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The Law of Treaties with Special Focus on Evolutionary Interpretation of the Treaties

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ABSTRACT

The Vienna Convention on the Law of Treaties, 1969 is the primary source of treaties that dominates the international law regime. The parties to this treaty are bound by the principles laid down under this Convention when they enter into a treaty. The present paper tries to cover the major aspects of treaties in international law. The paper discusses the process and formalities that are needed to be fulfilled by the States to form and sign a treaty. The concept of reservations to treaties has been discussed comprehensively. The main focus of the paper is the evolutionary interpretation of treaties. The paper discusses several dimensions of evolutionary interpretation used by the international courts and such state members. Evolutionary interpretation is one of the main foundational aspects that the international law is built upon. It is very important for the States to be flexible with changing times. It is important to consider the retrospectivity of evolutionary interpretation of a treaty. The present paper discusses the same. The paper further observes how the modification of treaties is distinct from amendment and interpretation of a treaty. In the conclusion, the paper clarifies the position of evolutionary interpretation in international law.

Keywords- *States, International Law, interpretation, obligations, rights.*

I. INTRODUCTION

A treaty aids the States to transact a vast amount of work, wherein the international law procedures are not enough for their working on an international level. The treaty helps in setting up rights and obligations of the State parties, which are binding in nature. There has been no easier way of reflecting the objectives of the States, that can be agreed upon by them. Therefore, the concept of treaty and its operation holds paramount importance to the evolution of international law.

Majority of the international disputes are concerned with the interpretation and the consequences of treaties. It is the state relations and the practical content of such state relations that has been regulated by such treaties. The legal foundation of the international organizations,

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such as that of the United Nations, are the multilateral treaties signed by the nations. They provide with the arrangements between the nations for matters concerning aviation, boundaries, investment protection, extradition, and shared natural resources. The International Law Commission (hereinafter referred to as "**the ILC**") has majorly dealt with the law of treaties ever since 1949. The adoption of 75 draft articles by the ILC in 1966, formed the basis for the Vienna Convention on the Law of Treaties, 1969 (hereinafter referred to as "**the VCLT**"). The VCLT came into force on 27th January, 1980.[2] At the time of the adoption, the VCLT was not taken as a whole declaratory document on the international law since various provisions of this treaty required progressive development. However, even then, the treaty has had a strong influence in the field of international law since it constitutes presumptive evidence of emergent rules.[3] The VCLT is considered as a primary source of law that applies to 111 states that are party to this treaty.

The convention was adopted by a substantial majority at the Vienna Conference covering the main aspect of the law of treaties. The covenant does not deal with the treaties signed between states and organizations, or the treaties signed between two or more organizations[4]. It also does not deal with state succession to treaties[5], and the effect of armed conflict on treaties[6]. Each of these areas which are not covered by the convention, is covered by separate projects undertaken by the ILC.

Article 2(1)(a) of the VCLT defines treat as "*an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.*" This article basically requires that the agreements under the convention is needed to be governed by international law. Thus, it does not include commercial agreements, entered into by the government under their national laws.

The basic and the most fundamental principle of a treaty is that the treaties are binding upon the parties and the parties need to perform their duties in good faith[7]. The rule is defined by a Latin phrase, pacta sunt servanda which means "agreements must be kept". This is one of the oldest principles of international law. This has been reaffirmed in Article 26 of the VCLT. It

[2] Vienna Convention on the Law of Treaties, May 22, 1969, 1155 U.N.T.S. 331.
[3] Villiger M, Commentary on the 1969 Convention on the Law of Treaties (2009).
[4] *See* Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, March 21, 1986, 25 I.L.M. 543-592.
[5] *See* Vienna Convention on Succession of States in Respect of Treaties, Aug. 22, 1978, 1946 U.N.T.S. 3.
[6] *See* Draft Articles on the effects of armed conflicts on treaties, with commentaries, 2011, 2 UNYBILC, part 2, para. 101, https://legal.un.org/ilc/texts/instruments/english/commentaries/1_10_2011.pdf.
[7] *See* Vienna Convention on the Laws of Treaties, *supra* note 1, Articles 26, 31, 46 and 69.

covers every international agreement since it lays down a minimum standard for the States to perform its duties under the treaty in good faith.

II. Requirements of a treaty

A treaty does not really have specific requirements with respect to its form in international law. However, just like any sort of agreement, it is important that through the treaty, the parties intend to create legal relationships between them. This is important so as to legally bind the State parties to fulfil their obligations under the treaty. In the ***South-West Africa cases***, the International Court has regarded a mandate agreement as being an essential part of a treaty[8]. In cases where the parties do not intend to create legal obligations upon themselves, such an agreement will not be a treaty. Although, the political effect of the agreement can still be considered.[9]

States however, do enter into a memorandum of understanding, which is not legally binding. The UK Foreign Office has observed that an MoU is usually used for informal arrangements between States for matter that cannot be accurately reflected through a treaty or in cases where it would be more appropriate than a treaty (for example, confidential agreements).[10] Non-treaty instruments play a large role in interstate dealings and are preferred over formal agreements, since the former is more flexible, can be kept confidential and relatively speedy. The non-binding factor plays a major role. They may not be legally binding, but they may have legal consequences.[11] Such informal agreements, being more personal in nature, can be easily amended and may be terminated by way of a reasonable notice. An issue related to this aspect came before the International Court in the ***Qatar v. Bahrain case***[12]. This was with respect to the signing of the minutes dated 25th December, 1990 by the parties and Saudi Arabia. The issue was that whether an agreement would be binding depending upon the terms of the agreement and the circumstances around it.[13] The Court observed that the Minutes is to be considered as a binding agreement since it created legal rights and obligations of the parties, to which they had consented.

III. Making of the treaties

(A) The Formalities

[8] South-West Africa cases, 1962 ICJ Rep. 319, 330.
[9] US Assistant Legal Adviser for Treaty Affairs, 1948, 8 A.J.I.L 515.
[10] UKMIL, 2000, 71 B.Y.I.L. 534.
[11] Heathrow Airport User Charges Arbitration, UKMIL,1992, 63 B.Y.I.L. 712.
[12] Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), 1994 I.C.J.112.
[13] *Id.* at 121.

The negotiation and enforcement of treaties depend upon the intention of the parties involved. There are no such express requirements for the form of the treaties.[14] Just like in the previous chapter, wherein the minutes of a conference had a legal effect of treaties.[15] The VCLT applies to agreements in the written form, however Article 3 mentions that this limitation is not prejudicial to the legal enforcement of treaties that are not in the written form.[16] The agreement can vary as per the parties involved i.e., it can be signed between states, or heads of the states, or the governments, or the governmental departments, whichever deems to be fit for the parties.

(B) Consent

After the negotiations and drafting of the treaties by the authorized stages, there still remains several stages that need to be looked upon before the treaty becomes a legally binding document. The text of the treaty drafted needs to be adopted by the parties as per Article 9 of the VCLT which says that, *"(2) The adoption of the text of a treaty at an international conference takes place by the vote of two thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule*." This procedure is followed in the United Nations General Assembly.[17]

In cases other than international conferences, an agreement can be adopted by way of consent of all the states involved in the agreement.[18] The consent of the state parties play a very important role in the formation of treaties since such consent binds the states to the treaty obligations. They act like contracts between the states. Article 11 of the VCLT mentions the means by which consent can be provided. This includes consent by "*signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means as agreed*".[19]

IV. Reservations to Treaties

Article 2(d) of the VCLT defines reservation as "*a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.*" Reservation is different from a statement on a treaty that does not have any legal effects, such as a political statement, a form of understanding or

[14] Temple of Preah Vihear (Cambodia v. Thailand), Preliminary Objections, 1961 ICJ Rep. 17, at 31-32.
[15] Qatar v. Bahrain, *Supra* note 18, at 120-122
[16] UNYBILC, Art. 3, 1966, Vol. II at 190,191.
[17] United Nations Charter, Art. 18, Jun. 26 1945, 1 U.N.T.S. XVI.
[18] Vienna Convention on the Laws of Treaties, *supra* note 1, Article 9(1).
[19] Vienna Convention on the Laws of Treaties, *supra* note 1, Article 11.

interpretive declarations.[20] The concept of reservation in international law of treaties has put forth a considerable uncertainty around the practice.

The International Courts have applied the definition of reservation from the VCLT in to relevant cases. The courts held that the statements made in those cases are to be considered as reservations. The definition was applied as customary international law since the parties were not bound by the VCLT.

In the case of ***United Kingdom/ France Continental Shelf***[21], the court of Arbitration had to decide the implications of a statement made by the French Republic, as a preliminary task of delimited the continental shelf boundary that existed between France and the United Kingdom. The statement was attached to French Republic's instrument of accession in 1965 to the Geneva Convention on the Continental Shelf. The statement provided with a condition that required the application of Article 6 of the Shelf Convention.[22] The Court had to decide whether such a statement is to be considered as a reservation or just an interpretive declaration. The Court said that – "*Although the third reservation doubtless has within it elements of interpretation, it also appears to constitute a specific condition imposed by the French Republic on its acceptance of the delimitation regime provided for in Article 6. This condition, according to its terms, appears to go beyond mere interpretation; for it makes the application of that regime dependent on acceptance by the other State of the French Republic's designation of the named areas as involving 'special circumstances' regardless of the validity or otherwise of that designation under Article 6*".[23] The Court classified the French statement as reservation.

In the ***Belilos case (Belilos v. Switzerland)***[24], an individual had challenged the practice of the Swiss Canton of Lausanne of trying certain crimes before a police board with a right to appeal to the normal courts, but only with respect to the issues of law. The Applicant claimed that her trial had violated the provisions of the European Convention for the Protection of Human Rights. Switzerland argued that it had made a reservation to the provision that ratified the European Human Rights Convention in 1974. The applicant argued that the statement was interpretive declaration and nothing else. The European Court of Human Rights after having heard the case, decided that the Swiss statement was in fact, a reservation.

The distinction between interpretive declaration and reservation is that even though the former

[20] MALCOLM SHAW, INTERNATIONAL LAW (Cambridge University Press 2017).
[21] Delimitation of the Continental Shelf (United Kingdom v. France), 54 I.L.R. 6.
[22] *Id.* at para 33.
[23] *Id.* at para 55.
[24] 10 Eur. Human Rights Rep. 466 (1988).

provides for an evidence of intention and understanding, it is not legally binding like the latter.

V. Interpretation of Treaties

The question of interpretation has always been one of the enduring issues faced by courts and tribunals. A unilateral interpretation of a treaty by one department of a state is not going to binding upon the other parties.[25] To ensure a uniform process of interpretation, rules and techniques for interpretation have been laid down in order to make it easier for the judicial bodies to resolve such issues.

There have been three basic approached following international law.[26] The first is the literal one, wherein the actual text of the agreement and its words are analyzed and emphasized upon.[27] The second approach is that where the intention of the parties while adopting the treaty, is used to solve ambiguity in the certain provisions and can be observed as a subjective approach. The third approach is rather a broad one. Its emphasis on the object and purpose of the treaty for the interpretation of one particular provision of that treaty.[28] It would be rather difficult to adopt one approach for the interpretation of a treaty.

VI. Evolution of the Interpretation of Treaties

The past and the present interpretation of the treaties is discussed in this chapter. It has been an observation that the present interpretation of treaties in international law, is dependent upon the intention of the parties.

Articles 31 and 32 of the Vienna Convention on the Law of Treaties lays down rules for interpretation of treaties. This interpretation aims to establish the consent of the parties with respect to a certain set of facts. Thus, it can be said the object of the interpretation of treaties is to establish the common intention of the parties involved, even though the Articles 31 and 32 of the VCLT do not make any mention of intention of the parties. However, Article 31(4) does provide with a variation, it says that- "*A special meaning shall be given to a term if it is established that the parties so intended*." This is the only provision that talks about the intention of the parties. It is the common intention that is given relevance in the interpretation of a treaty. Such is the approach that has been usually taken by the international courts and tribunals.

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[25] ARNOLD MCNAIR, LAW OF TREATIES 345-350 (Oxford University Press 1986).

[26] IAN SINCLAIR, THE VIENNA CONVENTION ON THE LAW OF TREATIES 114-115 (Manchester University Press 1984).

[27] Gerald Fitzmaurice, The Law and Procedure of the International Court of Justice, 1951-54: General Principles and Sources of Law, 30 Brit. Y.B. Int'l L. 1, 204-207 (1953).

[28] G. G. Fitzmaurice, Reservations to Multilateral Conventions, 2 (1) I.C.L.Q. 1, 7-8 (1953), http://www.jstor.org/stable/755719.

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In ***Delimitation of the Border between the States of Eritrea and the federal Democratic Republic of Ethiopia***[29], the Ethiopia- Eritrea Boundary Commission made the following observation for the interpretation of the treaties relevant in that matter-

"*The Commission will apply the general rule that a treaty is to 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. Each of these elements guides the interpreter in establishing what the Parties actually intended, or their common will*." [30]

Further in the case of ***Rhine Chlorides***[31], the tribunal made an observation on the general rule of interpretation of a treaty under Article 31 of the VCLT-

"*Should be viewed as forming an integral whole, the constituent elements of which cannot be separated. Moreover, this is the approach that is now taken by the International Court of Justice and by certain international arbitral bodies. All the elements of the general rule of interpretation provide the basis for establishing the common will and intention of the parties by objective and rational means*". [32]

The two cases mentioned above provide with four principles that can be drawn from their decisions. Firstly, the principle wherein the intention of the parties is needed to be established for the process of interpretation of the treaties, it would not be sensible be enough for express mentioning of intention as the basis for establishment. Secondly, such intention of the parties need to be the common intention and not the intention of only one or some of the parties. Thirdly, for the establishment of the intention of the parties, it would be relevant that the interpretation is to be based on rationality and objectivity rather than depending upon the subjective will or inner minds of the parties. Lastly, such intention of the parties is to be a presumed and objectivised intention of the parties for the purpose of avoiding any ambiguities in the future.

However, the interpretation of the simplest words in a treaty in an objective manner can lead to a subjective undertaking because even the rational minds will not accept the correct interpretation in certain cases. For instance, Article 77 (1) of the United Nations Convention on the Law of the Sea[33] provides that the Coastal states have sovereign rights over the continental shelf for the purpose of exploration and exploitation of the natural resources. It

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[29] I.L.R. (2002).
[30] Delimitation of the Border Between Eritrea and Ethiopia, 2002 I.L.R. 1, 34, para 3.4.
[31] (2004) 144 I.LR.
[32] Rhine Chlorides (Netherlands/ France), (2004)144 I.L.R. 259, 293.
[33] United Nations Convention on the Law of the Sea, Dec. 10, 1982,1833 U.N.T.S.

further states that "*the natural resources referred to in this Part consist of the mineral and other non- living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.*"[34]

From the abovementioned provision, the interpretation of the term 'sedentary species' has varied greatly by writers and the States. The interpretations have been subject based on the broader interests of the States that are involved and the broader views of the person who interprets them. The varying interpretations provide for an agreement of the means of interpretation that is to be adopted for an interpretation to be based upon correctly, considering the interpreters agree on such interpretations on the basis of such means of interpretation.

Such an approach has been considered as the right approach for the purpose of establishing an objectivised intention in accordance with the means of interpretation laid down in Articles 21 and 31 of the VCLT. This approach helps in further understanding of the concept of evolutionary interpretation of treaties.[35] The evolution of the interpretation of treaties is therefore, based on the rules of the interpretation codified in the VCLT, which like the other kinds of interpretation helps in establishing the intention of the parties. The international courts and tribunals have taken this approach in consideration while interpreting treaties in certain cases. The International Court of Justice's approach in its judgements such as Namibia[36], Aegean Sea[37], and Navigational Rights[38], is to establish "the intention of the authors as reflected by the text of the treaty and other relevant factors in terms of interpretation."[39]

In Magyar Helsinki Bizottág v. Hungary[40], such approach has been further exemplified by the Grand Chamber of the European Court of Human Rights (European Court). The case reflected upon the approach of the European Court which observed that "*the European Convention on Human Rights*" (ECHR) "*is a living instrument that is to be interpreted in the light of present-day conditions.*"[41] In the former case, the petitioner was a non-governmental organisation that sort certain information with respect to the working of an ex officio defence counsel. However,

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[34] *Id.,* Article 77(4).
[35] GEORGES ABI-SAAB ET. AL., EVOLUTIONARY INTERPRETATION AND INTERNATIONAL LAW 35-46 (Oxford Hart Publishing 2019).
[36] Legal Consequences for State of the Continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion), 1971 ICJ Rep 16, 35.
[37] Aegean Sea Continental Shelf (Greece v. Turkey) (Judgment), 1978 ICJ Rep. 3.
[38] Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua) (Judgement), [2009] ICJ Rep 213.
[39] *Id.* at 237.
[40] Magyar Helsinki Bizottág v. Hungary [GC], 2016 App no 18030/11 (Nov. 8).
[41] Tyrer v. United Kingdom, (1978) 53 I.L.R. 339, 353.

the Hungarian authorities denied the disclosure of such information and classified it as personal data as per the Hungarian law. The Grand Chamber observed in this particular case that, Article 10(1) of the ECHR which says that: "*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers*."[42] , also included a right to access to information. The Grand Chamber took a broad contextual interpretation to compare Article 10(1) of the ECHR with other international instruments such as the Article 19 of the International Covenant on Civil and Political Rights (ICCPR)[43], wherein the former provision does not expressly contain the right to seek information just like the latter. However on the question of whether the right to information would be inclusive into the provision or not, the Court held that it would necessitate "a more general analysis of this provision in order to establish whether and to what extent it embodies a right of access to State-held information."[44]

The Court rather put on emphasis on Articles 31-33 of the VCLT for its interpretation of the provision. The Court observed that a treaty on human rights need to be read as a whole and is to be interpreted in a manner that will help promoting internal consistency and harmonious construction of the provisions mentioned in it. The broader perspective of the Court was arguably, an exemplification to relying on the future conducts of the parties i.e. the evolving conditions of the world in general. The Court referred to an "evolving convergence as to the standards to be achieved within the Contracting States"[45]. The right to information can be perceived to be inherent in Article 10 of the ECHR which would be in consonance with Article 19 of the ICCPR and Article 19 of the United Nations Universal Declaration[46]. The Court termed its interpretation as a 'general analysis' of the interpretation of Article 10(1) of the ECHR. This approach in Magyar Helsinki Bizottság case is well aligned with the approach taken by other such international courts and tribunals that also include the International Court of Justice and the International Law Commission.

VII. Retrospectively of Evolutionary Interpretation of Treaties

Does the decision of the Court means that Article 10 of the ECHR was always meant to be interpreted in the way it was? That means whether such interpretation has a retrospective effect. The international jurisprudence has rather affirmed this revelation. The Permanent Court of

[42] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), Art. 10(1), Nov. 14, 1950, 213 U.N.T.S. 221.
[43] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.
[44] Magyar Helsinki Bizottág v. Hungary, *supra* note 46 at para 117.
[45] Magyar Helsinki Bizottág v. Hungary, *supra* note 46 at para 150.
[46] United Nations Universal Declaration, Dec. 10, 1948, G.A. Res 217 (III).

International Justice has made such an observation in the case of German Minority Schools[47]. It held that when the court provided for an interpretation of a treaty provision, then "in accordance with the rules of law, the interpretation given by the Court to the terms of the Convention has retrospective effect – in the sense that the terms of the Convention must be held to have always borne the meaning placed upon them by this interpretation".[48] This approach was further in another ICJ's decision in LaGrand[49]. In this case, the ICJ interpreted Article 41 of the Statute of the International Court of Justice[50]. The basis of the interpretation in this case was that the main object of the Statutes was to enable the court to carry out its functions in the manner which it was supposed to, under the Statute. The part where such interpretation was to be recognised retrospectively was observed later in case of Bosnian Genocide[51].

The evolutionary interpretation taken by the European Court in Magyar Helsinki Bizottság is to be considered as nothing but engaging in the "gradual clarification in the Convention case-law over many years."[52] The interpretation was further catching up. When one perceives the evolutionary interpretation as nothing but one of the clarifications regarding a statute, progressing over time and such interpretation is based on the intention of the parties then it is sensible enough to say that the evolutionary interpretations of treaty have retrospective effect.

VIII. Amendment and Modification of Treaties

The general clauses and the procedure for amendment and modification of treaties is mentioned in Articles 39- 41 of the VCLT. The meaning of amendment and modification of treaties may mean the same since they share a common objective involving the revision of treaties however, they are different in nature. Amendments involve a formal alteration of the treaty that impact all the parties to the treaty whereas, modification only refer to such changes to the treaty terms that impact specific parties only. The option for changes in the treaty is relevant due to the changing scenarios of the world. It is necessary that the alterations are to be adopted in the same original manner as the treaty was since it involves careful interpretation and attention of the States. Amendments are to be made with consent of the parties that are involved, and sometimes the issue is political. A treaty can be modified through the terms of another treaty.[53]

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[47] Access to German Minority Schools in Upper Silesia (Advisory Opinion), 1931 PCIJ Series A/B no. 40, 19.
[48] *Ibid.*
[49] LaGrand (Germany v. United States of America) (Merits), 2001 ICJ Rep 466.
[50] Statute of International Court of Justice (adopted 26 June 1945) 892 United Nations Treaty Series 119.
[51] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v, Serbia and Montenegro) (Judgment), 2007 ICJ Rep 230, para 452.
[52] Magyar Helsinki Bizottág v. Hungary, *supra* note 46 at para 127.
[53] Vienna Convention on the Laws of Treaties, *supra* note 1, Article 30.

It can also be modified with the subsequent establishment of a rule of jus cogens. Even though the States have a right to be a party to the treaty, it may choose to not be a party to the amended treaty.

IX. Modification v. Interpretation of Treaties

Modification and interpretation of the treaties is not supposed to be confused with each other. While interpreting a treaty, the parties need to agree with the meaning of the treaty which is consistent with the ordinary meaning, must be read in good faith and is in line with the object and purpose of the treaty. There have been instances where the international tribunal has adopted an interpretation to be consistent with the conduct of the party, which deviates from the ordinary meaning that further leads to the modification of the treaty.[54] The ILC has also contemplated to incorporate a provision which provides for modification "by subsequent practice in the application of the treaty establishing the agreement of the parties to modify its provisions."[55] However, the Draft article was not adopted into the Vienna Convention since it provided uncertainty. Modifications can be made as and when the parties wish to change their obligations that falls outside the scope of the treaty.

Subsequent party conduct may not impact the interpretation of the treaty, however it could still affect the rights of the parties through the doctrine of estoppel. In case where a party has surrendered its rights and the subsequent action of another party is dependent upon the this conduct, the previous will not be allowed to take its conduct bank.[56]

X. Conclusion

In international law, there is no generally agreed concept of "evolutionary" interpretation. International conventions, like the VCLT, do not include such a term. Evolutionary interpretation is not a stand-alone form of interpretation; rather, it is the product of combining one or more approaches to interpretation. However, evolutionary interpretation is used in international courts, quasi-judicial bodies, and public international arbitrations to make decisions. International courts, on the other hand, prefer terms like "living instrument" instead of "evolutionary interpretation."

Certain types of international treaties, such as treaties establishing international institutions or human rights treaties, can be seen as emblematic of the preference for evolutionary

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[54] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Jun. 21, Advisory Opinion, 1971 ICJ 16, para 22.
[55] Draft Articles on the Law of Treaties with Commentaries, Art. 38, 1966, II UNYBILC.
[56] Legal Status of Eastern Greenland (Denmark v. Norway), Judgement, Sept. 5,1933 PCIJ Series A/B, no. 53, para. 186.

understanding. That is not to suggest that this kind of interpretation is exclusive to these "unique" treaties, or that these treaties must be viewed in a complex manner every time.

It is possible that the interpretation of words used in the treaties does not evolve due to linguistic developments, but rather due to societal changes. As an example, the word 'fair' in the term 'fair trial' does not have to change its context. However, as social perceptions of what is 'fair' shift with time, so does the use of the term 'fair.'

Furthermore, if the treaty parties may not give a particular definition to a word, it might not be meant to develop. There are at least two reasons why evolutionary interpretation is important:

1. It guarantees that the rule of international treaties is complex and flexible.
2. It may be seen as a means of safeguarding the public interest in international law.

Changing international treaties, if at all necessary, is a lengthy procedure. The lack of express changes not made in the treaty by its "masters", i.e. states, is thereby compensated for by evolutionary understanding. The need for evolutionary understanding seems to have arisen from international courts' decision-making in order to keep international treaties in force. As a result, international courts will be able to substitute for a potentially reduced dynamic of state-led international law-making.

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