

Tratados II

Interpretación

Artículo 31. Regla general de interpretación.

1. Un tratado deberá interpretarse de buena fe (modulador de la literalidad) conforme al sentido corriente (literalidad) que haya de atribuirse a los términos del tratado en el contexto (*principio de integración, complementario*) de estos y teniendo en cuenta su objeto y fin
2. Para los efectos de la interpretación de un tratado, el contexto comprenderá, además del texto, incluidos su preámbulo y anexos:
 - a) Todo acuerdo que se refiera al tratado y haya sido concertado entre todas las partes con motivo de la celebración del tratado:
 - b) Todo instrumento formulado por una o más partes

Interpretación.

Artículo 31. Regla general de interpretación.

3. Juntamente con el contexto, habrá de tenerse en cuenta:

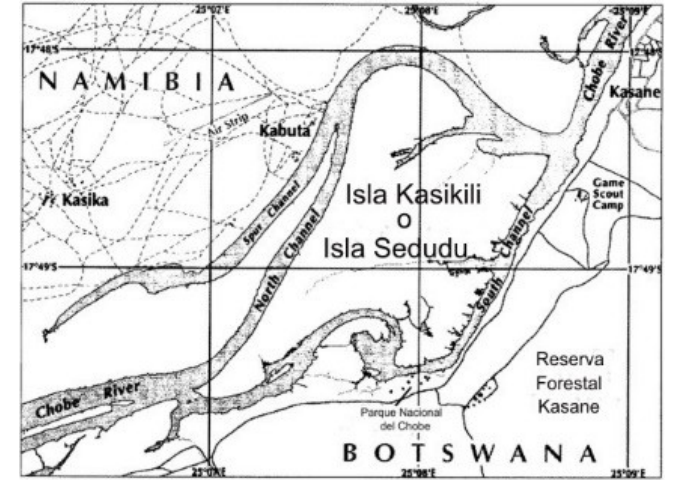
- a) Todo acuerdo ulterior entre las partes acerca de la interpretación del tratado o de la aplicación de sus disposiciones:
- b) Toda práctica ulteriormente seguida en la aplicación del tratado por la cual conste el acuerdo de las partes acerca de la interpretación del tratado:

Escuelas de Interpretación

Fitzmaurice distingue tres escuelas:

1. Textual (significado ordinario de las palabras)

**Case concerning Kasikili/Sedudu Island,
Botswana v Namibia, ICJ, 1999.
Canal principal del río Chobe**





Case concerning Kasikili/Sedudu Island, Botswana v Namibia, ICJ, 1999.

- En 1890 Alemania y el UK firmaron un tratado para delimitar sus esferas de influencia en África
- (18) neither Botswana nor Namibia are parties to the VCLT, but both of them consider art 31 (interpretation) is applicable inasmuch as it reflects CIL
- (40) Court: main channel is the part of the Chobe that offers more favourable conditions for navigation
- (41) Court: in accordance with the **ordinary meaning** of the terms the provisions of the 1890 treaty, the northern channel of the river chobe around Kasikili/Sedudu Island must be regarded as its main channel.

Case concerning Kasikili/Sedudu Island, Botswana v Namibia, ICJ, 1999

- (43) the court will now consider how and to what extent the **object and purpose** of the treaty can clarify the meaning to be given to its terms. [treaty was to determine spheres of influence and navigation was important, and that was the reason to put 'centre of the main channel']
- (46) The **travaux préparatoires** are of particular support to this reasoning.
- (47,51) the parties made abundant referenced to the subsequent practice of the parties and interpretative agreements to the 1890 Treaty as an element of interpretation



- In constructing a treaty, as in constructing a statute, We first look to its terms to determine its meaning
- The treaty says nothing about the obligations of the United States and Mexico to refrain from forcible abductions of people from the territory of the other nation, or the consequences under the Treaty if such an abduction occurs

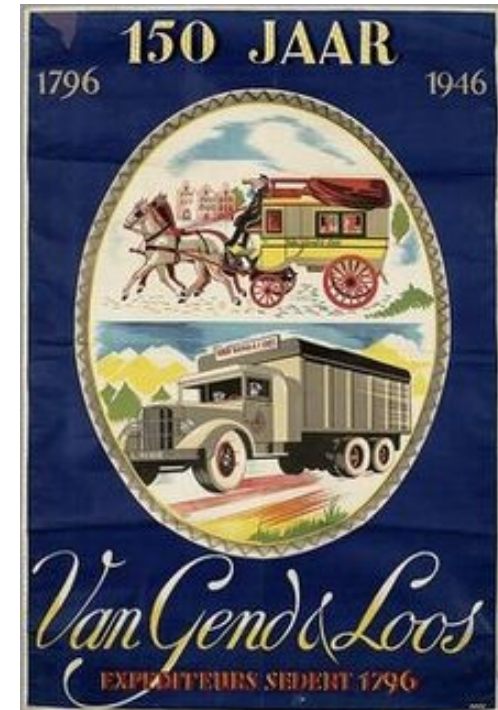
**US v. Alvarez Machain, 504
US 655 (1992), USSC, 1992**

Interpretación

Fitzmaurice distingue tres escuelas:

2. Intención de las partes;

**Van Gend & Loos v
Netherlands Inland Revenue
Administration, Case 26-22,
ECJ, 1962.**



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- “EEC Article 12.- Member States shall refrain from introducing between themselves any new customs duties on imports or exports or any charges having equivalent effect, and from increasing those which they already apply in their trade with each other”
- ¿El artículo 12 del EEC Treaty es auto aplicativo, es decir, los nacionales de un Estado pueden con base en ese artículo hacer una reclamación ante las cortes?

Van Gend & Loos v Netherlands Inland Revenue Administration, Case 26-22, ECJ, 1962.

- ... The objective of the EEC Treaty, which is to establish a common market, the functioning of which is of direct concern to interested parties in the community, implies that this treaty is more than an agreement which merely creates mutual obligations between the contracting states... The conclusion to be drawn from this is that the community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights..... community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage ... article 12 must be interpreted as producing direct effects and creating individual rights which national courts must protect

Interpretación

3. Teleológica (propósito y objeto). *Public Order*

Reparation for injuries suffered in the service of the UN, Advisory Opinion, ICJ, 1949.





Cuestionamientos

- La GA preguntó si la ONU tenía la capacidad de formular un reclamo internacional contra un gobierno de jure o de facto con el fin de obtener una reparación a i) la ONU, ii) a la víctima o personas vinculadas a la misma
- Si la respuesta fuere afirmativa cómo se concilia esta acción de la ONU con los derechos del Estado del cual la víctima es su nacional?
- Cuál es el daño resultante de la falla del Estado de cumplir sus obligaciones de protección a los agentes de la

Reparation for injuries suffered in the service of the UN, Advisory Opinion, ICJ, 1949.

- Does the organisation possess international personality?
The Charter does not settle this question. Subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community.
- The development of IL is influenced by the requirements of international life, this development culminated in the establishment of the UN whose purposes and principles are specified in the Charter, to achieve its ends the attribution of international personality is indispensable

Reparation for injuries suffered in the service of the UN, Advisory Opinion, ICJ, 1949.

- Diplomatic Protection rest on two bases: 1: defendant state has broken an international obligation towards the national state in respect of its nationals, and 2: only the party to whom an international obligation is due can bring a claim in respect of its breach. Nationality of claims rule gives no reason against recognising UN has the right to bring a claim.
- UN can bring an international claim against members and even not members of UN, 50 states had the power to bring into being an entity possessing **Objective international personality**.

VCLT: enmienda y modificación / Invalidez

Enmienda y Modificación: VCLT 39, 41

Invalidez

- ANULABLE: 46 derecho interno, 47 ultra vires, 48 error, 49 fraude, 50 corrupción;
 - Temple of Preah Vihear Case 1961 ICJ
- NULO: 51 coerción representante, 52 coerción estatal, 53 *ius cogens*

Terminación, suspensión, retiro

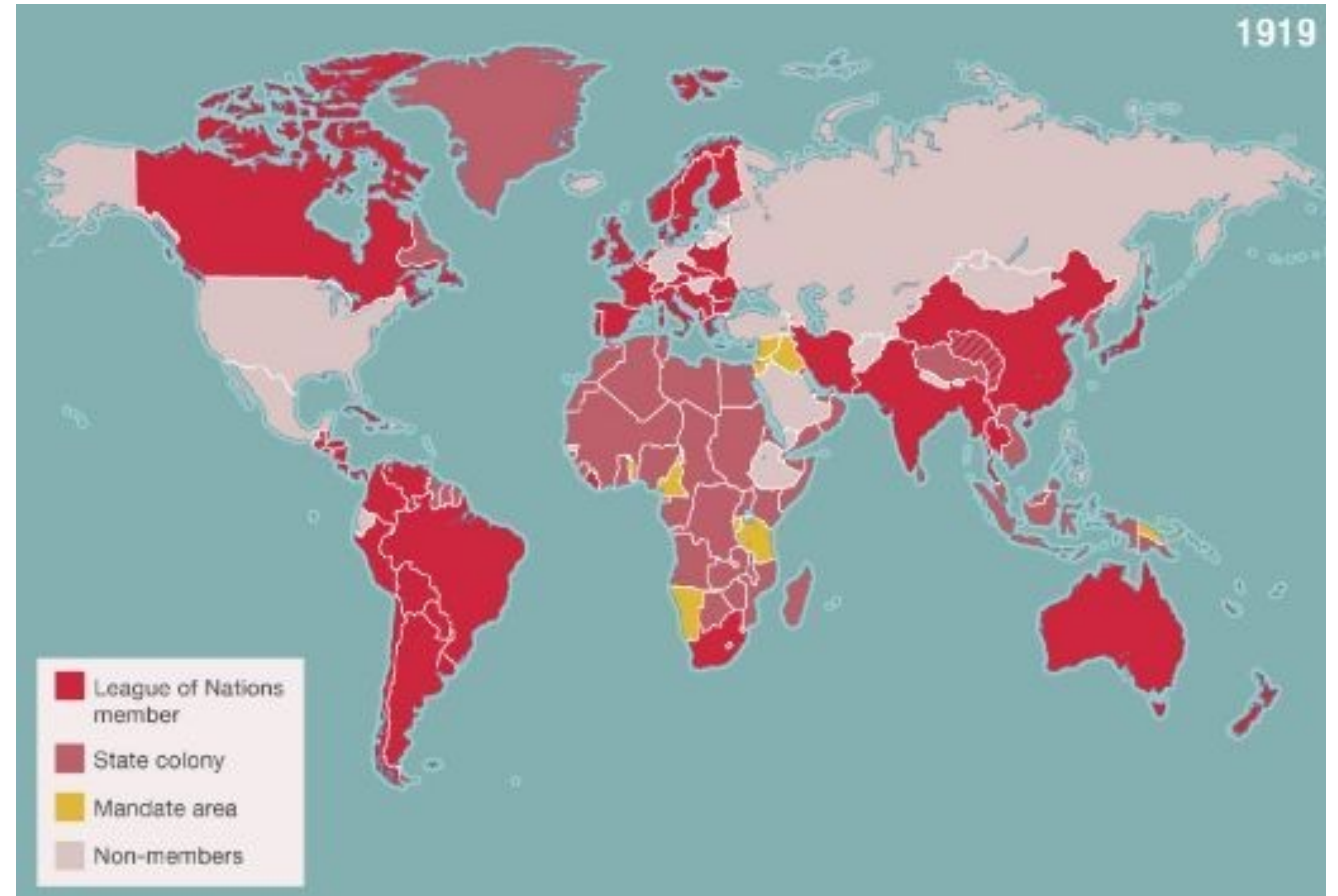
- (VCLT 60 material breach, 61 imposibilidad, 62 *Rebus sic stantibus*, 73 responsabilidad)

Gabcikovo Nagymaros project 1997 ICJ

Legal consequences for States of the continued presence of SA in Namibia SWA n/w SC res 276 (1970) ICJ 1971

Mandato

- La Sociedad de Naciones otorgó mandatos a los países que heredaron las colonias de Alemania y Turquía después de la WWI.
- Los mandatarios no ejercían soberanía sobre los territorios y estaban obligados a informar cada año a la Sociedad de Naciones sobre las medidas civilizadoras y protectoras que las preparaban para la independencia





Legal consequences for States of
the continued presence of SA in
Namibia SWA n/w SC res 276
(1970) ICJ 1971

- En 1840 los alemanes tomaron posesión y le llamaron África del Sudoeste Alemana
- En la WWI 1915 las fuerzas de la Unión Sudafricana derrotaron a los colonos alemanes
- La Sociedad de las Naciones dio a Sudáfrica el mandato de Namibia

Namibia

- Los sudafricanos desde el inicio impusieron el Apartheid
- En 1946, la GA exige a Sudáfrica se una al nuevo sistema de Administración Fiduciaria.
- En 1947, Sudáfrica informó a la ONU la anexión del territorio
- En 1949, Sudáfrica informó a la ONU de que no volvería a transmitir información
- En 1950, en una consulta anterior, la CIJ (International Status of South West Africa) determinó que Sudáfrica seguía teniendo obligaciones internacionales para con el Territorio, y que las

Namibia

- El 27 de octubre de 1967 la GA de la ONU dio por terminada la administración
- En 1969, el Consejo de Seguridad reconoció el término del Mandato, declaró ilegal la presencia continuada de Suráfrica, y le pidió que retirara su administración de forma inmediata. En 1970 el SC (res. 276) dijo que todo lo que hiciera Sudáfrica en Namibia era ilegal e inválido
- Namibia se independizó en 1990



Legal consequences for States of the continued presence of SA in Namibia SWA n/w SC res 276 (1970) ICJ 1971

- The UN treaty established a relation between all Members and every mandatory power, the party which disowns or does not fulfil its obligations cannot be recognized as retaining the rights which it claims to derive from the relation
- According to a general principle of IL, incorporated in VCLT, the right to **terminate a treaty** on account of breach must be presumed to exist in respect of all treaties, and the consent of the wrongdoer to such form of termination cannot be required.
- VCLT concerning termination of treaty on account of breach may be considered as a codification of CIL, in the light of these rules only a **material breach** (repudiation or violation of provision essential to accomplishment of object or purpose) justifies termination

Legal consequences for States of the continued presence of SA in Namibia SWA n/w SC res 276 (1970) ICJ 1971

- An **illegal** situation cannot remain without consequence. SA being responsible has the obligation to put an end. Member states of UN are obliged to recognize the illegality and invalidity of the act and refrain from lending support and assistance and to abstain from entering into treaty relations with SA in cases on which it acted on behalf of Namibia

Legal consequences for States of the continued presence of SA in Namibia SWA n/w SC res 276 (1970) ICJ 1971

- The termination of the Mandate and the declaration of the illegality of SA presence are opposable to all states in the sense of barring erga omnes the legality of the situations which is maintained in violation of IL.
- In particular no State which enters into relations with SA concerning Namibia may expect the UN or its members to recognise the validity or effects of such relation. Namibia is a people which must look to the International community for assistance in its progress towards the goals for which sacred trust was institute

Relación con el Derecho consuetudinario

- VCLT 38, 43, 53, 64
- North Sea Continental Shelf Cases 1959 ICJ
- Military and Paramilitary Activities in and Against Nicaragua, ICJ