

# INTERPRETAZIONE DEI TRATTATI

## I. REGOLE DELLA CONVENZIONE DI VIENNA

### **Articolo 31**

#### *Regola generale di interpretazione*

1. Un trattato deve essere interpretato in buona fede seguendo il **senso ordinario da attribuire ai termini del trattato nel loro contesto e alla luce del suo oggetto e del suo scopo.**
2. Ai fini dell'interpretazione di un trattato, il **contesto comprende**, oltre al testo, il preambolo e gli allegati ivi compresi:
  - a. ogni accordo in rapporto col trattato e che è stato concluso fra tutte le parti in occasione della conclusione del trattato;
  - b. ogni strumento posto in essere da una o più parti in occasione della conclusione del trattato e accettato dalle parti come strumento in connessione col trattato.
3. Si terrà conto, oltre che del contesto:
  - a. di ogni **accordo ulteriore** intervenuto fra le parti **in materia di interpretazione** del trattato o della applicazione delle sue disposizioni;
  - b. di **qualsiasi prassi successivamente seguita nell'applicazione del trattato** attraverso la quale si sia formato un accordo delle parti in materia di interpretazione del medesimo;
  - c. di **qualsiasi regola pertinente di diritto internazionale** applicabile nei rapporti fra le parti.
4. **Un termine verrà inteso in un senso particolare se risulta che tale era l'intenzione delle parti.**

### **Articolo 32**

#### *Mezzi complementari di interpretazione*

Si può fare ricorso ai mezzi complementari di interpretazione, e in particolare ai **lavori preparatori** e alle **circostanze** nelle quali il trattato è stato concluso, allo scopo, sia di confermare il senso che

risulta dall'applicazione dell'art. 31, sia di determinare il senso quando l'interpretazione data in conformità all'articolo 31:

- a. lascia il senso **ambiguo o oscuro**; oppure
- b. conduce ad un **risultato che è manifestamente assurdo o irragionevole**.

### **Articolo 33**

#### *Interpretazione dei trattati autentici in due o più lingue*

1. Quando un trattato è stato autenticato in due o più lingue, il suo testo fa fede in ciascuna di queste lingue, a meno che il trattato non disponga o che le parti non convengano che in caso di divergenza prevalga un testo determinato.
2. Una versione del trattato in una lingua diversa da una di quelle in cui il testo è stato autenticato sarà considerata come testo autentico solo se il trattato lo prevede o se le parti si sono accordate in tal senso.
3. Si presume che i termini di un trattato abbiano lo stesso significato nei diversi testi autentici.
4. Salvo il caso in cui un testo determinato sia destinato a prevalere ai sensi del paragrafo 1, quando il raffronto dei testi autentici fa apparire una differenza di senso che l'applicazione degli articoli 31 e 32 non permette di eliminare, **si adotterà il senso che, tenuto conto dell'oggetto e del scopo del trattato, permette di meglio conciliare i testi in questione**.

## II. ESEMPI DELLA PRASSI

**a) Metodo testuale. Parere Corte internazionale di Giustizia 3 marzo 1950 sulla “Competenza dell’Assemblea Generale per l’ammissione di uno Stato alle Nazioni Unite”**

### ART. 4 CARTA ONU

“1. Possono diventare Membri delle Nazioni Unite tutti gli altri Stati amanti della pace che accettino gli obblighi del presente Statuto e che, a giudizio dell’Organizzazione, siano capaci di adempiere tali obblighi e disposti a farlo.  
2. L’ammissione quale Membro delle Nazioni Unite di uno Stato che adempia a tali condizioni è effettuata con decisione dell’Assemblea Generale **su proposta** del Consiglio di Sicurezza.”

**“The Court has no doubt as to the meaning of this text.** It requires two things to effect admission: a «recommendation» of the Security Council and a «decision» of the General Assembly. It is in the nature of things that the recommendation should come before the decision. The word «recommendation», and the word «upon» preceding it, imply the idea that the recommendation is the foundation of the decision to admit, and that the latter rests upon the recommendation. Both these acts are indispensable to form the judgment of the Organization to which the previous paragraph of Article 4 refers. The text under consideration means that the General Assembly can only decide to admit upon the recommendation of the Security Council; it determines the respective roles of the two organs whose combined action is required before admission can be effected: in other words, the recommendation of the Security Council is the condition precedent to the decision of the Assembly by which the admission is effected.

When the Court can give effect to a provision of a treaty by giving to the words used in it their natural and ordinary meaning, it may not interpret the words by seeking to give them some other meaning. In the present case the Court finds no difficulty in ascertaining the natural and ordinary meaning of the words in question and no difficulty in giving effect to them.”

“La Corte non ha dubbi circa il significato del testo. Esso richiede due condizioni per procedere all’ammissione: una “raccomandazione” del Consiglio di sicurezza e una “decisione” dell’Assemblea generale. E’ nella natura delle cose che la raccomandazione debba arrivare prima della

decisione. Il termine “raccomandazione”, e il termine “su” [proposta] che lo precede

**b) Metodo teleologico (e interpretazione in lingue diverse)**

**<sup>1)</sup> Caso WEHMHOF c. Germania, Corte europea dei diritti dell'uomo, sentenza 27 giugno 1968**

Art. 5, par. 3, Convenzione europea dei diritti dell'uomo

Testo francese:

« Toute personne arrêtée... à le droit d'être jugée dans un délai raisonnable »

Testo inglese :

« Everyone arrested... shall be entitled to trial within a reasonable time”

(...)

6. Another question relating to the interpretation of Article 5 (3) (art. 5-3) raised in the course of the hearing before the Court is that of the period of detention covered by the requirement of a "reasonable time". While the Commission had expressed the opinion in its Report that the appearance of the accused before the trial court, which in this case took place on 9 November 1964, should be considered as the end of the detention, the length of which was to be appreciated by it, the President of the Commission, recalling that Wemhoff's detention on remand had continued after his appearance before the Regional Court of Berlin and referring also to the dissenting opinion of a minority within the Commission, requested the Court during the oral proceedings to pronounce upon the lawfulness of the detention from 9 November 1961 until 9 November 1964 or a later date.

The representative of the German Government expounded the reasons which led him to maintain the interpretation, accepted in the Commission's Report, that it is the time of appearance before the trial court that marks the end of the period with which Article 5 (3) (art. 5-3) is concerned.

7. The Court cannot accept this restrictive interpretation. It is true that the English text of the Convention allows such an interpretation. The word "trial", which appears there on two occasions, refers to the whole of the proceedings before the court, not just their beginning; the words "entitled to trial" are not

necessarily to be equated with "entitled to be brought to trial", although in the context "pending trial" seems to require release before the trial considered as a whole, that is, before its opening.

But while the English text permits two interpretations the French version, which is of equal authority, allows only one. According to it the obligation to release an accused person within a reasonable time continues until that person has been "jugée", that is, until the day of the judgment that terminates the trial. Moreover, he must be released "pendant la procédure", a very broad expression which indubitably covers both the trial and the investigation.

8. Thus confronted with two versions of a treaty which are equally authentic but not exactly the same, the Court must, following established international law precedents, **interpret them in a way that will reconcile them as far as possible.** Given that it is a law-making treaty, it is also necessary to seek the **interpretation that is most appropriate in order to realise the aim and achieve the object of the treaty,** not that which would restrict to the greatest possible degree the obligations undertaken by the Parties. It is impossible to see why the protection against unduly long detention on remand which Article 5 (art. 5) seeks to ensure for persons suspected of offences should not continue up to delivery of judgment rather than cease at the moment the trial opens.

9. It remains to ascertain whether the end of the period of detention with which Article 5 (3) (art. 5-3) is concerned is the day on which a conviction becomes final or simply that on which the charge is determined, even if only by a court of first instance.

The Court finds for the latter interpretation.

## ***2) Caso La Grand (Germania c. Stati Uniti), sentenza Corte internazionale di giustizia 27 giugno 2001***

Art. 41 dello Statuto della Corte internazionale di Giustizia:

Testo inglese:

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which **ought to be taken** to preserve the respective rights of either party.

Testo francese:

1. La Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de **chacun doivent être prises** à titre provisoire.

“ 99. The dispute which exists between the Parties with regard to this point essentially concerns the interpretation of Article 41, which is worded in identical terms in the Statute of each Court (apart from the respective references to the Council of the League of Nations and the Security Council). This interpretation has been the subject of extensive controversy in the literature. The Court will therefore now proceed to the interpretation of Article 41 of the Statute. It will do so in accordance with customary international law, reflected in Article 31 of the 1969 Vienna Convention on the Law of Treaties. According to paragraph 1 of Article 31, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of the treaty's object and purpose.

(...)

The Court will therefore now consider the object and purpose of the Statute together with the context of Article 41.

102. The object and purpose of the Statute is to enable the Court to fulfil the functions provided for therein, and, in particular, the basic function of judicial settlement of international disputes by binding decisions in accordance with Article 59 of the Statute. The context in which Article 41 has to be seen within the Statute is to prevent the Court from being hampered in the exercise of its functions because the respective rights of the parties to a dispute before the Court are not preserved. It follows from the object and purpose of the Statute, as well as from the terms of Article 41 when read in their context, that the power to indicate provisional measures entails that such measures should be binding, inasmuch as the power in question is based on the necessity, when the circumstances call for it, to safeguard, and to avoid prejudice to, the rights of the parties as determined by the final judgment of the Court. The contention that provisional measures indicated under Article 41 might not be binding would be contrary to the object and purpose of that Article.”

**c) Interpretazione attraverso prassi successiva delle parti. Parere consultivo Corte internazionale di Giustizia 21 giugno 1971 nel caso “Conseguenze giuridiche per gli Stati derivanti dalla presenza continua del Sud Africa in Namibia nonostante la risoluzione 276 (1970) del Consiglio di sicurezza”**

Art. 27, par. 3, Carta ONU:

3. Le decisioni del Consiglio di Sicurezza su ogni altra questione sono prese con un **voto favorevole di nove Membri**, nel quale **siano compresi** i voti dei Membri permanenti; tuttavia nelle decisioni previste dal Capitolo VI e dal paragrafo 3 dell'articolo 52, un Membro che sia parte di una controversia deve astenersi dal voto.

“21. The first objection is that in the voting on the resolution two permanent members of the Security Council abstained. It is contended that the resolution was consequently not adopted by an affirmative vote of nine members, including the concurring votes of the permanent members, as required by Article 27, paragraph 3, of the Charter of the United Nations.

22. However, the proceedings of the Security Council extending over a long period supply abundant evidence that presidential rulings and the positions taken by members of the Council, in particular its permanent members, **have consistently and uniformly interpreted the practice of voluntary abstention by a permanent member as not constituting a bar to the adoption of resolutions.** By abstaining, a member does not signify its objection to the approval of what is being proposed; in order to prevent the adoption of a resolution requiring unanimity of the permanent members, a permanent member has only to cast a negative vote. **This procedure** followed by the Security Council, which has continued unchanged after the amendment in 1965 of Article 27 of the Charter, has been **generally accepted** by Members of the United Nations **and evidences a general practice** of that Organization.”