

International Treaties Authenticated in Two or More Languages

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This article briefly discusses the problem of interpretation of international treaties drawn up in two or more languages with special regard to the Alpine Convention and the experience of the LexALP project.

1. International law and interpretation of treaties

The application of international law (as it is for all branches of law) presupposes an activity of interpretation (cf. Yasseen 1976, Köck 1976, Bos 1980, McRae 2002) in order to define the meaning and range of its rules. It is indeed a delicate task, given that many international disputes are concerned with the interpretation of international agreements.

The international community does not have a dedicated body empowered to provide States with a binding interpretation of norms, even though the parties to a dispute may confer such a competence on an *ad hoc* arbitral Tribunal or the International Court of Justice.

The rules of interpretation were codified in 1969 in the Vienna Convention on the Law of Treaties (art. 31-33)¹. The Vienna Convention distinguishes between a general rule of interpretation and supplementary means of interpretation. The General rule in article 33 of the Vienna Convention provides that:

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

This rule expresses the so called textual approach of interpretation, based on the ordinary meaning of the terms used in the text of the treaty, in the light of the context as well as of the object and purpose of the treaty. In the Advisory Opinion of 3rd March 1950², the International Court of Justice observed that:

...the first duty of a tribunal which is called upon to interpret and apply the provisions of

1 *United Nations Treaty Series*, vol. 1155, p. 331.

2 *Competence of Assembly regarding admission to the United Nations*, Advisory Opinion, I.C.J. Reports 1950, p. 8.

a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter.

If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean when they used these words.

Article 31, paragraph 2, defines the concept of ‘context’:

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
- (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

In accordance with article 31, paragraph 3, the interpreter shall also take into account any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions (cf. Voicu 1968), any subsequent practice in the application of the treaty (cf. Capotorti 1987), which establishes the agreement of the parties regarding its interpretation, and any relevant rules of international law applicable in the relations between the parties. Finally, a special meaning shall be given to a term if it is established that the parties so intended (cf. article 31, paragraph 3 of the Vienna Convention).

Article 32 of the Vienna Convention provides for supplementary means, such as preparatory work (cf. Lauterpacht 1934) or the circumstances in which the treaty was concluded, in order to confirm the interpretation resulting from the application of article 31 or to determine the meaning when the interpretation according to article 31 leaves it still ambiguous or obscure.

International disputes may concern the interpretation of international agreements authenticated in two or more languages (cf. Hardy 1961, Shelton 1997), where the divergence in the interpretation of the treaty may be caused by a discrepancy in the meaning of the texts.

On this point article 33 of the Vienna Convention (“Interpretation of treaties authenticated in two or more languages”) provides that:

- 1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty are presumed to have the same meaning in each authentic text.
4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

Therefore, on the basis of the above mentioned rules it can be assumed that the terms of a treaty shall have the same meaning in all languages in which the text has been authenticated. When a comparison between the authentic texts reveals a discrepancy of meaning and the divergence of interpretation still persists, the interpreter has to individuate the meaning that best reconciles the texts, having regard to the object and purpose of the treaty. As a result, it is of primary importance to give preference to an interpretation that is compatible with both texts and not an interpretation that, although compatible with one of the texts, is in contradiction with the other. Consequently, a comparison of all authentic versions is necessary in order to find the meaning that reconciles all versions of the treaty.

Obviously in case of doubt the interpreter enjoys a certain degree of discretion that only an authentic interpretation contextually furnished by the contracting parties or provided subsequently to the conclusion of the agreement can reduce or eliminate.

2. The Alpine Convention and the experience of the Lex-ALP project

A divergence in interpretation necessarily produces a divergence in application, with the consequence that an agreement might not have a uniform application in the territory of the contracting States. Such a situation is to be avoided, especially when treaties concern subjects of general interest not only for the contracting parties, but for the international community as a whole. The long-term protection of the natural ecosystem and the sustainable development can certainly be included among such topics of general interest. Both are objects and aims of the Convention on the Protection of the Alps (Alpine Convention) signed on 7th November 1991.

In the case of the Alpine Convention (and its Protocols), whose texts have been authenticated in French, German, Italian and Slovenian, the interpretation problem affects both the organs of the domestic legal system having competence to enforce the treaty and, at international level, the representatives of the member States, the officials, the interpreters and translators (cf. Vandeveldt 1988).

The LexALP project responds to the demand for useful tools of a legal and linguistic nature to support those who operate within and around the Alpine Convention and, with them, a vast array of linguists, legal experts and diplomats. Throughout all project activities a group composed of legal experts and linguists, the ‘Harmonising Group’, was confronted with the above mentioned rules to decide on the harmonisation of Alpine Convention terms in four languages. The terms have been harmonised keeping in mind the letter and the context of the Convention, its objects and purposes, as well as the need to find a solution that may conciliate the texts in the various languages. Finally, all decisions have been taken in the light of the opinions expressed by the representatives of the Permanent Secretariat of the Alpine Convention and other observers represented in the Harmonising Group.

Bibliography

- Bos, Marteen (1980): Theory and Practice of Treaty Interpretation. In *Netherlands International Law Review*. Cambridge University Press, 135 ff.
- Capotorti, Francesco (1987): Sul valore della prassi applicativa dei trattati secondo la Convenzione di Vienna. In *Etudes en l'honneur de Roberto Ago*, I. Milano: Giuffrè, 197 ff.
- Hardy, Jean (1961): The Interpretation of Plurilingual Treaties by International Courts and Tribunals. In *British Year Book of International Law*. London/ Oxford: Clarendon Press, 72 ff.
- Köck, Heribert Franz (1980): *Vertragsinterpretation und Vertragsrechtskonvention*. Berlin: Duncker & Humblot.
- Lauterpacht, Hersch (1934): Les travaux préparatoires et l'interprétation des traités, in *Recueil des Cours de l'Académie de Droit International de la Haye*, (II). Boston: Martinus Nijhoff Publ., 713 ff.
- McRae, Peter (2002): The Search for Meaning: Continuing Problems with the Interpretation of Treaties. In *Victoria University of Wellington Law Review*. Unpublished Masters Research paper, Victoria University of Wellington, 2001.
- Vandevelde, Kenneth J. (1988): Treaty Interpretation from a Negotiator's Perspective, in *Vanderbilt Journal of Transnational Law*. Nashville: Vanderbilt University, School of Law, 281 ff.
- Voicu, Ioan (1968): *De l'interprétation authentique des traités internationaux*. Paris: Pedone.
- Yasseen, Mustafa K. (1976): L'interprétation des traités d'après la Convention de Vienne sur le droit des traités. In *Recueil des Cours de l'Académie de Droit International de la Haye*, (II). Boston: Martinus Nijhoff Publ., 3 ff.