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ORIGINAL SCIENTIFIC ARTICLE / *ИЗВОРНИ НАУЧНИ РАД*

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RESOLVING CONTRADICTIONS IN THE PROCES OF INTERPRETATION OF TREATIES

Various interpretative sources express the same being of a treaty - the intent of the parties. Supposing that the intent is homogenous, contradictions among the interpretative sources should not be expected. Due various reasons the contradictions are, however, occurring sometimes in the process of interpretation. Leading by the principle of harmony, which is based on homogeneity of design of the parties, judges will attempt to harmonize contradictory information arising from competitive interpretative sources, but when it is not possible, they will weigh significance of competitive sources and gave priority to some of them. A concept of proper interpretation, as established by the International Law Commission of the United Nations, informs that the rule, which has to be applied in the case, will determine significance of competitive interpretative sources. This paper was written to show that the mode by which a treaty replies to the disputed question may also determine significance of competitive interpretative sources.

Key words: International treaties; Interpretation; Contradictions.

1. INTRODUCTION

The interpretation discovers the meaning which the parties attribute to terms, provision of a treaty and to text of the treaty as a whole. This definition implicates two things. First, it implicates that the meaning of a treaty comprises of something more than simple summation of meanings of particular terms. We shall see later that it may be important, especially in cases where a treaty does not have a particular article answering to the disputed question. Second, the definition uses the verb "to attribute" in simple present tense. That means, further, that attribution of the meaning to a treaty by

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the parties has not been finished by accepting the text, but it has continued during the whole life of a treaty. The subsequent agreements and subsequent practice in the application of a treaty, as means of interpretation, are hard evidence that support such proposition. The judicial interpretation denotes disclosing the meaning not *in abstracto*, but regarding the specific disputed question. It discovers, in fact, how a treaty answers to the disputed question.

Articles 31-33 of the 1969 Vienna Convention on the Law of Treaties (VCLT)[1] inform us where and how to search for the meaning of a treaty. They refer to the text of a treaty, annexes, other treaties related to the treaty, subsequent agreements and practice in the application of a treaty, the rules of international law applicable between the parties, the preparatory work and the circumstances of the conclusion of a treaty. These may be named as "sources of interpretation" or "interpretative sources" since they provide information about the meaning of a treaty. Articles 31 and 32 of the VCLT enumerate these sources as relevant for discovering the meaning, but enumeration is not exhaustive one. Interpreters use, also, other interpretative sources. Articles 31-33 indicate, also, methods of interpretation. Ordinary meanings have to be attributed to terms and there meaning have to be determined in the context, in the light of object and purpose and having in view other interpretative sources. Common name for sources and methods will be here "means of interpretation".

One of the main principles guiding interpretation is the principle of harmony. The principle of harmony expresses the presumption that all information arising from various interpretative sources and provided by the stated interpretative methods are in harmony. The presumption is based on the fact almost all interpretative sources are expressing the being of a treaty-common intent of the parties and on the presumption that the common intent is homogenous. The intent is expressed in the text of a treaty. The object and purpose is condensate of the intent. The intent drives subsequent agreements and subsequent practice in the application of a treaty. The principle of harmony governs relationship between different segments of a treaty, such as particular terms, context and object and purpose. The meaning of a term is expected to be in harmony with context, object and purpose, practice in the application of a treaty etc.

It may be, thus, presumed that all information, arising from different interpretative sources and provided by different methos, are harmonic and lead to the same interpretative result. We know very well that sometimes does not occur. It happens thus that information, which come from the preparatory work, are not in accordance with information resulting from the subsequent practice in the application of a treaty and they lead to different interpretative outcomes. Or, ordinary meaning of terms does not fit to object and purpose in certain circumstances.

[1] UN Treaty Series, vol. 1155, 331.

We are coming now to the subject-matter of my paper, to contradictory information which are arising from different interpretative sources and methods. Following the principle of harmony, judges will attempt to harmonize them. If that is not possible, they hardly have another choice than to give priority to information from one interpretative source over information from another source. Giving priority to information from one source over information from another source may determine outcome of interpretation. Weighing significance of means of interpretation is, thus, important issue. Building the concept of proper interpretation, the International Law Commission of the United Nations (ILC) addressed the issue. The purpose of this paper is to add something to the concept of proper interpretation, as envisaged by the ILC. My proposition is that significance of particular means of interpretation may depend, also, on the mode by which a treaty addresses the disputed issue. The practice displays a scale of various modes. Situation when the article of a treaty replies precisely and clearly to the disputed question consists a pole of the scale. The opposite pole is captured by situation when any particular article of a treaty does not address the dispute issue. Between the two poles is a range of situations where some articles of a treaty address the dispute question but not in sufficiently clear way. The first pole gives priority to ordinary meanings of terms in their context. The opposite pole prioritizes object and purpose over ordinary meaning. Situations between the two poles determines relevance and weight of various means of interpretation depending on degree of sufficiency and clarity by which articles answer the question. After presentation of the concept of proper interpretation, build by the ILC, I will analyze some cases to illustrate how the way by which a treaty replies to the disputed question may determine relevance and weight of certain means of interpretation.

2. PROCEDURE OF PROPER INTERPRETATION

The issue of a proper interpretation has not been very much discussed in literature. It was indirectly raised by the critiques of interpretation. The interpretation is sometimes seen as an anomic process which is guided rather by judicial instinct than by the rules on interpretation.[2] Or, Articles 31 and 32 of the VCLT are criticized due a broad discretion they allegedly leave to interpreter.[3] However, certain guidelines about proper interpretation may be

[2] H. Lauterpacht, "Restrictive Interpretation and the Principle of Effectiveness In the Interpretation of Treaties", *British Yearbook of International Law*, vol 26, 1949, 53.

[3] Ulf Linderfalk, „Is Treaty Interpretation an Art or a Science? International Law and Rational Decision Making'", *European Journal of International Law*, 1/2015, 175; Andrea Bianchi, „The Game of Interpretation in International Law in", A. Bianchi, D. Peat and M. Windsor, (eds), *Interpretation in International Law*, 2015, 44. On the other hand, the relevant Articles of the Draft of the VCLT were criticized as too much textually tied and

derived from materials of the ILC and they relate primarily to the choice of means of interpretation and to relations between them.

Articles 31 and 32 of the VCLT enumerate the authentic means and supplementary means of interpretation, but they do not inform which means should be used in a specific case and what to do if two applied means provide contradictory information. These two issues may really determine the outcome of interpretation. The two issues were addressed indirectly in a discourse on the relationship between means of interpretation as enumerated in Articles 27 – 29 of the Draft on the law of treaties. The ILC detected certain fear of States that the successive order of paragraphs in Article 27 of the Draft (now Article 31 of the VCLT) indicated the hierarchical order between interpretative means.[4] Convincing that the fear was without good reason, the Commission referred to singular, used in the title of the Article – "General rule of interpretation" – as well as to the opening phrase of paragraph 3 – "there shall be taken into account together with context" - to explain that the application of the means of interpretation would be "a single combined operation."[5] The Commission states: "All the various elements, as they were present in any given case, would be thrown into the crucible, and their interaction would give the legally relevant interpretation."[6] The ILC stresses two crucial points: first, all various elements at disposal in a case have to be considered; second, available elements have to be considered not each separately, but all together in mutual interaction.

The Commission has made a step forward, while working on the subsequent agreements and subsequent practice in the application of a treaty, as the means of interpretation in sense of Article 31 (3) (a) and (b) of the VCLT, in period between 2013 and 2018. The formula of "a single combined operation" has been slightly changed and supplemented. The supplement is given in paragraph 5 of Conclusion 2 under title "General rule and means of treaty interpretation" in the Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties of 2018.[7] The

narrow. See Myres S. Mc Dougal, „The International Law Commission's Draft Articles upon Interpretation: Textuality" *Redivivus*, *American Journal of International Law*, vol. 61, 1967, 992 - 1000. J.G. Merrills, „Two Approaches to Treaty Interpretaion, *Australian Yearbook of International Law*, 1968 – 1969, 55 – 80. Gidon Gottlieb, The Interpretation of Treaties by Tribunals", *American Society of International Law Proceedings*, 1969, 122 – 130.

[4] Report of the International Law Commission on the work of its eighteenth session, , 4 May – 19 July 1966, *The Yearbook of the International Law Commission* 2/1966, 219, para 8.

[5] *Ibid*.

[6] *Ibid*.

[7] Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, with commentaries, adopted by the International Law Commission at its seventieth session, in 2018, A/73/10, 17. Avaiable at https://legal.un.org/ilc/texts/instruments/english/commentaries/1_11_2018.pdf

paragraph reads: "The interpretation of a treaty consists of a single combined operation, which places appropriate emphasis on the various means of interpretation indicated, respectively, in articles 31 and 32."

The differentiation of various means of interpretation by "appropriate emphasis" alters and supplements the formula of 1966. The ILC explains that before the means of interpretation, an expression used now instead "elements" from 1966, would be "thrown into the crucible," an interpret should give them "appropriate weight in relation to each other" "in order to arrive at a proper interpretation".[8] It means that different means of interpretation have not necessarily equal emphasis in each specific case. In Draft of 1966, the ILC spoke on a "legally relevant interpretation" and now the ILC speaks about a "proper interpretation".

The weight of means of interpretation, according to the ILC, is "depending on the treaty or treaty provisions concerned".[9] The ILC clarifies further:

"This is not to suggest that a court or any other interpreter is more or less free to choose how to use and apply the different means of interpretation. The interpreter needs to identify the relevance of different means of interpretation in a specific case and determine their interaction with the other means of interpretation by placing a proper emphasis on them in good faith, as required by the treaty rule to be applied." [10]

The Commission did not further explain how, in what way "the treaty rule to be applied" requires distribution of importance among means of interpretation. Having observed that the jurisprudence of different international courts and tribunals indicates a possible relevance of the nature of a treaty for its interpretation, the ILC explains that the Draft conclusion 2 does not denote the nature of a treaty as the factor which would be regularly relevant for weighing certain means of interpretation and gives two reasons for that.[11] Reference to the nature of a treaty may endanger "the unity of interpretation process".[12] The ILC wants also "to avoid any categorization of treaties".[13] Besides, the ILC remarks that it would be difficult to separate the nature of a treaty from the object and purpose.[14]

The ILC obviously added new elements to its rudiments of legally relevant interpretation from 1966 while building the concept of proper inter-

[8] *Ibid*., 22, para 13.

[9] *Ibid*., para 14.

[10] *Ibid*.

[11] *Ibid*, 23, para 15.

[12] *Ibid*.

[13] *Ibid*.

[14] *Ibid*.

pretation in 2018. Still, the concept of proper interpretation has remained undeveloped. Precious information as how a treaty or treaty provision determines relative weight of means of interpretation is missing. I will try to connect weight of means of interpretation with the way by which a treaty answers the disputed question. As it was stated in the introduction, there is a scale od modes by which a treaty can address the disputed issue. The opposite extremes of the scale will be presented first. Then, it will be presented something between them.

3. THERE IS NO ANY ARTICLE OF A TREATY TO ADDRESS THE DISPUTED QUESTION

The Council of the League of Nations asked the Permanent Court of International Justice (the PCIJ or the Court) whether the competences of the International Labour Organization covered agriculture.[15] Part XIII of the Versailles Peace Treaty, which was then a constituent act of the International Labour Organization, was silent about the question. There was no any provision that explicitly addressed the issue. The Court did not have other choice but to consult the text of Part XIII as a whole. Consulting the text and the subsequent practice in the application of Part XIII, the Court faced disharmonic information. The purposes of Part XIII informed that the Organization has been competent for conditions of work in agriculture. A driving force for the establishment of the Organization, as stated in the preamble of Part XIII, was awareness that universal peace was not possible without social justice. At that time more than half working people was employed in agriculture. The purpose of the Organization could have not been reached without its competences in agriculture. On the other hand, the text of Part XIII included adjective "industrial" in more provisions, but adjective "agricultural" did not appear in any of them. There was a linguistic difference between English and French versions of the constituent instrument. Instead of the term "industrial," the term "professional" was used in some provisions in the French version. Having been more in accordance with the object and purpose, the Court opted for French terminology. Article 412 used the term "industrial" in both linguistic versions. The Article provides that a body competent for resolving disputed on observance by the parties of future conventions, which will be adopted by the Organization, will be consisted of "persons of industrial experience".[16] In might indicate that the future conventions will be limited to industrial matters. Consulting some dictionaries, the Court found that the term "industrial" includes in "primary and general" sense also agriculture

[15] *Competence of the International Laboure Organisation the Permanent Court of International Justice*, Advisory Opinion, PCIJ, 1922.

[16] *Ibid*., 3

production.[17] Thus, persons of industrial experience include also people of agricultural experience. The Court continued and stated:

"Taking this phrase in connection with the rest of the Treaty, the natural inference would appear to be that the phrase *matières industrielles* was intended to include the industry of agriculture. But, even if it were not so read the consequences would be that there would seem to be merely a defect in the constitution of the machinery in this particular instance, and not that the powers given to the international organization with regard to conditions of labour were to be similarly limited."[18]

There were also some other articles that included only term "industrial" in both linguistic versions. The quoted passage deserves, however, our special attention. The Court did not hesitate to say that the parties possibly made failure in drafting the constituent act of the International Labour Organization. The Court met, thus, contrary information arising from different sources: terminology of English and French versions, the purpose and subsequent practice in the application of the constituent act. The Court found that subsequent practice in period from June 1919 until October 1921 supported inclusion of agriculture under the competences of the Organization. Relying on the principle of harmony, where French and English terminology were different, the Court chose the terminology which was more in accordance with the purpose. Where the two versions used only the term "industrial," the Court opted for broader meaning of the term which covers agriculture. It seems that the Court gave decisive weight to the purpose of the constituent act. The purpose of the International Labour Organisation – maintenance of universal peace through social justice – could have not been reached without social justice in respect of people working in agriculture. Thus, information steaming from the purpose and subsequent practice overweighted contrary information send by some terms and by the composition of the dispute resolution body.

4. ARTICLE OF A TREATY PROVIDES SUFFICIENTLY CLEAR ANSWER TO THE QUESTION

First request for an advisory opinion, sent by the Council of the League of Nations to the PCIJ, related to Interpretation of Article 389 (3) of the Treaty of Versailles. The Article belonged to Part XIII of the 1919 Pease Treaty from Versailles, the Part which contained a constituent act of the International Labor Organization. The Council asked the PCIJ to answer the question whether the worker's delegate of the Netherlands at the Third Session of the International Labor Conference was nominated in accordance with Article 389 (3). The provision reads:

[17] *Ibid*., 35.

[18] *Ibid*., 37.

"The Members undertake to nominate non-Government Delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or work-people, as the case may be, in their respective countries."

The problem appeared when the Dutch worker's delegate was not nominated by agreement of the Netherlands Confederation of Trade Unions, the most numbered Dutch syndicate, but by agreement of three other syndicates, which together had more members than the Confederation. Focal point of the problem was meaning of "most representative organizations". The question was whether plural "organizations" was used to designate one most representative organizations of workers and one of employers, or the clause refer to plural regarding the both sides. If the expression denotes more organizations of workers and more organizations of employers, the question was whether the most numbered organization had to be among them. Having in view that paragraph 1 of Article 389 informed that one non-State delegate represents working people and adhering simple logic that more syndicates may have more members than one most numbered, the Court concluded that term "organizations" in Article 389 indicated plural regarding the both non-State parties. [19] Nither the Court accepted that the most numbered syndicate must be among the organizations of workesr, since it might vetoed agreement of others and thus the intention of representation of most working people might remain unrealised.[20] Relying on legal logic, the Court found all information necessary for the answer in the text of Article 389. Consultation of other sources, including the purpose of the constituent instrument, was unnecessary.

The advisory opinion of the International Court of Justice (the ICJ or the Court) in the case of *Competence of Assembly regarding admission to the United Nations* illustrates that hypothesis. The General Assembly of the UN asked the Court in November 1949 whether a State might be admitted to the membership of the UN when the Security Council has made no recommendation for admission due to missing majority of the votes of Members or due to negative vote of a permanent Member. Article 4, paragraph 2 addresses the issue in the following way:

"The admission of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council." [21]

The text of the provision is general and clear. The recommendation is necessary. The General Assembly made distinction, however, in its question

[19] *Designation of the Workers' Delegate for the Netherlands at the Third Session of the International Labour Conference*, 1922 PCIJ, 23.

[20] *Ibid.*, 25.

[21] *Competence of Assembly regarding admission to the United Nations,* Advisory Opinion, I.C. J. Reports 1950, 4.

sent to the Court between missing recommendation due to failing majority in the Security Council and missing recommendation due to veto of a permanent Member. The Cold War began and admission of new members was blocked. Dissatisfied by the situation, majority in the General Assembly attempted to overcome the problem by an interpretation of the Court. But, in vain. The Court stated:

"The Court considers it necessary to say that the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter. If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean when they used these words." [22]

The Court did not mention the purposes of the UN Charter. It rejected also to consider the preparatory work.[23] It took into account only subsequent practice in the implementation of Article 4, which has supported literal reading of the text. The object and purpose of the Charter of the UN may be understood to go against the answer of the Court.[24] Universality of the UN is a characteristic which makes an element of the object and purpose of the UN Charter. The right to veto of a permanent member of the Security Council regarding admission to the UN may be seen as an obstacle for achieving universality of the Organization, as it was seen by the two dissenting judges, Alvarez and Azevedo. The majority of judges believed, probably, that better achieving object and purpose cannot win the clear text.

4.1. Justified Exceptions

Only quite exceptional reasons may justify denying the decisive importance of ordinary meaning of the text of an article which extends clear, precise and complete answer to the issue at hand. The PCIJ accepted that "some valid grounds for interpreting the provision otherwise than in accordance with the natural sense of the words" might exist.[25] The ICJ stated, also: "To warrant an interpretation other than that which ensues from the natural

[22] *Ibid.*, 8.

[23] *Ibid.*

[24] See about object and purpose at Rodoljub Etinski, "The object and purpose of a treaty as a means of its interpretation", *Serbian Yearbook of International Law* 1/2021, 184. Available at https://www.researchgate.net/publication/357469583

[25] *Interpretation of the Convention of 1919 concerning Employment of Women during the Night*, PCIJ, 1932, 373.

meaning of the words, a decisive reason would be required."[26] The World Courts did not say what valid grounds or decisive reasons may legitimize interpretation contrary to ordinary meaning of the words.

There are certain indications in judicial practices. I will refer here to an opinion of judge Chile Eboe-Osuji in the case *Prosecutor v Ruto & Sang* from 2016.[27] The prevention of mass crimes was, probably, a decisive reason in that case for departing of ordinary meanings of the terms. The question before the trial chamber was whether an individual or small number of individuals can perpetrate a crime against humanity when an attack was not committed in furtherance of a State or organizational policy. Judge Eboe-Osuju gave a positive answer. The relevant text, para 2 (a) of Article 7 of the Rome Statute reads:

"For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;…"

The interpretation of judge Eboe-Osuju was going against the clear and precise answer as given by the quoted provision and against previous interpretation of these terms by the International Criminal Court. The judge emphasized teleological interpretation, distinguishing thus the object and purposes of the Rome Statute. An element of the object and purpose, as it is stated in the preamble, is to prevent perpetration of crimes from the competence of the Court. The case related to post election bloody violence which took human lives and which had been repeated several times after elections in Kenya. There was no evidence that behind accused people was the State or an organization. The judicial procedure was distorted by presser to witnesses. By majority of two judges in the trial chamber, the indictment was rejected, but the accused persons were not acquitted. Interpreting the Rome Statute as a whole, two judges found a meaning which was not explicated in the text and which reflected a clause, known in Anglo-Saxon law as "no case to answer". Since the prosecutor failed to submit evidence, partly due to miscarriage of justice, the two judges ended the proceedings, but left possibility to reopen the trial. During the proceedings the level of post-election violence had been significantly reduced. This fact informed the judges that deterrence might be effective in preventing violence. Literal reading of the quoted provision would, however, obstacle reopening the trial since the

[26] *Admission of a State to the United Nations (Charter, Art. 4)*, Advisory Opinion, 28 May 1948, IC J Reports, 1948, 63.

[27] *Prosecutor v Ruto & Sang* No.: ICC-01/09-01/11, 5. april 2016. *(Decision on Defence Applications for Judgments of Acquittal),* Reasons of Judge Eboe-Osuji.

accused persons have not acted pursuing a State or organizational policy. To overcome that problem, the judge gave primacy to the object and purpose over sufficiently clear and precise text. The prevention of mass crimes was most probably leading judge Eboe-Osuju to depart from clear text.

5. ARTICLE OF A TREATY PROVIDES INFORMATION RELEVANT FOR ANSWER TO THE QUESTION, BUT NOT SUFFICIENTLY CLEAR

The situation might be illustrated by the *Certain Expenses of the United Nations* advisory opinion.[28] The General Assembly asked the ICJ whether the expenses of peacekeeping operation constitute expenses of the Organization within the meaning of Article 17 (2) of the Charter? The question was provoked by division of members of the Organization regarding competence of the General Assembly to recommend collective action for preservation of peace and security. The General Assembly adopted Resolution 377 A (V), known as the Uniting for Peace resolution, taking a prerogative to recommend collective action against an aggressor when the Security Council is unable to perform its duty by veto of a permanent member. Some members challenged legality of the resolution and division of the members resulted in the question sent to the Court. The crucial question is, thus, whether the Charter authorizes the General Assembly to recommend collective action against an aggressor. Articles 10, 11, 12, 14 and 24 reply to the question. Article 10 states that the General Assembly may make recommendations on any matter within the scope of the Charter, except as provided in Article 12. Article 11 enumerates specific functions of the General Assembly. Thus, Article 11 (2) states that the General Assembly may discuss any question relating to the maintenance of peace and security and may make recommendations, except as provided by Article 12. This provision states further: "Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion." It might indicate that the Security Council is exclusively competent for acting in the field of peace and security. However, Article 11 (3) declares that the specific powers, enumerated in this Article, will not limit the general scope of Article 10. According to Article 12 (1), the General Assembly will not make any recommendations regarding dispute or situation while the Security Council is exercising its functions concerning that dispute or situation. The Secretary-General informs, in accordance with Article 12 (2) the General Assembly immediately that the Security Council ceases to deal with such matter. Article 14 entitles the General Assembly to recommend measures

[28] *Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion of 20 July 1962, I.C. J. Reports 1962, 151.

for peaceful adjustment of any situation which may violate the purposes and principles of the Charter, under the exception of Article 12. Article 24 (1) begins by words "In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security…"

Thus, what the Charter says whether the General Assembly may recommend collective action against an aggressor? The quoted articles do not provide a precise and clear answer. The General Assembly is authorized to make any recommendation regarding peace and security, except when the Security Council is exercising its function. That means that the Security Council may recommend collective action against the aggressor. On the other hand, Article 11 (2) states that the General Assembly will refer the matter to the Security Council if action is necessary. Whether that means that the General Assembly is not authorized to recommend action? Article 24 (1) informs that the members conferred to the Security Council primary responsibility for peace and security. The ICJ was not asked to answer whether the General Assembly was authorized to recommend peacekeeping operation, but whether expenses of the peacekeeping operations are expenses of the Organization according to Article 17 (2) of the Charter. Replying to the question, the Court came unescapably in position to comment the relationship between the General Assembly and the Security Council regarding activities for maintaining peace and security. The ICJ noted that Article 24 transfer "primary," not exclusive responsibility to the Security Council regarding maintaining peace and security.[29] The Court founded that the term "measures," as used in Article 14, "implies some kind of action".[30] Thus, according to the Court, function of the General Assembly was not "not merely hortatory".[31] Decisive question for the Court was "whether the resolutions authorizing the operations here in question were intended to carry out the purposes of the United Nations and whether the expenditures were incurred in furthering these operations."[32] After examination of the purposes, functions and structure of the Organization, the Court concludes that "it is apparent that the operations were undertaken to fulfil a prime purpose of the United Nations, that is, to promote and to maintain a peaceful settlement of the situation."[33] Thus, in the case when some articles allow two opposite interpretations, the purpose of the Charter points at the right answer.

[29] *Ibid*., 163.

[30] *Ibid.*

[31] *Ibid*.

[32] *Ibid*., 158, 167.

[33] *Ibid*., 171.

6. CONCLUSIONS

The proposition of this paper that the mode by which a treaty replies to the disputed question may determine relevance and significance of competitive sources of interpretation is based on legal logic and expediency. Indeed, it is logical that when any provision of a treaty does not answer the disputed issue, an interpreter is searching for answer in other sources, particularly in the object and purpose of a treaty and subsequent practice in the application of a treaty. The object and purpose is a reservoir of implied meaning. As it was stated in the introduction, the meaning of a treaty extends over summation of ordinary meaning of all terms of the treaty and includes implied meaning. Subsequent agreements and subsequent practice in the application of a treaty reflects alive intent of the parties regarding the treaty, which supplements the intent expressed in the text. On the other hand, when a provision of a treaty replies to the question sufficiently clear, there is no need to go beyond the text of the provision for gathering information. Necessary information are given in the provision.

It should be noted, however, that judge Anzilotti in his dissent[34] to decision of the PCIJ in *Interpretation of the Convention of 1919 concerning Employment of Women during the Night* observed that clarity of text might be ascertained only in light of the purpose of a treaty as the best evidence of the intent of the parties. The PCIJ was asked whether the 1919 Convention on Employment of Women during the Night prohibited night work of women in position of supervision or management. Article 3 answered clearly in positive way. However, the article did not make distinction between manual workers and managers. Judge Anzilotti claimed that the general purpose of international labour law was protection of manual workers. The interpretation of the PCIJ was technically perfect, but two years later the parties to the 1919 Convention adopted a revised text of the Convention excluding women managers from prohibition of night work. That does not necessarily mean that the interpretation of the majority judges was improper and that Anzilotti's interpretation was proper. It might be that the parties changed their intent regarding the issue after the conclusion of the Convention. However, the concept of proper interpretation, as established by the ILC, requires judges to consult indeed all available interpretative sources. In spite of clarity of a provision regarding disputed issue, they should consult object and purpose and all other available interpretative sources. If not pressed by the parties to the dispute, judges frequently do not do that and they are usually satisfied by the text of an article when it clearly replies the question. Various reasons exist for such practice. Heavy workload and time pressure under which

[34] *Interpretation of the Convention of 1919 concerning Employment of Women during the Night*, 1932 PCIJ, Dissent Opinion of Judge Anzilotti.

judges are working sometimes are not the least important. Expediency may sometimes explain such approach.

The proposition that the object and purpose overweighs contrary specific terms or provision of a treaty in cases when any provision does not reply to the question is based also on interpretative logic. The disputed issue which has not been addressed by a treaty, might have not been in mind of drafters of a treaty. Specific issues which were in mind and which are addressed in the treaty are not necessary quite relevant for detection of the intent of the parties regarding the non-addressed issue. In such cases the general intent of the parties, as expressed in the purpose of a treaty, might be more relevant. On the other hand, when an article replies clearly to the disputed question, terms and provisions of the article will prevail the object and purpose of a treaty, except in exceptional situations. The parties determine in the text of a treaty mechanisms of realization of the purpose of the treaty and judges are not invited to improve these mechanisms.

The proposition that the mode by which a treaty replies to the disputed question determines relevance and weight of competitive interpretative sources is supported by practice. The review of practice in this paper amounts very small segment, which consists of a few advisory opinions of the World Courts regarding constituent instruments of international organizations. No doubt that the practice the European Court of Human Rights confirms the proposition. The proposition might be valid also regarding "contractual" treaties as it is confirmed by the *Iron Rhine* arbitration.[35] The author of the paper may thus reliably expect that comprehensive exploration of practice would confirm the propositions submitted in this paper.

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РЕШАВАЊЕ СУПРОТНОСТИ У ПРОЦЕСУ ТУМАЧЕЊА МЕЂУНАРОДНИХ УГОВОРА

Сажетак

Различити интерпретативни извори изражавају исто биће уговора – намеру уговорница. Имајући у виду да је намера уговорница у начелу хомогена творевина, није очекивано да се догоде супротности међу интерпретативним изворима у процесу тумачења међународних уговора, али због различитих разлога, оне се дешавају. Вођени начелом хармоније, које има своју основу у хомогености намере уговорница, судије ће настојати да усаглаше супротне информације из конкуретних извора тумачења, али када то није могуће, они ће мерити значај различитих извора и дати предност некима од њих. Концепт исправног тумачења, како га је установила Комисија за међународно право Уједињених нација, обавештава да правило које треба да буде примењено у спорном предмету одређује значај појединих компетативних извора. Овај чланак писан је да би показао да начин на који уговор одговара на спорно питање, такође, одређује значај појединих компетативних извора тумачења.

Кључне речи: *Међународни уговори; Тумачење; Супротности*.