



INSTITUT DE HAUTES
ÉTUDES INTERNATIONALES
ET DU DÉVELOPPEMENT
GRADUATE INSTITUTE
OF INTERNATIONAL AND
DEVELOPMENT STUDIES

International Law

Academic year 2021-2022

The Theory and Practice of Treaty Interpretation

DI103 - Printemps - 6 ECTS

Tuesday 10h15 - 12h00

Course Description

Long relegated to the narrow boundaries of legal technique by a purportedly rule-based, mechanical approach, the process of treaty interpretation has recently gained prominence as a matter of great importance, both as a form of practice and as an object of intellectual investigation. After exploring the historical development of treaty interpretation from the early days of international law to the 1969 Vienna Convention on the Law of Treaties, the course will broach the main approaches (textualism, intentionalism, purposeful interpretation, systemic integration etc.) and will critically reflect on the reasons that account for the treaty interpretation regime prevailing in the international legal discourse today. It will also examine the politics of treaty interpretation in various areas of international practice, ranging from constitutive treaties of international organizations to human rights and investment arbitration. Ultimately, this interactive course aims at spurring a critical understanding of the interpretive processes in the various contexts in which they arise.

> PROFESSOR

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> ASSISTANT

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Syllabus

Format:

Interactive course - 25 students maximum.

Teaching Methodology:

The instructors will jointly teach each session using the Socratic method. Students are expected to read the class materials in advance in order to be able to participate in class discussion. Attendance of the course is compulsory.

Tutorials (Optional):

The TA of this course will hold a total of 3 optional tutorial sessions for this course. The purpose of these sessions is to help students review the basic concepts mentioned in the course, as well as address any questions that the students may have in their learning process. The specific timing for these tutorials will be disclosed later in the semester.

Evaluation:

Evaluation is exclusively based on the final exam. The final take-home exam will consist of two questions (one essay question plus one text to comment upon). The date of the final exam will be advised in the first class.

Class Schedule

Tuesday 22 February 10h15 (Salle S5)

1. Setting the Stage: Interpretation and its Stakes

Questions:

- What is the act of interpreting a treaty really about?
- What interests are involved in the process of treaty interpretation?
- Who is entitled to interpret treaties? Does it make a difference who interprets them?
- What are the implications of taking a rule-based approach to treaty interpretation?

Readings:

- ❖ Roland Barthes, 'The Eiffel Tower' in Roland Barthes, *A Barthes Reader* (Susan Sontag ed, Farrar, Straus and Giroux 1982) 236-250.
- ❖ Ludwig Wittgenstein, *Philosophical Investigations* (translated by G.E.S. Ascombe, 3rd edn, Basil Blackwell 1967) Sections 185-202.
- ❖ Hubert Schwyzer, 'Rules and Practices' (1969) 78(4) *Philosophical Review* 451.
- ❖ Statement by Joe Verhoeven in 'Le Point de Vue des Praticiens' (2006) 39 *Revue Belge de Droit International* 432, 451-452.
- ❖ European Court of Human Rights, *Golder v. United Kingdom* (App. No. 4451/70) Report of the Commission (adopted on 1 June 1973) 16 *Publications of the European Court of Human Rights* (Series B) 9, paras. 44, 49-50.
- ❖ *Golder v. United Kingdom* (Separate Opinion of Judge Sir Gerald Fitzmaurice) (1975) 1 *Eur. H.R. Rep.* 524.
- ❖ Lewis Carroll, 'Humpty Dumpty' , in Lewis Carroll, P. Hunt, and J. Tenniel, '*Alice's Adventures in Wonderland and through the Looking-Glass*' , OUP Oxford, 2009, pp. 185-197.
- ❖ Old Testament, Deuteronomy 12:32.
- ❖ Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 3.2.

Tuesday 1 March 10h15 (Salle S5)

2. A Genealogy of the Contemporary Regime of Treaty Interpretation

Questions:

- What has been the intellectual history of treaty interpretation? Does it matter?
- How did the codification process before the International Law Commission go? Was the codification of interpretive rules uncontroversial?
- What place does the Vienna Convention have in the contemporary treaty interpretation regime?

Readings:

- ❖ Michel Foucault, 'Nietzsche, Genealogy, History' in Paul Rabinow (ed), *The Foucault Reader* (Pantheon Books 1984) 76-100.
- ❖ Hugo Grotius, 'Book II Chapter 16: The Interpretation of Treaties' in *On the Law of War and Peace* (slightly abridged by A.C. Campbell, Batoche 2001) 140-156.
- ❖ Emer de Vattel, 'Chapter XVII: Of the Interpretation of Treaties' in Emer de Vattel, *The Law of Nations* (Béla Kapossy and Richard Whatmore eds, Liberty Fund 2008) 407-448.
- ❖ Institut de Droit International, *Annuaire de l'Institut de Droit International* (Tome I, Vol. 44, Librairie C. Muquardt 1952) 197-223.
- ❖ Institut de Droit International, *Annuaire de l'Institut de Droit International* (Tome II, Vol. 44, Librairie C. Muquardt 1952) 359-406.
- ❖ Institut de Droit International, *Annuaire de l'Institut de Droit International* (Vol. 46, Librairie C. Muquardt 1956) 317-365.
- ❖ Fuad Zarbiyev, 'A Genealogy of Textualism in Treaty Interpretation' in Andrea Bianchi and others (eds), *Interpretation in International Law* (Oxford 2015) 251-267.
- ❖ *First Award under the Convention between Costa Rica and Nicaragua of 8 April 1896 for the Demarcation of the Boundary between the two Republics* (1896) 28 RIAA 215, 216.
- ❖ *Iran v United States* (Case No A/18) (1984) 23(3) International Legal Materials 489, 489-497.

Tuesday 8 March 10h15 (Salle S5)

3. Textualism's Unfulfilled Promises

Questions:

- Does a text have a meaning in and of itself?
- Is text autonomy a myth?
- What kind of interests does textualism foster? What functions does it perform?

Readings:

- ❖ Sir Gerald Fitzmaurice, 'The Law and Procedure of the International Court of Justice 1951: Treaty Interpretation and Other Treaty Points' (1957) 33 *British Yearbook of International Law* 203, 212.
- ❖ Statement by Myres S. McDougal during the 31st Plenary Meeting of the Conference on the Law of Treaties (Friday, 19 April 1968, at 3.20 p.m.) in *United Nations Conference on the Law of Treaties, First session, Vienna, 26 March-24 May 1968, Official Records* (1969) A/CONF.39/11 164, 166-168.
- ❖ Myres S. McDougal, 'The International Law Commission's Draft Articles upon Interpretation: Textuality *Redivivus*' (1967) 61(4) *The American Journal of International Law* 992.
- ❖ Gerald Graff, "'Keep off the Grass", "Drop Dead", and Other Indeterminacies: A Response to Sanford Levinson' (1981) 60 *Texas Law Review* 405.
- ❖ Stanley Fish, 'There Is No Textualist Position' (2005) 42 *San Diego Law Review* 629.
- ❖ Walter Benn Michaels, 'Against Formalism: The Autonomous Text in Legal and Literary Interpretation' (1979) 1 *Poetics Today* 23.
- ❖ Merrill F. Garrett, 'Does ambiguity complicate the perception of sentences?' in Giovanni B. Flores d'Arcais and Willem J.M. Levelt (eds), *Advances in Psycholinguistics* (North-Holland 1970).
- ❖ John R. Searle, 'Literal Meaning', in John R. Searle, *Expression and Meaning: Studies in the Theory of Speech Acts*, (Cambridge 1979), 117-136.
- ❖ *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (Judgment) (1994) ICJ Rep 6, para. 41.
- ❖ European Court of Human Rights, *Golder v United Kingdom*, App. No. 4451/70, Report of the Commission (adopted on 1 June 1973) 16 *Publications of the European Court of Human Rights (Series B)* 9, paras. 49-50.

Tuesday 15 March 10h15 (Salle S5)

4. Intentionalism: A Lost Cause?

Questions:

- Why does intentionalism play a marginal role in treaty interpretation?
- Is intentionalism about 'reading' States' minds?
- Is there such a thing as an intention-free interpretation?

Readings:

- ❖ Institut de Droit International, *Annuaire de l'Institut de Droit International* (Tome I, Vol 43, Librairie C. Muquardt 1950) 366-444.
- ❖ International Law Commission, 'Report of the International Law Commission on the work of its eighteenth session (Geneva, 4 May - 19 July 1966)' in *Yearbook of the International Law Commission* (Vol 2 1966) A/CN.4/SER.A/1966/Add.1 172, 217-222.
- ❖ Shabtai Rosenne, 'What is a treaty? A Signatory's intentions' in Shabtai Rosenne, *Essays on International Law and Practice* (Brill 2007) 435-443.
- ❖ Stanley Fish, 'Intention Is All There Is: A Critical Analysis of Aharon Barak's Purposive Interpretation in Law' (2007-2008) 29 *Cardozo Law Review* 1109.
- ❖ Deborah Perron Tollefsen, 'Collective Intentionality and the Social Sciences' (2002) 31(2) *Philosophy of the Social Sciences* 25.
- ❖ Austen Clark, 'Beliefs and Desires Incorporated' (1994) 91(8) *The Journal of Philosophy* 404.
- ❖ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)* (Jurisdiction and Admissibility, Judgment) (1995) ICJ Rep 6, paras. 24-41.
- ❖ *Wintershall Aktiengesellschaft v Argentine Republic (Award)* (2008) ICSID Case No. ARB/04/14, paras. 76-91.

Tuesday 22 March 10h15 (Salle S5)

5. What's the Purpose of 'Object and Purpose'?

Questions:

- How does one determine what the object and purpose of a treaty are? Can there be different objects and different purposes in the very same treaty?
- What use has been made of the ‘object and purpose’ test in the practice of treaty interpretation?
- How does the ‘object and purpose’ criterion relate to other criteria of treaty interpretation?

Readings:

- ❖ Richard K Gardiner, *Treaty interpretation*, Oxford University Press, 2015, pp. 211-222.
- ❖ Vincent Descombes, *Le raisonnement de l'ours*, Le Seuil, 2007, pp. 85-121.
- ❖ International Law Commission, ‘Reservations to treaties: Text and title of the draft guidelines constituting the Guide to Practice on Reservations to treaties, as finalized by the Working Group on Reservations to Treaties from 26 to 29 April, and on 4, 5, 6, 10, 11, 12, 17 and 18 May 2011’ (A/CN.4/L.779), 19 May 2011, Section 3.1.5.1.
- ❖ *Interpretation of the Convention of 1919 concerning Employment of Women during the Night* (Advisory Opinion) (Dionisio Anzilotti Dissenting Opinion) (1932) PCIJ Rep Series AB No. 50 383.
- ❖ *LaGrand (Germany v. United States of America)* (Judgment) (2001) ICJ Rep 446, paras. 99-109.
- ❖ WTO Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products (US – Shrimp)* (12 October 1998) WT/DS58/AB/R, para. 114.
- ❖ *SGS Société Générale de Surveillance S.A. v Republic of the Philippines* (Decision of the Tribunal on Objections to Jurisdiction) (2002) ICSID Case No ARB/02/6, paras. 113-135.
- ❖ *Saluka Investments BV (The Netherlands) v The Czech Republic* (Partial Award) (2006) PCA/UNCITRAL Tribunal, para. 300.
- ❖ *RSM Production Corporation v Grenada* (Award) (2009) ICSID Case No ARB/05/14, para. 383.

Tuesday 29 March 10h15 (Salle S5)

6. Supplementary Means and their Scope

Questions:

- Is the notion of ‘supplementary means’ limited to ‘travaux préparatoires’ and ‘circumstances of conclusion’?
- What criteria of interpretation other than those codified in the Vienna Convention are ordinarily used in treaty interpretation?
- Are ‘supplementary means’ really ‘supplementary’ in the process of treaty interpretation?

Readings:

- ❖ Julian Davis Mortenson, 'The *Travaux* of *Travaux*: Is the Vienna Convention Hostile to Drafting History?' (2013) 107(4) *The American Journal of International Law* 780.
- ❖ Andrew D. Mitchell and James Munro, "Someone Else's Deal: Interpreting International Investment Agreements in the Light of Third-Party Agreements." *European Journal of International Law* 28, no. 3 (2017): 669-95.
- ❖ Jan Klabbers, 'International Legal Histories: The Declining Importance of *Travaux Préparatoires* in Treaty Interpretation?' (2003) 50(3) *Netherlands International Law Review* 267.
- ❖ *Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v. Sweden)* (Judgment) (Separate Opinion by Sir Percy Spender) (1958) ICJ Rep 116, 129-130.
- ❖ *Methanex Corp. v United States of America* (Final Award of the Tribunal on Jurisdiction and Merits) (2005) NAFTA/UNCITRAL Tribunal, Part II, Chap. H, para. 25.
- ❖ *Canfor Corp. v United States of America* (Procedural Order No 5) (2004) NAFTA/UNCITRAL Tribunal.
- ❖ *HICEE B.V. v The Slovak Republic* (Partial Award) (2011) PCA/UNCITRAL Tribunal, para. 128.
- ❖ *Vladimir Berschader and Moïse Berschader v The Russian Federation* (Award) (2006) SCC Case No. 080/2004, paras. 145-147.

Tuesday 5 April 10h15 (Salle S5)

7. The Magic of Systemic Integration

Questions:

- In what context did the principle of systemic integration originate? What are the presuppositions behind the principle?
- What function can it perform? How did the ILC use it?
- How can the principle of systemic integration be reconciled with the limited jurisdiction of international tribunals?

Readings:

- ❖ International Law Commission, 'Fragmentation of international law: difficulties arising from the diversification and expansion of international law: Report of the study group of the international

law commission' (finalized by Martti Koskenniemi, 2006) UN Doc A/CN.4/L.682, paras. 37-43, 410-480.

- ❖ Isaiah Berlin, *The Roots of Romanticism*, Chatto&Windus London, 1999, pp. 21-24.
- ❖ Michel Foucault, *The Archeology of Knowledge*, London, Tavistock, 1982, pp. 149-156.
- ❖ Campbell McLachlan, 'The principle of systemic integration and Article 31 (3)(c) of the Vienna Convention' (2005) 54(02) *International and Comparative Law Quarterly* 279.
- ❖ *Oil Platforms (Islamic Republic of Iran v. United States of America)* (Judgment) (Separate Opinion of Judge Higgins) (2003) ICJ Rep 225, paras. 40-50.
- ❖ WTO Appellate Body Report, *European Communities – Measures Affecting Trade in Large Civil Aircraft (EC – Aircraft)* (18 May 2011) WT/DS/316/AB/R, paras. 839-855 (read with WorldTradeLaw.net Dispute Settlement Commentary, *EC – Aircraft*, 5-6).
- ❖ Pierre-Marie Dupuy, 'L'unité formelle de l'ordre juridique international,' in *The Hague Academy of International Law* (ed), *Collected Courses of the Hague Academy of International Law, Publications of the Hague Academy of International Law* (Brill), pp. 200-206.

Tuesday 12 April 10h15 (Salle S5)

8. The Implied Powers Doctrine

Questions:

- What powers can be deemed to be 'implied'?
- How has the doctrine been used in international case law?
- What purposes does the doctrine serve? Are there limits to its potential application?

Readings:

- ❖ Jan Klabbbers, 'Chapter 3: The Legal Position of International Organizations' in Jan Klabbbers, *An Introduction to International Institutional Law* (3rd ed, Cambridge 2015) 50-69.
- ❖ Robert B. Brandom, 'Objectivity and the Normative Fine Structure of Rationality' in Robert B. Brandom, *Articulating Reasons: An Introduction to Inferentialism* (Harvard 2000) 185-205.
- ❖ Robert B. Brandom, 'Linguistic Practice and Discursive Commitment' in R. Brandom, *Making it Explicit*, (Harvard 1994), 141-198.
- ❖ *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) (1949) ICJ Rep 174, 181-185.

- ❖ *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* (Advisory Opinion) (1996)
ICJ Rep 66, paras. 18-26.
- ❖ *Commission of the European Communities v Kingdom of Denmark* (Case no. 252/83, Judgment)
(1986) ECR 03713.

Tuesday 26 April 10h15 (Salle S5)

9. Regime-Specific Issues

Questions:

- Do some treaties in particular areas of international law warrant specific rules of interpretation? If so, what would these be?
- Is there a danger in conceiving of treaty interpretation as regime-specific?
- Can one identify a ‘politics of treaty interpretation’ in different areas of international law?

Readings:

- ❖ Catherine Brölmann, ‘Specialized Rules of Treaty Interpretation: International Organization’, in Duncan B. Hollis ed, *The Oxford Guide to Treaties* (Oxford 2012) 507-524.
- ❖ George Letsas, ‘Intentionalism, Textualism, and Evolutive Interpretation,’ in George Letsas (ed), *A Theory of Interpretation of the European Convention on Human Rights* (Oxford University Press, 2007).
- ❖ Mahnoush H. Arsanjani and W. Michael Reisman, ‘Interpreting Treaties for the Benefit of Third Parties: The “Salvors’ Doctrine” and the Use of Legislative History in Investment Treaties’ (2010) 104(4) *The American Journal of International Law* 597.
- ❖ Anthea Roberts, ‘Power and Persuasion in Investment Treaty Interpretation: The Dual Role of States’ (2010) 104(2) *The American Journal of International Law* 179.

Tuesday 3 May 10h15 (Salle S5)

10. Time and Treaty Interpretation

Questions:

- Is evolutionary interpretation limited to specific categories of treaties, and can it be used strategically?
- Are treaties unaffected by the passage of time?
- How does ‘subsequent practice’ impact on treaty interpretation? Can it produce effects that are tantamount to treaty amendments?
- Can practice affect treaty interpretation? If so, how?

Readings:

- ❖ Daniel Moeckli and Nigel D. White. "Treaties as "Living Instruments"", in *Conceptual and Contextual Perspectives on the Modern Law of Treaties*, edited by Michael J. Bowman and Dino Kritsiotis: Cambridge University Press, 2018.
- ❖ Rosalyn Higgins, 'Time and the Law: International Perspectives on an Old Problem' (1997) 46(03) *International and Comparative Law Quarterly* 501.
- ❖ International Law Commission, 'Subsequent agreements and subsequent practice in relation to the interpretation of treaties: Text of the draft conclusions provisionally adopted by the Drafting Committee on first reading', (A/CN.4/L.874), 6 June 2016.
- ❖ Luigi Crema, 'Subsequent Agreements and Subsequent Practice within and outside the Vienna Convention' in Georg Nolte (ed), *Treaties and Subsequent Practice* (Oxford 2013) 13-28.
- ❖ *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)* (Judgment) (2009) ICJ Rep 213, paras.42-71.
- ❖ *Aegean Sea Continental Shelf (Greece v. Turkey)* (Judgment) (1978) ICJ Rep 3, paras. 77-79.
- ❖ *Tyrer v the United Kingdom* (App no. 5856/72, Judgment) (1978) ECHR 2, para. 31.
- ❖ *Christine Goodwin v the United Kingdom* (App no. 28957/95, Judgment) (2002) ECHR 588, paras. 97-104.
- ❖ *Selmouni v France* (App no. 25803/94, Judgment) (1999) ECHR 28, para. 101.
- ❖ WTO Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products (US – Shrimp)* (12 October 1998) WT/DS58/AB/R, paras. 127-132.
- ❖ International Law Commission, 'Report of the International Law Commission on the work of its eighteenth session (Geneva, 4 May - 19 July 1966)' in *Yearbook of the International Law Commission* (Vol 2 1966) A/CN.4/SER.A/1966/Add.1 172, 236.
- ❖ '37th (Wednesday, 24 April 1968, at 3.15 p.m.) Plenary Meeting of the Conference on the Law of Treaties' and '38th (Thursday, 25 April 1968, at 11.5 a.m.) Plenary Meeting of the Conference on the Law of Treaties' in *United Nations Conference on the Law of Treaties, First session, Vienna, 26 March-24 May 1968, Official Records* (1969) A/CONF.39/11 203, 210, 207-215.
- ❖ *Kasikili/Sedudu Island (Botswana/Namibia)* (Judgment) (1999) ICJ Rep 1045, paras. 47-51, 62-63, 71-87.
- ❖ WTO Appellate Body Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (US – Tuna II (Mexico))* (16 May 2012) WT/DS381/AB/R, paras. 371-372.

- ❖ Bianchi, Andrea. "Law, Time and Change: The Self-Regulatory Function of Subsequent Practice." In *Treaties and Subsequent Practice*, edited by Georg Nolte: Oxford University Press, 2013.
- ❖ Barthes, Roland. "Theory of the Text." In *Untying the Text: A Post-Structuralist Reader*, edited by Robert Young: Routledge, 1981.
- ❖ Copenhagen Declaration 2018 to the European Convention on Human Rights

Tuesday 10 May 10h15 (Salle S5)

11. Text, Author and Control

Questions:

- Can a treaty text be orphan?
- How can States exercise control on treaty interpretation?
- What is the value of authentic interpretation? How does it compare to other types of interpretation?

Readings:

- ❖ Michel Foucault, "What Is an Author?" Translated by Robert et al. Hurley. In *Essential Works of Foucault 1954-1984: Aesthetics, Method and Epistemology*, edited by James D. Faubion: The New Press, 1994, p. 221.
- ❖ Roland Barthes, "The Death of the Author." Translated by Stephen Heath. In *Image - Music - Text*: FontanaPress, 1977.
- ❖ Plato, *Phaedrus (Oxford world's classics)*, Oxford University Press, 2002, pp. 68-72.
- ❖ Sandesh Sivakumaran, "Beyond states and non-state actors: the role of state-empowered entities in the making and shaping of international law," *Colum. J. Transnat'l L.* 55 (2016), pp. 371-381.
- ❖ *ADF Group Inc. v. United States of America*, ICSID Case No. ARB (AF)/00/1 (Award), 9 January 2003, paras. 175-192.
- ❖ Philip Allott, "Interpretation - an Exact Art", in *Interpretation in International Law*, edited by A. Bianchi, D. Peat and M. Windsor: Oxford University Press, 2015, pp. 380-381.
- ❖ Davidson, Donald. "A Nice Derangement of Epitaphs", in *The Essential Davidson*, edited by Donald Davidson: Clarendon Press, 2006, pp. 251-265.

- ❖ Draft General Comment on Article 6 of the International Covenant on Civil and Political Rights – Right to life, available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx>
- ❖ Submission of the Australian Government, Draft General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights: Right to Life.
- ❖ Japan's Comments on the Draft General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights.
- ❖ United Nations Conference on the Law of Treaties, Vienna, Austria First session, 26 March – 24 May 1968, Document A/CONF.39/C.1/SR.33, 33rd meeting of the Committee of the Whole: Extract from the *Official Records of the United Nations Conference on the Law of Treaties, First Session (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*, p. 179.
- ❖ International Criminal Court, "Press Release: Al-Bashir Case: ICC Appeals Chamber confirms Jordan's non-cooperation but reverses the decision referring it to the ASP and UNSC", 6 May 2019, available at <https://www.icc-cpi.int/Pages/item.aspx?name=pr1452>.
- ❖ *Statement by Honourable Given Lubinda, Minister of Justice*, at the 18th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, 2 December 2019, The Hague.

Tuesday 17 May 10h15 (Salle S5)

12. Interpretation as a Game

Questions:

- What are the pros and cons of thinking of treaty interpretation as a game?
- Who are the players and how do they play? Can there be strategies at play?
- Why is it that everybody seems to be convinced that the game is worth playing?

Readings:

- ❖ Daniel Peat & Matthew Windsor, 'Playing the Game of Interpretation: On Meaning and Metaphor in International Law', in Andrea Bianchi and others (eds), *Interpretation in International Law* (Oxford 2015) 4-33.

- ❖ Andrea Bianchi, 'The Game of Interpretation in International Law: the Players, the Cards, and why the Game is Worth the Candle', in Andrea Bianchi and others (eds), *Interpretation in International Law* (Oxford 2015) 34-57.
- ❖ Joost Pauwelyn and Manfred Elsig, 'The Politics of Treaty Interpretation: Variations and Explanations across International Tribunals' (2012) in Jeffrey L. Dunoff and Mark A. Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations* (Cambridge 2012) 445-473.
- ❖ Fuad Zarbiyev, 'The 'Cash Value' of the Rules of Treaty Interpretation,' *Leiden Journal of International Law* (2018).

Tuesday 24 May 10h15 (Salle S5)

13. 'The Interpreter's Self': freedom and constraints in treaty interpretation

Questions:

- What may one mean by 'interpretation is a process'?
- What are 'cognitive frames' and how are they supposed to operate?
- What other insights drawn from other disciplines can be used in thinking about treaty interpretation?

Readings:

- ❖ Martin Walisch, 'Cognitive Framework of Interpretation in International Law', in Andrea Bianchi and others (eds), *Interpretation in International Law* (Oxford 2015) 331-347.
- ❖ Steven L. Winter, 'Chapter 1: A Clearing in the Forest' in Steven L. Winter, *A Clearing in the Forest: Law, Life, and Mind* (University of Chicago 2001) 1-21.
- ❖ Andrea Bianchi, 'Textual interpretation and (international) law reading: the myth of (in)determinacy and the genealogy of meaning', in Pieter H. F. Bekker and others (eds), *Making Transnational Law Work in the Global Economy* (Cambridge 2010) 34-55.
- ❖ Stanley Fish, 'What Makes an Interpretation Acceptable?', in Stanley Fish, *Is There a Text in this Class?* (Harvard 1980) 338-355.
- ❖ Walter Benn Michaels, 'The Interpreter's Self: Peirce on the Cartesian "Subject"' (1977) 31(2) *The Georgia Review* 383.

- ❖ Minutes of the ABM Treaty Interpretation Dispute Hearing before the Subcommittee on Arms Control, International Security, and Science of the Committee on Foreign Affairs, House of Representative (99th Cong., 1st sess., 22 October 1985), 1-21, 38-42.
- ❖ United States v. Alvarez-Machain, 504 U.S. 655 (1992).

Tuesday 31 May 10h15 (Salle S5)

14. Conclusions

Questions:

- Does it make a difference to do interpretation and to think about interpretation?
- What is the interplay between power and persuasion in treaty interpretation?
- Is law interpretation?