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A Description of Different Interpretations Which Can Postpone The International Treaty

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A DESCRIPTION OF DIFFERENT INTERPRETATIONS WHICH CAN POSTPONE THE INTERNATIONAL TREATY

A PAPER

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ABSTRACT

A paper entitled “A Description of Different Interpretations Which Can Postpone The International Treaty” discussed about interpretation process that is one of field translation. The data of this research are international treaties that can be postponed because of different interpretation. The scope of this writing is to find some types of interpretation are used in making of the international treaty and to find out why those can postpone the treaty. The method of research applied is descriptive qualitative. After analyzing the data, there are 4 kinds of interpretation used in the treaty, namely grammatical interpretation, systemic interpretation, historical and teleological interpretation and lastly logical interpretation and some rules to overcome this problem, also the example of the case that already happened before with the settlement.
ABSTRAK

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Assalamualaikum Warrahmatullahi Wabarakatuh,

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Medan, July 2017

Rendi Mulyadi
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CHAPTER I
INTRODUCTION

1.1 Background of the Study

The relationship between all of the countries in this world is very important. It can be a good way to cooperate and help each other. The world will become a better place, if they can unite and make a good relationship between them. Unfortunately, this is the real world, not a fairytale which lived happily ever after. There is always a conflict between all of the countries on the earth. This always appears on the surface because each country has a different thought about making this world a better place and has the ego to achieve it with their way.

The conflict cannot be avoided and they sometimes use a military action to finish the conflict. Fortunately, this rarely happens nowadays, because now people can access all the information freely and they can criticize the government who takes the military action. Many countries have to obey them, because it’s about their reputation which can make their economy falls. Therefore, they will take the diplomatic action to solve the conflict with another country. The United Nations can be a mediator and make a treaty that will make both sides agree to sign it.

McNair (1961:15) says that a treaty is an agreement under international law entered into by actors in international law, namely sovereign states and international organizations. A treaty may also be known as an (international) agreement, protocol, covenant, convention, pact or exchange of letters and among
other terms. Regardless of terminology, all of these forms of agreements are under international law, equally considered treaties and the rules are the same.

Aust (2005:67) says, “Treaties can be loosely compared to contracts: both are means of willing countries assuming obligations among themselves and a country to either that fails to live up to their obligations can be held liable under international law.” A treaty is an official express written agreement that states use to legally bind themselves. A treaty is the official document which expresses that agreement in words and it’s also the objective outcome of a ceremonial occasion which acknowledges the countries and their defined relationships.

Unfortunately, the treaty sometimes will come to dead end, if both sides cannot agree to the content of it. Many factors can be the obstacle to make the treaty successful. One of them is the difference of interpretations between both sides.

Bassnett (1990:12) says that interpretation is an assignment of meaning to the symbols of a formal language. The general study of interpretations of formal languages is called formal semantics.

Linderfalk (2007:48) says that the language of treaties must be interpreted when the wording does not seem clear or it is not immediately apparent how it should be applied in a perhaps unforeseen circumstance. The Vienna Convention states that treaties are to be interpreted ‘in good faith’ according to the ‘ordinary meaning given to the terms of the treaty in their context and in the light of its object and purpose’. International legal experts also often invoke the
principle of maximum effectiveness, which interprets treaty language as having the fullest force and effect possible to establish obligations between the countries.

Gardiner (2008:98) says that no country to a treaty can impose its particular interpretation of the treaty upon the other countries. Consent may be implied, however, if the other countries fail to explicitly disavow that initially unilateral interpretation, particularly if that state has acted upon its view of the treaty without complaint. Consent by all countries to the treaty to a particular interpretation has the legal effect of adding another clause to the treaty. This is commonly called an ‘authentic interpretation’.

Boczek (2005:56) says that international tribunals and arbiters are often called upon to resolve substantial disputes over treaty interpretations. To establish the meaning in context, these judicial bodies may review the preparatory work from the negotiation and drafting of the treaty as well as the final, signed treaty itself.

1.2 Problem of the Study

The problem of this study can be defined as below:

1) What types of interpretations can postpone an international treaty?

2) Why can different interpretations postpone an international treaty?
1.3 Scope of the Study

There are many factors that can postpone an international treaty and also different interpretations can be the obstacle of every kind of text. In this study, the writer limits only to the description of different interpretations which can postpone an international treaty.

1.4 Purpose of the Study

The purpose of the study can be defined as below:

1) To find out the types of interpretations that can postpone an international treaty.

2) To find out the reason why different interpretations can postpone an international treaty.

1.5 Method of the Study

The writer uses library research in writing this paper. Library research is a technique by research to gather as much information as possible relates to the topic. It can be gotten from literatures: scientific books, treaties, and other sources of suitable like internet.
The method is qualitative by collecting all the required data from all treaties that have been postponed because of the different interpretations and also the related books about interpretations. The data are sentences that contain the problems and explanations for this topic.
CHAPTER II

REVIEW OF LITERATURE

2.1 Interpretation

Bassnett (1990:12) says that interpretation is an assignment of meaning to the symbols of a formal language. The general study of interpretations of formal languages is called formal semantics.

Theory of interpretation by Paul Ricoeur provides through which researchers using hermeneutics can achieve congruence between philosophy, methodology and method. Ricoeur's theory of interpretation acknowledges the interrelationship between epistemology (interpretation) and ontology (interpreter). Also, he notes the way interpretation moves forward from naive understanding, where the interpreter has a superficial grasp of the whole of the text, to deeper understanding, where the interpreter understands the parts of the text in relation to the whole and the whole of the text in relation to its parts (the hermeneutic circle). In this way, Ricoeur's theory of interpretation provides researchers with a method of developing intersubjective knowledge. Through exposition of the concepts of Ricoeur's theory, which include distanciation, appropriation, explanation and understanding, guess and validation, a hermeneutic approach to textual analysis is presented, discussed and critiqued. Examples from nursing research are also used to demonstrate points under discussion. Ricoeur's theory of interpretation warrants consideration as a method of textual analysis (Geanellos, 2000).
An interpretation often (but not always) provides a way to determine the true value of sentences in a language. If a given interpretation assigns the true value to a sentence or theory, the interpretation is called a model of that sentence or theory.

Many of the commonly studied interpretations associate each sentence in a formal language with a single truth value, either true or false. These interpretations are called true functional, they include the usual interpretations of propositional and first-order logic. The sentences that are made true by a particular assignment are said to be satisfied by that assignment.

No sentence can be made both true and false by the same interpretation, but it is possible that the true value of the same sentence can be different under different interpretations. A sentence is consistent if it is true under at least one interpretation, otherwise it is inconsistent. A sentence is said to be logically valid if it is satisfied by every interpretation.

2.1.1 Hermeneutics

Oevermannet al. (1987:5) says, “Hermeneutics is the theory and methodology of interpretation, especially the interpretation of wisdom literature and philosophical text.” Hermeneutics as the methodology of interpretation is concerned with problems that arise when dealing with meaningful human actions and the products of such actions, most importantly texts. As a methodological discipline, it offers a toolbox for efficiently treating problems of
the interpretation of human actions, texts and other meaningful material. Hermeneutics looks back at a long tradition as the set of problems it addresses have been prevalent in human life, and have repeatedly and consistently called for consideration: interpretation is a ubiquitous activity, unfolding whenever humans aspire to grasp whatever interpretanda they deem significant. Due to its long history, it is only natural that both its problems, and the tools designed to help solve them, have shifted considerably over time, along with the discipline of hermeneutics itself.

Gadamer (2000:73) says that modern hermeneutics includes both verbal and non-verbal communication as well as semiotics, presuppositions, and pre-understandings. Hermeneutics has been broadly applied in the humanities, especially in law, history and theology.

Hermeneutics concerns itself, the philosophy of interpretation initially oriented toward the interpretation of texts. The use of Gadamerian hermeneutics in legal interpretation is well documented. Indeed, Gadamer regarded law as having ‘exemplary significance’ in developing his Post-Romantic interpretation that moved beyond methodological variations of attempting to determine authorial (specifically here, legislative) intent (literal, mischief or golden rule) (Chowdhury, 2016).

Gadamer (2000:64) says, “Understanding is essentially a historically effected event.” These can be understood in three ways; that interpretation is ‘ontological, dialectical and critical’.
Clingerman et al. (2013:64)says, “Hermeneutics was initially applied to
the interpretation and has been later broadened to questions of general
interpretation.” Hermeneutics is a wider discipline which includes written, verbal,
and non-verbal communication.

2.1.2 Exegesis

Exegesis is a critical explanation or interpretation of a text, particularly
a religious text. Traditionally the term was used primarily for work with the Bible;
however, in modern usage ‘biblical exegesis’ is used for greater specificity to
distinguish it from any other broader critical text explanation. Exegesis focuses
primarily upon the word and grammar of texts (Utzschneider, 1996).

Exegesis includes a wide range of critical disciplines: textual criticism is
the investigation into the history and origins of the text, but exegesis may include
the study of the historical and cultural backgrounds for the author, the text and the
original audience. Other analyses include classification of the type of literary
genres present in the text and analysis of grammatical and syntactical features in
the text itself.

2.2 Treaty

McNair (1961:15) says that a treaty is an agreement under international
law entered into by actors in international law, namely sovereign states and
international organizations. A treaty may also be known as an (international)
agreement, protocol, covenant, convention, pact or exchange of letters and among other terms. Regardless of terminology, all of these forms of agreements are under international law, equally considered treaties and the rules are the same.

Aust (2005:67) says, “Treaties can be loosely compared to contracts: both are means of willing countries assuming obligations among themselves and a country to either that fails to live up to their obligations can be held liable under international law.” A treaty is an official express written agreement that states use to legally bind themselves. A treaty is the official document which expresses that agreement in words and it’s also the objective outcome of a ceremonial occasion which acknowledges the countries and their defined relationships.

It’s widely accepted that the treaty is nowadays, the principal source of public international law, the best way to find and determine the international commitments that the states commit themselves as subjects of international legal relations binding, as a carriers of sovereignty. Linderfalk (2007:1) says that it was even believed that ‘we live in the age of treaties’. The International treaty is, at the same time, an important tool to influence international cooperation, a very efficient development and management method of the international relations.

Regardless of the name they bear, the international treaty is the consistent manifestation of the will of two or more subjects of international law, in order to produce legal effects of international law. Fitzmaurice & Elias (2004:87) say that treaties may be seen as 'self-executing', in that merely becoming a party puts the treaty and all of its obligations in action. Other treaties may be non-self-executing
and require 'implementing legislation', a change in the domestic law of a state party that will direct or enable it to fulfill treaty obligations. An example of a treaty requiring such legislation would be one mandating local prosecution by a party for particular crimes.

Wood & Pronto (2010:65) say that the division between two parties is often not clear and politicized in disagreements within a government over a treaty, since a non-self-executing treaty cannot be acted on without the proper change in domestic law. If a treaty requires implementing legislation, a state may be in default of its obligations by the failure of its legislature to pass the necessary domestic laws.

2.2.1 Bilateral Treaty

Waibel (2011:576) says that a bilateral treaty is a treaty strictly between two state parties. These two parties can be two states or two international organizations or one state and one international organization. It is similar to a contract, so it is called contractual treaty.

Bilateral treaty is concluded between two states or entities. However, it is possible for a bilateral treaty to have more than two parties, for instance the bilateral treaties between Switzerland and the European Union (EU) following the Swiss rejection of the European Economic Area agreement. Each of these treaties has seventeen parties. These however are still bilateral, not multilateral treaties.
The parties are divided into two groups, the Swiss (on the one part) and the EU and its member states (on the other part). The treaty establishes rights and obligations between the Swiss and the EU and the member states severally. It does not establish any rights and obligations amongst the EU and its member states.

2.2.2 Multilateral Treaty

McNair (1961:28) says that a multilateral treaty is a treaty to which three or more sovereign states are parties. Each party owes the same obligations to all other parties, except to the extent that they have stated reservations. Some examples of multilateral treaties are the Convention Relating to the Status of Refugees, the United Nations Convention on the Law of the Sea, the Geneva Conventions, and the Rome Statute of the International Criminal Court.

A multilateral treaty is concluded among several countries. The agreement establishes rights and obligations between each party and every other party. Multilateral treaties are often regional. Treaties of ‘mutual guarantee’ are international compacts, for example the Treaty of Locarno which guarantees each signatory against attack from another obligation amongst the EU and its member states.
CHAPTER III

THE DESCRIPTION OF DIFFERENT INTERPRETATIONS WHICH CAN POSTPONE THE INTERNATIONAL TREATY

3.1 The Types of Interpretations in International Treaty

The interpretation’s technique of the legal norm as regards the treaty’s interpretation, requires four types of interpretation:

• Grammatical Interpretation

Grammatical interpretation is requiring a legal standard of international interpretation. Also, the rules of grammar on syntax, morphology, vocabulary are very important in interpretation.

The following ‘Eight Rules’ are the heart or center of all grammatical interpretation:

1. Define the terms or words being considered and then adhere to the defined meanings.

2. Do not add meaning to established words and terms. The passage must written by the common usage in the culture and time period.
3. Avoid using words or phrases out of context. Context must define terms and how words are used.

4. Do not separate interpretation and historical investigation.

5. Be certain that word as interpreted agrees with the overall premise.

6. Use the known and commonly accepted meanings of words, not obscure meanings for which there are no precedent.

7. Even though many documents may be used there must be a general unity among them.

8. Base conclusions on what is already known and established or can be reasonably implied from all known facts.

Grammatical interpretation means interpretation is based exclusively on the words themselves. It uses words in phrases and sentences to construct meaningful combinations.

- **Systematic Interpretation**

Systematic interpretation involves the establishing of the international legal standard meaning of a treaty. It is connected by its relation to the whole text and to the legal institution or other provisions of international law.
The systematic interpretation formed a second pillar when construing a legal provision and its terms. In applying this second method of interpretation the meaning of the wording in question was to be established in the context of the relevant provision itself. In addition, the provision had to be interpreted as taking into account of its position and function within a coherent group of related legal norms.

• **Historical and Teleological Interpretation**

Historical and teleological interpretation which consists of clarifying the meaning of the terms of a treaty by taking into account of the historical, social and political conditions which led to the adoption of the document in question and the purpose pursued by the states as parties to the treaty. In such case, it should be considered the preparatory work for drafting the treaty text, the debates about the draft treaty within international conferences, exchanges of notes, etc.

Historical interpretation is a method of legislative interpretation which takes into account circumstances prior to the enactment of the legislation in question. The historical approach is described by David and Brierley as 'clarifying present texts in the light of previous circumstances and taking into account the legislator's intention'.

Teleological interpretation may be defined as the method of interpretation used by courts, when they interpret legislative provisions in the light of the
purpose, values, legal, social and economic goals of these provisions aim to achieve. European national constitutional courts as well as the European Court of Human Rights apply this method. It is also considered to be the method of interpretation utilized most by the European Court of Justice (ECJ).

• **Logical Interpretation**

Logical interpretation is a method which leads to clarify the content of a treaty by the use of reasoning and arguments of formal logics. In practice, parties have established in the domain of conclusion and implementation of treaties rules, methods, principles and procedures used in interpretation (Cretu, 2006:216-217), which were codified by the 1969 Vienna Convention on the Law of Treaties.

Logical interpretation means abstract interpretation over logical lattices. Such interpretation departs from the literal words on the ground that there may be other, more satisfactory evidence of the author’s true intention. It raises new challenges for theorem proving.

### 3.2 The Rules of International Treaty’s Interpretations

Linderfalk (2007:48) says that the language of treaties must be interpreted when the wording does not seem clear or it is not immediately apparent how it should be applied in a perhaps unforeseen circumstance. The Vienna Convention
states that treaties are to be interpreted ‘in good faith’ according to the ordinary meaning given to the terms of the treaty in their context and in the light of its object and purpose. International legal experts also often invoke the principle of maximum effectiveness, which interprets treaty’s language as having the fullest force and effect possible to establish obligations between the countries.

The interpretation process requires compliance with rules of interpretation that the states have codified by the 1969 Vienna Convention on the Law of Treaties, which establishes parameters where the texts of various treaties must be understood. The interpretation of a treaty should lead to the clarification of ambiguous terms and to determine the real intention of the parties concerning the rights, obligations established by the text.

According to the principle of good faith, the interpretation of any treaty must be made with the intention of establishing the exact meaning of its regulations. In the matter of treaty’s interpretation, good faith demands the compliance of the following requirements:

• If the treaty is clear, the meaning should not change under the pretext of respecting the spirit.

• The used terms in the treaty must be assigned to their ordinary, natural meaning and they should be interpreted taking into account the object and purpose of the treaty.
• To a term it will be assigned a special meaning if it’s established that it was the intention of the parties (Anghel, 2000:1185).

In the interpretation of treaties there must be considered other fundamental principles of international law. They are the principle of sovereign equality of states, the principle of peaceful settlement of disputes, the principle of inviolability of borders and territorial integrity, the principle of respecting human rights and fundamental freedoms, etc.

In the situation where from interpretations under article 31 VCLT (Vienna Convention on the Law of Treaties) is achieved to an ambiguous meaning or obscure and the interpretation has led to a result which is manifestly absurd or unreasonable, the article 32 provides the possibility of using complementary means of interpretation, noting the preparatory work and the circumstances in which the treaty was concluded. This solution can be approached also to confirm the meaning resulting from the application of article 31.

It is noted that in formulating VCLT (Vienna Convention on the Law of Treaties), there are assigned different degrees of freedom to the interpreter. It is whether article 31 requires (“a treaty shall be interpreted...”), or article 32 leaves up to the performer the recourse of additional means of interpretation (“recourse may be had to supplementary means of interpretation”) (Waibel, 2011:574).

VCLT (Vienna Convention on the Law of Treaties) provides special rules concerning the interpretation of treaties authenticated in two or more languages,
which were included in article 33. For the interpretation of such a treaty, article 33 requires the rule according to which a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty otherwise provides or the parties agree that, in case of divergence, a particular text shall prevail.

Usually, treaties include this term in the final clauses. For example, even VCLT (Vienna Convention on the Law of Treaties) provides in article 85 that the original of this Convention, of which the Chinese, English, Spanish, French and Russian texts are equally authentic, shall be deposited to the Secretary General of the United Nations. Similarly, the 1961 Vienna Convention on diplomatic relations established in article 53 that the original is “the English, Chinese, Spanish, French and Russian texts are equally authentic, and they shall be deposited with the Secretary General of the United Nations who will transmit a certified copy to all states belonging to any of the four categories mentioned in Article 48.”

If the treaty provides or if the parties have agreed otherwise it may be considered an authentic text, a version of the treaty in a language other than those in which the text was authenticated. Although the VCLT (Vienna Convention on the Law of Treaties) provides that the terms of a treaty are presumed to have the same meaning in authentic texts, a situation can lead to ambiguity regarding the terms used for drafting the treaty, in practice being able to find different ways of
equivalent terms in different languages when they proceed to compare texts (Miga-Besteliu, 2005:120).

If the parties agree otherwise, one of the texts shall prevail, prevailing in the meaning of the interpretation of that version. If there is no particular clause of the different versions and in the situation where the comparison of the authentic texts results in a difference of writing, which cannot be eliminated by applying the rules of article 31 and 32 VCLT (Vienna Convention on the Law of Treaties) in interpretation, it will be taken into account of the object and the purpose of the treaty and will adopt the meaning “best reconcile these texts” (VCLT, article 34).

The interpretation of treaties is governed identically by the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (VCLT, article 31-33). As regards, the legal texts that have generated from much discussion and were subject to interpretation as a legal operation.

One case to demonstrate the importance of rules of legal interpretation of treaties is the case of Hamdan v. Rumsfeld in 2006, which there are questions about the content of the article 3 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field in August 12 1949 and where the United States Supreme Court rejected the interpretation of this article by the Bush Administration. Essentially, the events of September 11 2001 represent the beginning of a period that can be characterized as “the global war against the new terrorism” (Arend, 2007:673-708).
Following the extensive military operations that the United States took in Afghanistan and elsewhere, the U.S. State has hesitated on the problem of the category in which to fit those detained as a result of the participation in armed conflict: were they prisoners of war or not? If that would have been classified as prisoners of war, they would have had rights under the Geneva Convention. Otherwise, their rights would have been limited.

U.S. government decided that those detained from these armed conflicts cannot enjoy the rights of prisoners of war under article 3. Al Qaeda is a non-state actor and therefore cannot be considered as part of the Geneva Conventions.

When the D.C. Circuit Court of Appeals decided Hamdan among other things, it was stated that Afghanistan is a “High Contracting Party”. Hamdan was captured during hostilities there. But it is the war against terrorism in general and the war against Al Qaeda in particular, an “armed conflict not of an international character” (Arend, 2007:717).

United States Supreme Court, also rejected the Bush administration's interpretation of the provisions of article 3, states that the reference in Common Article 3 to “conflict not of an international character” occurring in the territory of one of the “High Contracting Parties”, does not refer only to civil war — as the Government had argued — but rather to any conflict that is not between states.

The Court further explained that the term “conflict not of an international character” is used here in contradistinction to a conflict between nations. So much
is demonstrated by the fundamental logic of the Convention’s provisions on its application. Common Article 2 provides that the present Convention shall apply to all cases of declared war or any other armed conflict which may arise between two or more of the “High Contracting Parties”. They also must abide by all terms of the Conventions to one another, even if one party to the conflict is a non-signatory power and must abide to the non-signatory, if the latter accepts and applies those terms. Common Article 3, by contrast, affords some minimal protection, falling short of full protection under the Conventions, to individuals associated with neither a signatory nor even a non-signatory power who are involved in a conflict in the territory of a signatory. The latter kind of conflict is distinguishable from the conflict described in Common Article 2, chiefly because it does not involve a clash between nations (whether signatories or not). In context, then, the phrase “not of an international character” bears its literal meaning.

Gardiner (2008:98) says that no country to a treaty can impose its particular interpretation of the treaty upon the other countries. Consent may be implied, however, if the other countries fail to explicitly disavow that initially unilateral interpretation, particularly if that state has acted upon its view of the treaty without complaint. Consent by all countries to the treaty to a particular interpretation has the legal effect of adding another clause to the treaty. This is commonly called an 'authentic interpretation'.

Boczek (2005:56) says that international tribunals and arbiters are often called upon to resolve substantial disputes over treaty interpretations. To establish
the meaning in context, these judicial bodies may review the preparatory work from the negotiation and drafting of the treaty as well as the final, signed treaty itself.
4.1 Conclusion

The interpretation of treaty’s issue is complex and solving it requires taking into consideration of number of aspects. Coordinates of appropriate methods of interpretation can highlight the dynamic nature of the international law (Eremia, 1998:54).

In this paper highlighted the importance and necessity of the act of interpretation of treaties, both in their adoption stage, when the parties at the negotiation of a treaty agree to assign certain meanings of terms used in the text of that treaty, and in the correct application of provisions of international agreements or in the situation of settlement of international disputes.

The interpretation process requires compliance with rules of interpretation that the states have codified by the 1969 Vienna Convention on the Law of Treaties, which establishes parameters where the texts of various treaties must be understood. The interpretation of a treaty should lead to the clarification of ambiguous terms and to determine the real intention of the parties concerning the rights and obligations established by the text.
4.2 Suggestion

The writer suggests the reader to learn the importance of interpretation in an international treaty because sometimes a country can make a treaty with another country and the people must know the real content of it. The reader can criticize it if that’s bad or praise it if that’s good. Don’t be silent because maybe that will affect to many people’s life.

The reader can use it too, if make an agreement on paper with someone else. Ask about the interpretation of it, if both side on the same page with it, then, it is good, but if it’s not, try to compromise with it until it’s done. Maybe it’s very complicated to do it, but perhaps it will be a big mistake for not doing it.


