

Interpretación

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VCLT. 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

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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:

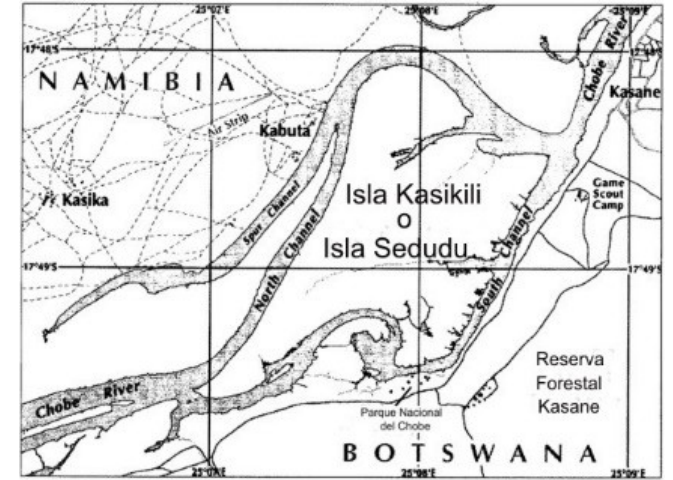
Escuelas de Interpretación

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

(Main Channel)



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

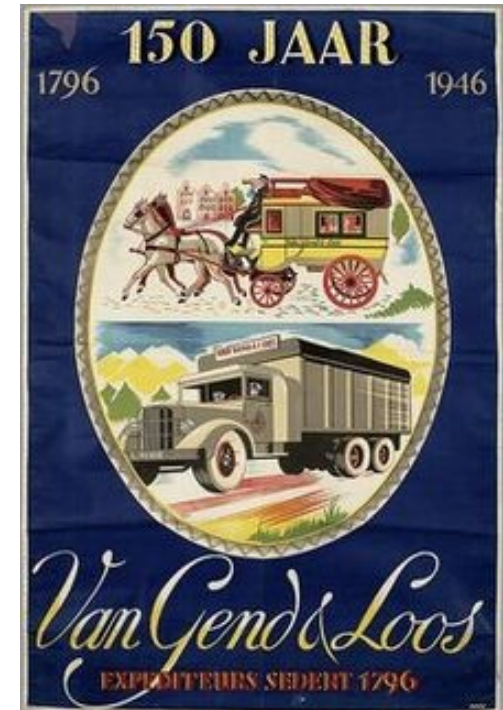
**US v. Alvarez Machain, 504
US 655 (1992), USSC, 1992**

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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) la ONU, b) a la víctima o personas vinculadas a la misma
- Si la pregunta fuere afirmativa cómo se concilia esta acción de la ONU con los derechos del Estado del cual la víctima es su nacional?
- El daño resultante de la falla del Estado de cumplir sus obligaciones de proteger a los agentes de la organización in la

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- 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

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- 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**