, which relies on coordinated action. This is what is called in international law jurisprudence the framework of the treaty. The text contained in the treaty is not isolated from other texts, as the articles complement each other, and an ambiguous text may be interpreted by another text (43). Algerian courts have affirmed the supremacy of international treaties over domestic laws. Order No. 06-2002 issued by the Emergency Division of the Ghardaia Court stated: "The application of physical coercion in civil and commercial contracts cannot be based on the text of Article 407 of the Code of Civil Procedure, but rather on the provisions of Article 11 of the International Covenant on Civil and Political Rights of December 16, 1966, which Algeria has ratified. The treaty takes precedence over domestic law, which should be based on the present case, and the application of Article 407 of the Code of Civil Procedure regarding physical coercion should be excluded. This requires the rejection of the plaintiff's request for justification. An example of a systematic interpretation, which takes into account, among other things, the assessments and perceptions inherent in other rules of international law, is as follows. Article 20 of the International Covenant on Civil and Political Rights states:

* The law prohibits any propaganda in favor of war.

* Any incitement to national, racial or religious hatred that incites discrimination, hostility or violence shall be prohibited by law. This provision is an extension of Article 19 of the International Covenant on Civil and Political Rights, which guarantees freedom of expression. By providing in paragraph 3 the relevant restrictions on freedom of expression, it has a content similar to that of Article 10 of the European Convention on Human Rights. Article 20 essentially complements Article 19, paragraph 3, of the International Covenant on Civil and Political Rights, adding further restrictions on freedom of expression. Therefore, restrictions on freedom of expression are lawful if they relate to "any pro-war propaganda" or "any incitement to national, racial or religious hatred that incites to discrimination, hostility or violence."

This conclusion must also be adopted when interpreting Article 10, paragraph 2, of the European Convention on Human Rights, which states: "The exercise of these freedoms, insofar as it entails duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and which are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of confidential information or for maintaining the correctness and impartiality of the judiciary" (translation from the English text)[44]

Through substantive international criminal law, (45) According to Article 7, paragraph 1, paragraph 1 and 2, paragraph 2, paragraph (h), of the Statute of the International Criminal Court, (46) is considered a crime against humanity, including apartheid, which "means inhumane acts of a similar nature, as those referred to in paragraph 1, committed in the context of an institutionalized regime

of systematic oppression and domination of one racial group over any other racial group or groups, with the aim of maintaining that status, whereby acts of apartheid are considered all those acts referred to in Article 7 equivalent to 1 partial acts, for example, murder, extermination, enslavement, deportation or violent transfer of population, imprisonment, rape, sexual slavery, enforced prostitution, persecution, violent disappearance of persons… etc.

"Inhumane acts of a similar nature as those referred to in paragraph 1", i.e. inhumane acts of a similar gravity as those referred to in Article 7, paragraph 1, of the Statute of the International Criminal Court, can be identified by Article 2(c) and (d) of the United Nations International Convention on the Suppression and Punishment of the Crime of Apartheid ([47]), should also be considered:

1) Legislative or other appropriate measures to exclude a tribal group from the political, social, economic and political participation in the economic life of the country.

2) The deliberate creation of conditions that hinder the full development of such a group, in particular conditions that deprive members of an ethnic group of human rights and fundamental freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave the country and return, the right to nationality, the right to freedom of movement and residence, the right to freedom of expression and the right to meet peacefully and create associations with others. 3) Legislative or other measures, by which the population is planned to be divided into ethnic groups, for example, the creation of "ghettos" for members of a tribal group, the prohibition of intermarriage between members of different groups or the confiscation of land ownership of members of a tribal group

C: The national judge must adhere to the content of

the preamble in the text of the international treaty.

Treaties are usually preceded by a preamble, although international law does not require this to be an essential requirement. The preamble mentions the states or representatives of states who participated in the drawing up of the treaty, or refers more generally to states. The parts to it; and usually mention the reasons for its approval ([48]) , the preamble has received little attention, as theses rarely assign the preamble's place in the practice of interpreting treaties ([49]) , and the preamble is not part of the executive clauses in the treaty, but rather part of its context, and thus it can be referred to for guidance in interpreting the treaty ([50]) ; and the reason for that is especially that it may give an indication of the subject of the treaty and its purpose ([51]) only George Scheele: "It is unusual for a preamble to contain actual legislative or regulatory provisions that specify or supplement the provisions of a treaty body." ([52]). This problem cannot be solved in a general way, because it is considered a diversity. whereas it cannot be said in general that the preamble lacks the necessary force to create legal obligations or that the preamble cannot contain or contract some obligations ([53]), the following considerations have been made in relation to this subject

1: The binding force and interpretive value of the preamble ([54])

The interpretive value of the preamble to an international agreement is indisputable from its side, as ([55]), Article 31 of the 1969 Vienna Convention on the Law of Treaties states: "For the purposes of the interpretation of a treaty, the context includes in particular the text, the preamble and the annexes (...)." In other words, determining the meaning to be given to a particular provision depends on examining the entire text of the treaty, including the preamble. ([56]) What is the legal value of the preamble in the international legal system? While some believe that it has no binding force, it nevertheless constitutes an element of a judge's interpretation of a treaty ([57])

2: The preamble is a text of a special nature.

The binding force of the preamble is a matter of dispute ([58]), While some claim that the binding force of the preamble does not exist, others offer a more nuanced view, relying in particular on the

nature of the treaty[59]. - The preamble to international treaties must be evaluated on a case-by-case basis. General rules cannot be established for assessing the legal meaning of the rules and clauses contained therein. The provisions of the preamble cannot fill gaps in the treaty. However, jurists seem to realize that the preamble to an instrument can in no way be used against a provision with which it may be inconsistent ([60]).

2 - Some of the drafts contain real supplements to those contained in the operative part of the treaty, however, the statements of purpose and principles, formulated therein, have the most frequent scope in the interpretation of treaties ([61]).

3. These statements, contained in the preamble, which forms an integral part of the text of the treaty, should be used as a normal means of interpretation to determine and specify the "percentage of agreement," the aims and purposes of the parties, and the general function of the treaty ([62.]). Provisionsin the operative part of the treaty that clearly conflicts with the statements in the preamble should, in principle, be interpreted as an exception to the general order provided by the contracting parties. If any particular provision has a dubious interpretation with regard to the general order of the treaty, an attempt should be made to accommodate it in its interpretation.

4. Statements of purposes and principles contained in treaties based on the correspondence of international organizations are a useful and important element for their correct interpretation and for the dynamic interpretation, adequate understanding, and application of the principle of specialization and the implied powers of international organizations ([63]).

The general function of the preamble is to serve as an interpretation of international treaties ([64]), and in this sense it has been used by international jurisprudence, which concludes that the preamble in the international system has no executive force but constitutes an element of the interpretation of the treaty ([65]).

The task of the judge's interpretation is to give the exact value and meaning to the treaties, which must be interpreted taking into account the rules studied and the rules that the Vienna Convention gives to be followed ([66]).Finally, the legal assessment was left to the preamble, which is part of the treaties and must be given due importance in the matter of interpretation.

Section Two: The Practical Foundations of Judge's Interpretation

The practical foundations of interpretation are based on the determinants that a national judge must interpret international rules in a way that is consistent with their "international meaning." According to a well-known formula, "the interpretation of documents is to some extent an art and not an exact science."

"Draft Articles on the Law of Treaties and Commentaries" ([67]), how then can the "international meaning" of a rule be determined and the correct interpretation of its text arrived at ([68]), independently of any binding international interpretation?

A: the judge's interpretation of good faith

It is considered The principle of good faith ([69]) is a natural consequence of the application of another principle in international treaties, which is the principle of "the agreement is binding." Therefore, the interpretation must be based on the fact that the contracting parties are of good faith, such that they intend to implement their mutual commitments in good faith, since this is the situation that the logic and wisdom of contracting dictates. It is not conceivable that the contract would have binding force and that the contract is the law of the contracting parties if both of them are lying in wait for the other and their contract is dominated by bad faith ([70]).

An example of good faith between the parties to a treaty is the ruling of the International Court of Justice in the case of the delimitation of maritime boundaries and territorial matters between Qatar and Bahrain. The court ruled that it had jurisdiction and that the proceedings before it were admissible. Bahrain claimed that by signing the minutes, it did not intend to enter into a legally

binding agreement. The court did not see the need to examine the true intentions of the Bahraini Foreign Minister at the time of signing the minutes. By examining some facts in addition to the text of the minutes itself, the court concluded that after signing such a text, the Bahraini Foreign Minister could not later argue that this was not an international treaty but merely a statement of a political agreement. Regardless of the subjective element, which is the will of the Bahraini Foreign Minister, it focused only on the objective aspect of the text of the agreement and the trust that could be created in Qatar. Therefore, the court used the theory of trust as an aspect of good faith ([71]).

B: the judge's interpretation according to the purpose of the treaty

The first section - the aim and purpose of the treaty (teleological interpretation): It is also called the objective or functional method, where the purpose of the treaty can be inferred either from its text ([72]), which includes the preamble, or from the preparatory work for the treaty, or from comparing its text with the text of another treaty ([73]).

The idea of the subject of the treaty can be taken further than that, so that the interpretation is carried out in light of its productive or beneficial effect. ([74]) The Algerian Constitutional Council had previously approved the principle of the supremacy of international law over national law, when it cancelled some texts of the election law for violating the provisions of the International Covenant on Civil and Political Rights of 1966, as well as the African Charter on Human and Peoples' Rights ([75]), as it requires the interpreter to start from the fact that the drafters of the treaty had prepared a text in order to apply it, in other words, to implement the rule that implementing the text is better than neglecting it. ([76])

, paragraphs 3 and 4 of the 1961 Vienna Convention on Diplomatic Relations states: "The diplomatic bag may not be opened or concealed. The baggage constituting the diplomatic bag must bear distinctive external marks of its character and may contain only diplomatic documents or articles intended for official use."

The question arises as to whether a diplomatic bag can be subjected to x-ray inspection. The passage of a diplomatic bag through magnetic radiation is permissible, as it only reveals its contents due to the presence of metallic objects. However, the passage of a diplomatic bag through x-rays should be prohibited, as they reveal the true contents of the bag. Why this distinction? The purpose of Article 27, paragraphs 3 and 4, of the Vienna Convention on Diplomatic Relations is to protect the confidentiality of the contents of the diplomatic bag and to ensure free and unimpeded communication by the diplomatic mission with the sending State or third parties and the unhindered performance of diplomatic duties.

When only metallic objects appear in X-ray examination, no breach of diplomatic secrecy is committed, whereas X-rays, on the contrary, reveal the contents of diplomatic documents. Thus, Article 27, paragraphs 3 and 4 of the Vienna Convention on Diplomatic Relations determine what is legal or illegal.

Teleological interpretation is crucial to resolving the disputed issue and to find the true meaning of the phrase "the diplomatic bag cannot be opened" ([77]), the International Court of Justice in the LaGrand case ([78]) attempted to diagnose whether provisional measures under Article 41 of the Statute:

1. The International Court of Justice should have the authority to indicate, if circumstances so require, what interim measures should be taken to preserve the rights of each party.

2. Pending the final decision, immediate notification of the proposal to the parties and the Security Council obliging the parties to use the teleological interpretation.

The purpose of its Statute is to enable the Court to fulfil the duties stipulated therein and in particular the essential function of the judicial settlement of international disputes through binding decisions in accordance with Article 59 of the Statute and in particular the purpose of Article 41 is to prevent

prejudice to the rights of the parties as will be determined in its final decision, as its judicial function will be hampered, if the rights of the parties are not guaranteed and preserved by binding provisional measures ([79]).

As a form of teleological interpretation, which achieves the aim and purpose of the treaty, the interpretation that is directed towards a beneficial outcome of a treaty or the principle of effectiveness should be considered, meaning that the treaty should be interpreted in a way that can achieve its purpose in the best possible way and achieve the beneficial or intended and desired results. ([80])

2 - the actual interpretation

Another case of effective interpretation is the case law on positive obligations ([81]), which means that civil (and political) rights not only prohibit state institutions from engaging in conduct contrary to their content (such as killing a human being), but also impose on them a duty to take appropriate legislative, administrative and judicial measures ([82]), on the one hand, to facilitate and ensure the effective exercise and enjoyment of that right ([83]). On the other hand, to protect the right, and prevent insults and interference by third parties (individuals) ([84]).

This interpretation of the European Court of Human Rights lies at the dividing line between interpretation in the form of definitions of vague concepts, and additional judicial interpretation of the law. ([85])

Similarly, the actual interpretation is a dynamic and hierarchical interpretation (dynamic and evolutionary), which takes into account the new situation (technical or social innovations or modifications and other changes that occurred after the signing of the international treaty) and the conditions prevailing during the interpretation and application of the treaty, in order to understand the linguistic meaning and purpose of the treaty.

Often the true meaning of a provision in an international treaty is ascertained by using legal arguments as supplementary means of interpretation ([86]). For example, there is a dispute over whether warships of a state have the right of safe passage through the territorial waters (territorial sea or coastal zone) of a foreign state, which is provided for by the provisions of Article 17 et seq. of the 1982 Law of the Sea Convention: The true meaning of this Convention is that warships have this right under the same conditions as merchant ships. The arguments in favor of this position are as follows:

a) Article 17 of the Convention provides for the right of safe passage for ships of all States without discrimination and without excluding warships (argumentum e silentiolegis = argument from the silence of the law).

(b) Article 30 of the above-mentioned Convention provides that if a warship fails to comply with the laws and regulations of the coastal State relating to passage through the territorial sea and ignores any request to it to comply, the coastal State may require it to leave the territorial sea immediately. This provision appears to take the right of safe passage of warships for granted.

(c) Article 20 of the above-mentioned Convention regulates the manner in which submarines may pass through the territorial sea: “In the territorial sea, submarines and other submerged vessels shall sail on the surface and shall fly their flag in a visible manner.” Since submarines and other submerged vessels are generally warships, this provision is implicit but clearly grants the right of safe passage to warships.

d) In addition, there is another argument: there are currently twenty-three (23) States, among the States Parties to the Law of the Sea Convention, whose national law requires the flag State to obtain authorization before its warships attempt to exercise the right of safe passage through territorial waters. However, the fact that approximately one hundred and forty-five (145) States are Parties to the Law of the Sea Convention and the fact that the domestic law of most States (122) does not

require the flag State to obtain authorization before warships exercise the right of safe passage through territorial waters allows us to conclude and confirm that States, increasingly, consider it their duty to grant foreign warships the right of safe passage through their territorial waters, without the need to obtain prior authorization.

3-: Interpretation of treaties and the judge's adherence to jurisdiction

The judiciary maintains its jurisdiction to interpret international treaties in force within the Republic, considering them an integral part of the state's legal system, ignoring regulatory texts that deprive it of the power of interpretation. We mean by this the Ministry of Foreign Affairs, where the national judge maintains its jurisdiction to interpret international agreement texts in order to consolidate the independence of the judiciary vis-à-vis the executive authority.

Decree No. 1242 of 1984, dated October 20, 1984.

concerning the responsibilities of the Tunisian Ministry of Foreign Affairs, stipulates that the Ministry of Foreign Affairs is responsible for: preparing and implementing the government's foreign policy in accordance with the directives and choices determined by the Head of State; ensuring the preservation and development of friendly relations and cooperation in the political, economic, social, cultural and other fields linking Tunisia with foreign countries and international organizations; representing the Republic of Tunisia before foreign countries, international institutions and organizations; protecting, defending and preserving abroad the material and moral rights and interests of Tunisia and its nationals, whether natural or legal persons; and acting as the official mediator between foreign missions, international institutions and organizations based in Tunisia on the one hand, and Tunisian ministerial departments and organizations on the other; preparing and conducting negotiations, in cooperation with the competent ministerial departments; concluding international agreements, treaties and agreements; proposing their ratification and publication; ensuring their interpretation when necessary; and ensuring their proper implementation. When a Minister of Foreign Affairs is appointed, foreign countries must be notified of this so that his representative status is established in their countries.

While it is agreed that the decisions of the Ministry of Foreign Affairs in matters relating to international relations, including those relating to the interpretation of international treaties, are binding on the public authorities of the state, the issue of their binding on domestic courts depends on the rules adopted by these courts. Some of them have made the interpretation of treaties the responsibility of the Ministry of Foreign Affairs, and thus they are bound by the interpretation provided by this ministry. Others have granted themselves the right to interpret on their own, and thus they are not bound by what the Ministry of Foreign Affairs undertakes.

The same applies to Algeria, where the regulatory texts explicitly deprived the Algerian judge of the jurisdiction to interpret international treaties (). The Algerian legislator, with regard to the [87] issue of interpreting international treaties, was influenced by what is traditionally practiced in both France and Egypt, and followed the same approach in the regulatory texts, by making international treaties acts of sovereignty, the interpretation of which is the responsibility of the Ministry of Foreign Affairs, in the absence of any positive role for the judge

The Algerian legislator was not satisfied with obligating the judge to request an interpretation from the Ministry of Foreign Affairs ([88]), but rather obligated him to adhere to the content of this interpretation and made it mandatory and not advisory. The question raised here is, is the Algerian judge bound by the text of Article 37 of the Nationality Law ([89]) ,

Should he consider its ruling to apply to all international treaties concluded by the Algerian state? Or is the text of the aforementioned article limited in scope of application only when it comes to a dispute concerning nationality? Here, the judge must request an interpretation from the Ministry of Foreign Affairs and must adhere to its binding opinion, and thus the Ministry of Foreign Affairs replaces the judiciary in one way or another in resolving the dispute ([90])?

According to the text of Article 165 of the Algerian Constitution, "the judge is subject only to the law," and that the executive authority, represented by the Ministry of Foreign Affairs, is not permitted to replace the judiciary with regulatory texts that impose the necessity of obtaining its opinion regarding the interpretation of international treaties, as long as interpretation is a judicial act that is considered an essential part of the judge's work.

It should be noted that the aforementioned regulatory and legal texts - Article 37 of the Nationality Code and Article 17 of Presidential Decree No. 02-403 of November 26, 2002, defining the powers of the Minister of Foreign Affairs in force - which grant the Minister of Foreign Affairs exclusive jurisdiction to interpret international treaties, conflict with the text of Article 14 of the Interna

Covenant on Civil and Political Rights, which Algeria acceded to on September 12, 1989, as it enshrined the right to an independent and impartial court established in accordance with the law. It also contradicts Article 10 of the Universal Declaration of Human Rights of 1948, which states: "Everyone is entitled to full equality and to a fair trial by an independent and impartial tribunal in the determination of his rights and duties and of any criminal charge against him." Therefore, depriving the judge of the authority to interpret the texts of ratified international agreements constitutes an infringement of the concept of the independence of the judiciary, enshrined in the aforementioned International Covenant and the Universal Declaration of Human Rights, to which Algeria has committed itself in order to guarantee a fair trial.

The issue of the judge's interpretation of international treaties and his jurisdiction over them is not in the mind of the Algerian legislator. Article 5/37 of the Algerian Nationality Law ([91]( ) states that: "When it is necessary to interpret the provisions of international agreements related to nationality in connection with a dispute, the Public Prosecution requests this interpretation from the Ministry of Foreign Affairs ([92]) and the courts are bound by this interpretation ([93])."

According to Article 14 of the International Covenant on Civil and Political Rights ([94]), which corresponds to the text of Article 6-1 of the European Convention on Human Rights, the right to an independent and impartial court established in accordance with the law is guaranteed. Therefore, the text of Articles 5/37 and 6 contradicts the concept of independence enshrined in the aforementioned International Covenant, which Algeria has pledged to guarantee to all litigants before its judicial authorities, under penalty of international state responsibility, to guarantee a fair and independent trial.

It is clear from the previous decrees that they all explicitly assigned the authority to decide on the interpretation of international treaties to the Ministry of Foreign Affairs, in a manner that does not allow it to be assigned to any other party. In this context, it is noted that the situation in Algeria is similar to what was practiced in France before 1991. However, the observation that can be understood through an examination of the previous decrees is that there is an explicit recognition of the possibility of national judicial authorities being exposed to international treaties ([95]) in the context of deciding on disputes presented to them. In this case, it is understood that they must refer the issue of interpretation to the Ministry of Foreign Affairs.

conclusion

,If, aswehavestated, theobjectiverulesofinterpretationinthelawoftreatiesprevailoverthesubjectiverules theViennaConvention
tendstovaluetheactualratherthanthedeclaredwillofthecontractingstates". Thisresultsfromtheimportancethatthetrea ,tyitselfattachestothepreparatoryworkandtheteleologicalstandard
,whichassumesthatthetreatyisreadinlightofitspurpose. Therefore whentheliteralstandardisinsufficienttoreconstructthemeaningintendedbytheparties, non- ,textualelementsmayberelevant
.suchasthepracticesubsequentlyfollowedintheapplicationoftheagreement Thetwolegalsystemscanbedistinguished .withregardtotheinterpretationprocedure ,Asfortreaties

,heactuallyseemstohaveruledoutthepossibilityofresortingtoexternalanalogy
.whichwouldalterthebalancereachedbytheparties

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(1) **ROUSSEAU (C.)** , International Public Law, Paris, Sirey, 2nd ed., 1970, volume I, p. 291. See also **VISSCHER (Ch. de)** , "Notes on the textual interpretation of international traits", Variajurisgentium, Liber Amicorum JPA François, Leiden, AW Sijthoff, 1959, p. 390, as "there is an art of the interpretation of traits". **JamalManaa**,TreatiesintheAlgerianLegalSystem, Master'sthesis, UniversityofAlgiers, p. 69 Hans Kelsen, Principles of Public International Law, 1965, p. 275(2)

(3) **بن عامر تونسي**، عميمر نعيمة، محاضرات في القانون الدولي العام، ديوان المطبوعات الجامعية،2010، الجزائر، ص 57. أنظر أيضا: محمد بو سلطان، الرقابة على دستورية المعاهدات في الجزائر مجلة المجلس الدستوري، العدد 01، سنة 2013، ص 231،232.

(4) **على عبد القادر القهوجي**، المعاهدات الدولية أمام القاضي الجزائي، مرجع سابق، ص 90 .أنظر أيضا: **عبد الستار فتح الله سعيد**، المدخل الى التأويل الموضوعي، دار التوزيع والنشر الإسلامية طبعة 2 سنة 1991، ص 13و **على على منصور**، المدخل للعلوم القانونية والفقه الإسلامي، دون دار نشر، سنة 1971 ، ص 226 وجميل الشرقاوي، دروس في المدخل القانونية، دون سنة نشر، ص 193. و**عبد الحي حجازي**، المدخل لدراسة العلوم القانونية، الكويت سنة 1971 جزء 1، ص 510. و**عبد الرزاق السنهوري وحشمت أبو ستيت**، المدخل لدراسة أصول القانون، القاهرة، مطبعة لجنة التأليف والترجمة والنشر، سنة 1952، ص 235.

(5) **FORTEAU (M.)** : «Les techniques interprétatives de la court internationale de justice», in 'Les techniques interprétatives de la norme internationale', RGDIP, 2011, p.399

(6)

,Thetextoftheagreementaimstofinallydeterminethemaritimebordersbetween AlgeriaandTunisia
,allowingeachpartyinitsmaritimedomaintoexerciseitssovereignrightsorlegaljurisdiction
aswellastoexchangeinformationintheeventofexploitationofnaturalresourcesdiscoveredonbothsi
,desofthemaritimeborders
inadditiontosettlinganydisputearisingbetweenthetwopartiesregardingtheinterpretationorapplic
,ationofthisagreementthroughnegotiations. Ifthisisnotpossible
recourseshallbehadtoanyotherpeacefulmethodacceptabletobothpartiesinaccordancewithinterna
:tionallaw. Seehttps://www.echoroukonline.com/

(7) Whilethisinterpretationappears to be in accordance (...) with the willexpressed by the legislator...". This assertion of the Court of Cassation, oftenadopted by the judges of the Court, requires as much as refersit to the generallyestablished objective of judicialinterpretation of laws: to reveal the will of the legislator. See:

Cass., January28 .L'INTERPRÉTATION IN DROIT Michel Van de Kerchovep. 51-95 :

(8) أكد **دينيس سيمون** بالفعل أن "مشكلةتطور العملية التأويلية وتجدد نفسها يكون بمعدل التحولات القانونية الدولية" .

SIMON (D.), L'interprétation judiciaire des traités d'organisations internationales, (Morphologie des conventions et fonction juridictionnelle), Paris, Pedone, 1981, p. 8

(9) Declarations, reservations, objections and notifications of withdrawal of reservationswith respect to the Convention on the Elimination of All Forms of Discrimination againstWomen.... CEDAW United Nations/SP/2010/2

(10) **Ian Brownlie**, Basic Documents in International Law, Oxford, 2009, p. 270 etsuiv., **Pierre-Marie Dupuy** , Les grandes textes du Droit International Public, Paris, 2006, p. 311 et suiv

(11)Which are referred to as broadprocessinterpretation, restrictedinterpretation, contextualanalysis, purposiveinterpretation, historicalinterpretation, etc., while as a principle of the principle of good faithinterpretation. The title of this article wasarbitrarilychosen to convey the forms, types, principles, rules, means and degrees of interpretation and furthercrystallization of international law.

(12)Application “implies the determination of the effects on the contracting parties” (see Fundamental Some, Haraszti. G.; Problems in the Law of Treaties (AkadémiaiKiadó, 1973), p. 18). The legality of a rule, i.e. “it is recognized that it is not manifest in any way and cannot be applied unless its content is made clear.”

(13) -**Manuel Gros** . Droit administratif: l'angle jurisprudentiel. 4° edition. L'harmattan. Paris. 2012. p.217

(14) -**Antoine MASSON**. Droit communautaire : droit institutionnel et droit matériel. Op.cit. p.345‹l’application des règles conventionnelles internationales « est relatif aux capacités du juge interne d’accéder à la connaissance du contenu et du sens du droit international public »voir: BEDJAOUI (M.), (dir.), Droit international : Bilan et perspectives, tome 1, Paris, Pédone, 1991, p.304.

(15) Application d'actes clairs ou précis ne soulève pas de question préjudicielle. Please note: Conflict Tribunal, December 18, 1943, in French c/ Chouard, Rec., p. 325; Tribunal de Conflit, 10 February 1949, Roubaud, Rec., p.591

(16) -**Nadine Poulet,Gibot Leclerc** . Droit administratif: sources, sources, controls. 3e edition. Real. 2007. pp.80-86

(17) **عبدلي سفيان**، مرجع سابق، ص 154

(18) For a similarreading, see A. Bianchi, “TextualInterpretation and Reading of (International) Law: The Myth of (In)Determinacy and the Genealogy of Meaning,” in P. Bekker (Ed) Making Transnational Law Work in the Global Economy - Essays in Honor of Detlevvagts (Cambridge Universitypress, 2010) 35 (“CurrentReflection of ScholarlyResearchRemainsSteeped in TraditionalApproachesBased on Rules of LegalInterpretation

(19) **Gardine**r, Interpretation Des Traités (OUP, 2e Ed. 2015), A 13ff. In general:**JM Sorel** , 'Article 31' Dans **Plein et O Corten**, Les Conventions of Vienne Sur Le Droit Destraités. Commentaire Article Par Article (Bruxelles, Bruylant, 2006) 1289–1334 ;

(20)The customarynatureofthedoctrineofinterpretationcanbechallengedfromthe ,perspectiveofthedoctrineofthesourcesofinternationallawitself. Indeed ,ifthedoctrineiscustomary, internationallawisappliedclassically anditisnotatallcertainthattherestrictionsimposedoninterpretationenrichinternationallawwiththet .raditionalrequirementsforverifyingcustomaryrules

(21)For a review of recentwork on interpretation, see M. Waibel, “Demystifying the Art of Interpretation,” European Journal of International Law (2011), 571–88. Seealso A. Bianchi, D. Peat and M.R. Windsor (eds), Interpretation in International Law (OxfordUniversityPress, 2015). For an approachthatinterprets the rules of interpretation as directive principles, see I. Van Damme, Interpretation of traits by the OMC CallingOrganization (OUP, 2009), p. 35.

(22) ICJ, Different territorial (Jamahiriya Arab libyenne c Tchad) [1994];LaGrand (Allemagne contre États-Unis Amérique) [2001] CIJ Rep 501, para 99; CIJ, Consequences of construction in the old Palestine Territory, July 9, 2004, par. 94.

Seealso Arbitrage concern the Rhin de Chemin de fer (Belgique / Pays-Bas), sentence du May 24 2005, p. 23, par. 45.

(23)International Court of Justice, Compatibility with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion), Advisory Opinion of 22 July 2010, para. 94. See: “Interpretation of Security Council Resolutions under Chapter VII in the Aftermath of the Iraq Crisis,” Yearbook of Comparative International Law, (2007), p. 83.

(24)Same asthepreviousreturn

(25) So it is due to the fact that the European Union (European Union) is in, there may be a trend in the independence and autonomy (in the civil relationship between the European Union and the European Union), part of the international public, This is not the case in the universe - the International Universal International mainland, in the European Union (notified after the Lisbon trade union, entered on 1.12.2009 and joined by the National Juridical Organization) is a supranational international organization (the international public est). This branch (droit of international organizations) a part and a juridical organization based on international trends and sources from t

he sources of international (droit international) enter the memberships:

. M. Perrin de Brichambaut / JF Dobelle / MR d'Haussy,Lessons de droit international public, 2002, p. 311 et s. , 321ep., **Dominique Carreau** , Droit international, Pedone, Paris, 2007, pp. 61ep., 67ep., 98ep., 102ep., **Guy Isaac / Marc Blanquet** , Droit généra l de l'European Union, 2006, p. 187

(26) **Richard Gardiner** , Interpretation of traits, Oxford, 2008, p. 109 and so on. **Jean d'Aspremont and Richard Gardiner** ,Working document for the ILA study group on Interpretation In International Law P Reliminary M Ethodological Observations

(27) The CEDH is in an important net effect on the effective activity, under the interprétative action of the Strasbourg Court. This has adopted an ambivalent method, betweenproper international interaction and interaction "constitutionnel". look:**WACHSMANN (P.),** « Les méthodes d'interprétation des conventions internationales relatives à la protection des droits de l'homme », S.F.D.I., Colloque de Strasbourg de 1997, La protection des droits de l'homme et l'évolution du droit international, Paris, Pedone, 1998, 334 p., p. 162.

(28) **Richard Gardiner** ,Interpretation of traits, Oxford, 2008, p. 301 et suiv., 349. If the principes generated from the droit that are applied abroad, if the question is not related to an international or international market, signify the good principe and the interaction of the droits, the obligation to return the injuste enrichment, the principe of the Equity, the administration of public affairs without demands, the autorité of the court of the parties, it is possible to preuve the indications. . : Malcolm N. Shaw, Droit international, 2008, p. 98

(29) Article 3 of the 1901 Treaty of Hyponsefutconcerning the Panama Canal states: "The Panama Canal shallbe free and open to the vessels of mercantile and war of all nations observingtheserules on a basis of completeequality."

لكن الولايات المتحدة الأمريكية قالت في تفسيرها الخاص أن عبارة "جميع الدول لا تشملها لأن البلد هو الذي شق القناة ويملكها ولا توجد لديه أية نية للتخلي عن منح سفنه معاملة تفضيلية -كإعفائها منمن دفع الرسوم - وقد وقف **إيليهو روت** وهو أبرز المحامين الدوليين في الولايات المتحدة في ذلك الوقت إلى جانب بريطانيا في احتجاجها القائل أن النصوص الواضحة للمعاهدة لا تقبل هذا التأويل و بالتالي فإن الولايات المتحدة الأمريكية بهذا التأويل تكون قد خرقت الإعفاءات الوارد ذكرها ، وبعد مناقشات مطولة في الكونغرس ألغيت الإعفاءات سنة 1914. أنظر: عبد الكريم علوان، المرجع السابق ص 309.

وقد جاء في أحد الأحكام التي أصدرتها محكمة التحكيم الدائمة في 7 أيلول 1910 في الخلاف الذي قام بين الولايات المتحدة وبريطانيا حول مناطق صيد الأسماك في شمال المحيط الأطلسي ما يلي: انه لمن مبادئ التأويل المسلم بها أن الألفاظ المستعملة في الاتفاقات لا يمكن أن تعد مجردة من المعاني الا إذا وجد دليل خاص على ذلك. أنظر: **رشاد عارف يوسف** السيد، مبادئ في القانون الدولي العام، منشاة المعارف الطبعة 4، 2000ص 111. أنظر أيضا: **محمد المجذوب**، المرجع السابق، ص 682.

(30) **غالب عواد حمودة، سهيل الفتلاوي**، موسوعة القانون الدولي العام الجزء الأول، دار الثقافة الطبعة الأولى 2009، الأردن ص 128.

(31) **Emm. Roukouna**, Droit international, number one, 1997, pp. 179, 186ff

The Tunisian-French Judicial Agreement of 1957, in Article 3 thereof, allows the use of the French language in all stages of the application of the agreement in cases concerning the French since its entry into force for a period of five years. Accordingly, the petition for action is not

invalid simply because it was not drafted in the Arabic language. Therefore, the contested ruling is invalidated. Accordingly, and in accordance with the provisions of Article 149 of the Code of Civil and Commercial Procedure, the case is returned to the court of first instance to consider the subject matter.

(32) For the translation, the English and French texts are on the computer, if they appear to be difficult, since the translations and the outside voice are detailed. Roukounas, d'Arg. Fatourou and C. Sourd. Art. 31 (Règle générale d'interpretation).

(34) **Malcolm N. Shaw** , Droit international, 2008, p. 932 et suiv. Dominique Carreau, Droit International, Paris, 2007, p. 154, the treatment process dated May 23, 1969, although all of them are aware that Article 31 of the Vienne Convention is applicable to the measure or the international contract. This is the day of the event in the passage Concluding that the international quorum trouve its expression in Article 31 of the Vienne Convention "(Botswana c. Namibia), dated December 13, 1999, General List No. 98, para. 18)

(35) **Fatourou**, Public International Law, Theory of Sources, 1988, pp.185, 187

(36)**Cependant**, le principe s'applique en droit international que toute interprétation commence par la lettre de la loi, c'est-à-dire que toute interprétation commence par le texte du traité : cf. Karl Doehring, V o lkerrecht , 2004, p. 169 , sous invocation du Tribunal international (Recueil 1950, p. 8 - Avis sur la compétence de l'Assemblée générale sur l'admission de nouveaux membres aux Nations Unies, Recueil 1962, p. 336 - Afrique du Sud-Ouest).

(37)هناك مسألة موضع جدل أكبر ألا وهي مسألة ما إذا كان يجب إعادة أسرى الحرب إلى أوطانهم ولو كان ذلك ضد إرادتهم. وتشير ممارسة الدول في الآونة الأخيرة إلى أنه لا ينبغي فعل ذلك. وتنتهج المملكة المتحدة سياسة تقضي بأنه لا ينبغي إعادة أسرى الحرب إلى أوطانهم ضد إرادتهم ويدل هذا الاستخدام المحدد للفظتي **"يجب"** و**"ينبغي"** معاً على أن المملكة المتحدة، على غرار دول أخرى، لا ترى أن الممارسة اللاحقة تدل على تفسير للمعاهدة مفاده أنه يجب دائماً احترام الإرادة التي يعلن عنها أسير الحربA/69/10 الفصل السابع الاتفاقات اللاحقة والممارسة اللاحقة فيما يتعلق بتفسير المعاهدات ص 227.https://legal.un.org/ilc/reports/2014/arabic/chp7.pdf

(38)**محمد المجدوب**، القانون الدولي العام، منشورات الحلبي، الطبعة السادسة، بيروت، 2007، ص 672.

(40) والحكمة من وراء ذلك يعرفها أطراف المعاهدة وفق أوضاعها في تلك الحقبة، وقد تتغَير الحكمة من عقد المعاهدة مع مرور الزمن. فالمفسر الذي يبحث عن تطبيق قاعدة في المعاهدة التي وضعت منذ زمن بعيد، عليه أن يبحث عن أساسها في الوقت الذي يفسر فيه. أنظر: **وليد البيطار**، القانون الدولي العام، المؤسسة الجامعية تونس ص202.

(41) **Pierre-Marie Dupuy** , Droit International Public, Paris, 2008, p. 337

After the conferences at the CEDH jurisprudence, including those, that the European Union entered into the international and European countries that entered the parties of the Convention (to save the international conventions that were effective) in the system's cadre Interpretation of the dispositions of CEDH

(42) See on the content of a systematicinterpretation Chr. Satlani, MethodologicalProceedings for the Exclusion and Reduction of Crime, 1999, pp. 115ff., 121, where, amongotherthings, itiswritten: "According to systematicinterpretation, the meaning of an individual provision isofteninferredonly if itisconsideredwithin the framework of an arrangement, in whatbelongs, whilebetweenPerissosadvances possible meaningsgiven by the word-linguisticmeaning of the law, itispreferredthat the importance, whichallows to memorize the harmony of a devicewithotherrules of the system, with lasting as a whole.

(43) **وغوم كمال**، مصادر القانون الدولي، دار العلوم، بيروت ص109. أنظر: **محمد سعيد الدقاق**، أصول القانون الدولي العام، ص118.

(44) **Richard Gardiner** , Interpretation of traités, Oxford, 2008, p. 272,

,whichreferstooneofthemanydecisionsoftheEuropeanCourt

,inwhichitusesthemethodologicalinterpretation (: "However, itshouldbenotedthatinpractice obligationsarisingfromothertreatiescoveredbytheapplicationaresometimesreferredtowithoutdis

tinctionofinterpretationbyArticle 31(3)(c). Forexample, inHN v. ,Poland (no. 77710/01 13September
theEuropeanCourtofHumanRightsaffirmedthattheEuropeanConventiononHumanRights,(2005 . mustbeappliedinaccordancewiththeprinciplesof ..." :

(45) . The references are mentioned in Chr. Satlani, The procedural development of the International Penal Code in the State of Rome of 1998 and related questions, 2009, pp. 14-16.

(46) Whichentered on 01/07/2002.

(47) Which was accepted by UN General Assembly Resolution 3068 of 30/11/1973 and entered into force on 18/7/1976, while 107 countries have already ratified it, as a manifestation of racial segregation of German origin, committed mainly against the Jews of Europe and the Negroes of South Africa.

(48) **Duncan B. Hollis** , Defining Treaties, In The Oxford Guide To Treaties ,oxford ,p. 11, 2012

(49) **richard k. Gardiner** , treatyinterpretation ,p186-87 ,oxford ,2008.

(50) The specificity of "humanrights" lies in the factthattheybelong to the individual as a humanbeingwhocannotbedeprived of the essence of theserightsunderanycircumstances. As such, they are inherent to the humanbeing as such. The Universal Declaration of HumanRights, as well as the International Covenant on Civil and PoliticalRights and the International Covenant on Economic, Social and Cultural Rights, all express thisfundamental moral foundation in the first paragraph of theirpreambles by recognizing "the inherentdignity... and the equal and inalienablerights of all members of the humanfamily." In thiscontext, the universality of rightsisexpressed,

(51) For information on the interpretative function of digraphs, see Vienna Convention on the Law of Treaties 1969, Article 31.

.**Gardiner, Richard K.** , Treaty Interpretation, Oxford University Press, 2008, pp. 192–197

(52) **Kelsen,Hans** ,Principles of public international law ,p275

The preamble to the Second Optional Protocol to the International Covenant on Civil and (53) PoliticalRights, an international treatyadopted by the United Nations General Assembly and aimed at the definitive abolition of the death penalty, emphasizes the importance of abolishing the death penalty for the protection and promotion of humanrights. It thereforerequires the commitment of Member States to this end.The Convention against Discrimination in Education isreferred to in the preamble to the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of TheirFamilies.

(54) Introduction to international records, such as the contracts, the titles of the records, the points of the parties contract, etc. In principle, the beginning is not direct juridiquementcontraignant, but it is inserted into a constitution, a loi or a contrat. In a difficult situation in the European Union, there are several previous types of considérants that appear in the original contract , in specific directives (direct UE) , providing information on the authentication of the original contract; In other terms, the interaction between the norm and the donor has come to him.
observée.https://wirtschaftslexikon.gabler.de/definition/praeambel-46052

(55) He will be given to the interpretation of standard accords . This term comes to the Latin word “praeambulare” or the Latin expression “praeambulum” used in XVe car and sign littéralement “allez-y”,
«introduction» https://www.juraforum.de/lexikon/praeambel
Today, "preamble" refers to a formal declaration, often written in sophisticated language, at the beginning of a document, particularly a constitution or an international treaty.

(56) **MK Yasseen**, Interpretation of the Treaties according to the Vienna Convention on Treaties Law, RdC, p. 151, 1976

See: "Report of the Maternity Protection Committee," Provisional Record No. 20, International Law Commission, Eighty-eighth Session, 2000, para. 68, where the ILO Legal Counsel considers that the preamble to conventions may be used for interpretative purposes as part of the context. During ILO standard-setting, the question of the binding force of the preamble was repeatedly raised. The Legal Counsel consistently reiterated that the preamble is non-binding and that its main function is to provide the context appropriate to the instrument. International Labour Organization.http://learning.itcilo.org/ilo/jur/fr/2_1_2_1.htm.

(57)In the case of France and the United States of America concerning the rights of US citizens in Morocco, the CIJ held that in interpreting the provisions of the Algeciras Law of 1906, it was advisable to take into account its objectives set forth in the preamble. In the same case, the Court hardly needed to recall that the interpretation given by the US government of the 1880 US-Moroccan Madrid Agreement went beyond the latter's objectives set forth in its preamble. ICJ, Reports 1952, pp. 196-197, in the same case, the Court hardly needs to recall that the interpretation provided by the American government of the 1880 American-Moroccan Madrid Convention went beyond the purposes of the latter, as set out in its preamble (ICJ, Reports 1952, pp. 196-197).

In determining the legal nature of South Africa's mandate over South West Africa, the ICJ also referred to its preamble (Preliminary Objections, Reports 1962, pp. 330-331).

(58) **QuocDinh,P. Daillier** ,A. Pellet: *Public international law* (7th edition) ,LGDJ ,Paris , ,2002p. 131 .

(59)Sincediabetics are not part of the operativetext of treaties, thereis a viewthatitisideal to negotiatethemonlyafter the basic treatytext has been determined; seeAust, p. 368, and Pazarci, p. 2, para. 1.

(60)**MK Yasseen**.op. *cit*: p ,. 35.

(61) **Kovacs, Peter** , 'Article 7. Full powers', in Olivier Corten and Pierre Klein (eds), The Vienna Conventions on the Law of Treaties: A Commentary, Vol. I, Oxford University Press, 2011, pp. 126–144.

(62) **Mbengue, MakaneMoïse**, 'Preamble', in RüdigerWolfrum (ed.), version of September 2006, Max Planck Encyclopedia of Public International Law, Oxford University Press, http://www.mpepil.com.

(63).The 1949 Diplomatic Conference, through its third committee, which was formed to discuss the seven draft conventions, addressed the issue of the preamble. There was heated debate within these committees on the matter. While there was no substantive objection to the inclusion of the preamble in the four conventions, or to the proposed draft preambles, it proved difficult to agree on their precise content. The Holy See's proposal, in particular, that "every preamble should include some reference to God" led to controversy. Other proposals emphasized the importance of indicating that States Parties should prohibit certain violations of the conventions and impose penalties for specific violations. See the Final Record of the 1949 Geneva Diplomatic Conference, Vol. 2-A, p. 33. The First Committee was entrusted with the task of discussing the draft revision of the Geneva Convention relating to the wounded and sick of 1929, the Second Committee with the task of discussing the draft revision of the Geneva Convention relating to prisoners of war, and the Third Committee with the task of discussing the draft new convention relating to the protection of civilians in time of war. See the Final Record of the 1949 Geneva Diplomatic Conference, Vol. 2-A, pp. 112-114.

(64)If thereis a dispute over the content of individualcontractual clauses, thisshould first bedeterminedfrom the wording of the agreement and usingvariousinterpretationmethods. One question that arises iswhatpurpose a particularregulationshould serve. The preamblecanprovide guidance on thismatter.

If the parties forget or fail to explicitlyregulate a particular aspect in the agreement, the interpretation of the supplementarycontractisused to examine whetherthere are any indications of the regulation the parties would have implementedhadtheytakenthis aspect intoaccountwhenconcluding the contract. Here, too, the preamblecanbeveryuseful. Against this background, the wording in the preambleshould at least bechosenwith the same care as in othercontractual clauses.

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(65) **Pazarci, Hüseyin**, 'Preamble', in Olivier Corten and Pierre Klein (eds), The Vienna Conventions on the Law of Treaties: A Commentary, Vol. I, Oxford UniversityPress, 2011, pp. 1–11.

[66]The judge of the El Oued Court, Misdemeanor Division, in case No. 00291/21 dated 04/27/21, based his reasoning for the ruling on the provisions of the preamble to the Constitution, which stated: "After reviewing the provisions of the Constitution of the Second Algerian Republic, approved by the people in 2020 and published in the Official Gazette No. 82 issued on 12/30/2020, especially its preamble..."

(67) Projet d'articles sur le droit des traités et commentaires », *ACDI* , 1966, vol. II, p. 238

(68).The International Law Commission seems to consider that the national judge must interpret international law according to international methods, because its work and explanations on interpretation are also addressed to the latter. See: "Draft Conclusions on Subsequent Agreements and Practice in the Context of Treaty Interpretation and Commentaries Thereon", CIDA, 2018, vol. ii (2), p. 17.

(69) **Richard Gardiner**.Interpretation of Treaties, Oxford, 2008, pp. 152 et seq., where it is understood that both case law and legal theory avoid formulating a complete definition of good faith, which would be accompanied by at least an indicative list of cases.

(70) **سهيل حسين الفتلاوي**، القانون الدولي العام، المكتب المصري للنشر، 2002، مصر، ص 74.

(71) See: International Court of Justice, Reports 1994, pp. 120-122,

Robert Kolb, Interpretation and Creation of International Law, Bruylant. Brussels, 2006, pp. 421-423.

(72) **محمد المجذوب**، المرجع السابق، ص 672. أنظر أيضا: **محمد فؤاد عبد الباسط**، المرجع السابق، ص 211.

(73) **Ian Brownlie**., Principles of Public International Law, 2008, pp. 630 et seq. Malcolm N. Shaw, International Law, 2008, pp. 932 et seq. Gerhard Werle, Principles of International Law, 2005, pp. 54 et seq.

(74) **P. DAILLIER, M. FORTEAUet A. PELLET** ,*Droit international public* , 8e éd., Paris, LGDJ, 2009, pp. 258-261.

[75]Article 86 of Electoral Law No. 89-13 of August 7, 1989 is among the articles that the Constitutional Council was asked to determine the constitutionality of. The third paragraph of the law stipulates that the spouse of a candidate for the elections to the National People's Assembly must have original Algerian nationality. The Constitutional Council considered this condition to be in conflict with the Constitution and with the 1966 International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, as legal instruments that explicitly prohibit all discrimination of any kind. The Constitutional Council based its decision on the argument that any agreement, after its ratification and publication, is incorporated into national law and, pursuant to Article 123 of the Constitution, acquires supremacy over laws, and authorizes every Algerian citizen to invoke it before the judicial authorities. The same ruling was applied to the third paragraph of Article 108 of Law No. 89-13, which requires that the declaration of candidacy for the presidency of the Republic be

accompanied by a certificate of original Algerian nationality for the candidate's spouse. This condition was made unconstitutional through Decision No. 95. -01, issued on August 6, 1995. See: Al-KhairQashi, "The Application of Conventional International Law in Algeria," Journal of Humanities and Social Sciences, University of Batna, Issue 4, pp. 22-25, 1995.
See: Khaled Hassani, Journal of Constitutional Law and Political Institutions, Enforcement of International Treaties in the Algerian Legal System, Part 1, Issue 1, pp. 149-162.

(76)Salah al-Din Ali, the previous reference, p. 32
(77) **Robert Kolb**,Interpretation et creation du droit international, Bruylant - Bruxelles, 2006, p. 532.
78(Germany v. United States of America, 27.6.2001, para. 98 et seq., 102.
(79)The object and purpose of the Statuteis to enable the Court to perform the functionsprovided for therein, in particular the essential function of the judicialsettlement of international disputes through binding decisions in accordance with Article 59 of the Statute. The context in which Article 41 of the Statute must beconsideredis to avoid the Court beinghindered in the exercise of itsfunctions by failing to safeguard the rights of the parties before the Court. It followsfrom the object and purpose of the Statute, as well as from the provisions of Article 41 read in thiscontext, that the authority to refer to provisionalmeasuresmeansthatsuchmeasures must be binding, to the extentthat the authorityconcernedconsidersitnecessary, whencircumstancessorequire, to protect and avoidprejudice to the rights of the parties as determined by the final judgment of the Court. To assertthatprovisionalmeasuresspecifiedunder Article 41 may not be binding wouldbe incompatible with the object and purpose of that Article.

(80) **Ian Brownlie**,Principles of Public International Law, 2008, p. 635, where it refers to the principle of effective interpretation (principle of effective interpretation). For international justice, ICJ Reports 1999, pp. 432, 455.
(81) **Chr. Satlani**Positive obligations of state authorities to safeguard and protect human rights in the case law of the ECtHR, LegalStep 2010.
(82) For negative and positive content from home, at the EDH, 28.6.2001, VGT c. Switzerland, no. 24699/94, § 45
Under the provisions of Article 1 of the Convention, Contracting States recognize “to any relevant personwithintheirjurisdiction the rights and freedoms set forth in the Convention.
A negative obligation of a state by a state that refuses anyjurisdiction over rightsguaranteed by the constitution “has no positive obligations in essence.” In thisway, a state cannotbeheldresponsible if itdoes not respect its obligation to registerinternalregulations.

(83).For executive efficiency and the joy of law is often right. , the judgment of the ECHR, 20.3.2008, Budayeva and others v. Russian, no: 15339/02, § 172: “The way to deal with the management of the insurance in advance of positive measures in order to protect the private property due to examinations in the previous year’s glow. The first sentence of the first paragraph of the article 1 of the Protocol n 1 to the Convention, which enshrines the right to respect for the people (Beyeler v. Italy [GC], no. 33202/96, § 98, CEDH 2000-I, cited above, § 133).
(84)In some cases, the effectiveness of treaty provisions implies the existence of positive obligations in addition to those expressly provided for in the text, as with regard to the right to life under the European Convention. The European Court of Human Rights in Cyprus v. Turkey affirmed that "the obligation to protect the right to life under Article 2 of the Convention, coupled with a State's general duty under Article 1 to 'secure to everyone within its jurisdiction the rights and freedoms set forth in [the Convention],' implicitly requires the need for some

form of effective official investigation when people are killed as a result of the use of force by agents of the State." In order to further strengthen the effectiveness of Article 2, the European Court has affirmed that the implementation of this procedural obligation is not subject to proof of a violation of the primary obligation under Article 2. As the Court stated, “The above-mentioned procedural obligation also arises from proof of an arguable allegation that a person last seen in the custody of State agents subsequently disappeared in a context which could be considered life-threatening.

(85) This EDH intervention will be located at the front of the interpretation so that the definition of vague concepts and the development of the educational institute (creation of the beginning of the beginning of the day) leads to the linguistic deficiency that corresponds to the international method.

(86) **N. VALTICOS**, « Les conventions internationales du travail devant le juge français », *Rev. crit. DIP* , 1967, n° 1, pp. 41-72.

(87) Article 9 of Decree 77-54 issued on 3/1/1977, and also Article 17 of PresidentialDecree No. 02-403 datedNovember 26, 2002, whichdefines the powers of the Minister of ForeignAffairs.

(88) Article 9 of Decree 77-54 issued on 3/1/1977, and also Article 17 of PresidentialDecree

(89) Order No. 70-86 of December 15, 1970, containing the Algerian Nationality Code, amended and supplemented by Order No. 05-01

(90) It means the unilateral government interpretation, since the application of international treaties is a unilateral application, i.e. unilateral interpretation, and the state must, while carrying out its interpretation, take into account the principle of good faith recognized in the provisions of international law. In the field of unilateral government interpretation, we will focus on what Algeria adopts in this field, touching on the various orders and decrees that define the competencies of the Ministry of Foreign Affairs in the field of interpreting international treaties, as it is the only body in Algeria responsible and authorized to interpret treaties. First: Decree of 1977: Article 9 of Decree No. 77/54 dated March 1, 1977 stipulated that “the Ministry of Foreign Affairs is responsible for interpreting international treaties, agreements, protocols and settlements. It is also within its sole jurisdiction, after taking the opinion of the relevant ministries, to propose support for this interpretation to foreign governments, organizations and judicial bodies. It has the right to provide an interpretation of these texts before national courts.” We can deduce from the text of this article several observations that we summarize as follows: The term “interpretation” differs from “interpretation.” The term “interpretation” is narrower in meaning than the term “interpretation.” The text may require interpretation, but it does not necessarily require explanation.

(91) Order No. 70-86 dated December 15, 1970 containing the Algerian Nationality Law, amended and supplemented by Order No. 05-01 dated February 27, 2005, (Official Gazette No. 15, p. 17).

.(92) The Minister of Foreign Affairs is responsible for interpreting international treaties, agreements, conventions, protocols and regulations to which Algeria is a party. He supports and assists the Algerian state’s interpretation with foreign governments and, where necessary, with international organizations and courts, as well as with national judicial bodies,” in accordance with Article 17 of Presidential Decree No. 02403 of November 26, 2002, which defines the powers of the Ministry of Foreign Affairs. Official Gazette, No. 79, of 2002

(93) .The first paragraphs of this article were amended by Order 05-01 issued in 2005, but paragraphs 05 and 06 maintained the same wording under Order 70-86

(94) The International Covenant on Civil and PoliticalRightsissued on December 19, 1966. Algeriajoinedit on September 12, 1989.

.(95)The constitutional founder's recognition of international treaties as having a higher status than the law will inevitably become part of the state's legal system, and the judge is obligated to apply them and is subject to the supervision of the Supreme Court in this regard, as is the case in all legal matters. In application of the principle of the supremacy of treaties over domestic legislation, the judge must apply international treaties with priority over the law in the event of a conflict with the latter. Therefore, any violation of the provisions of international treaties or the denial of their invocation before national judicial authorities may entail international responsibility for Algeria. Abdelli Sofiane, The Authority of the National Judge in Interpreting International Treaties, see: Ahmed Shatta, The Concept of Interpretation of International Treaties and the Authorities Competent Thereto, Journal of Legal and Political Studies, Issue 2, June 2015, p. 368