Sovereignty and Interpretation of International Norms

Carlos Fernández de Casadevante y Romani

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To Virginia, Maria, Pablo,
Victoria, Irene and Clara
With love

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CHAPTER I:

Sovereignty and Interpretation: A Relationship of Dependence

1 The sovereignty of the State conditions the interpretation of international norms: Discrepancy, discretion. Persistence of the problem

As we approach the beginning of the XXI century, one might think that addressing the problem of the interpretation of international norms is just another theoretical contribution to the Science of Law. Some might criticise it as being one more paper turned out by the ivory tower of the university. The problems, the practice, in other words, real life goes on outside these walls and our goal would only be another theoretical construction devoid of practical application and utility. However, the interpretation of international norms is one of the themes most closely linked to the practice of both international and domestic law. Furthermore, in the international field of law, the task of interpretation underlies the range of norms (conventional, institutional and custom), as well as the other ways of creating legal obligations (unilateral declarations), and it acquires a new dimension within the framework of the functioning of the international judicial or arbitration scenario. In this context, interpretation can be required on different occasions. This may be beforehand, as regards the declaration of acceptance of the jurisdiction of the body in question, or while exercising the judicial or arbitration function (while applying the norm to the specific case, which will acquire a variety of profiles depending on the type of norm). However, it is also required when there is a hypothetical application of the interpretation of a judgement or of the advisory opinion of the I.C.J.

So, it is evident that in the international legal order the problems linked to the interpretation of norms and the conduct of the State are neither theoretical nor trivial.

In spite of the advances made, the International Community is still a society composed mainly of sovereign States and is characterised by the decentralisation of political power.

The consequence is that sovereignty is involved both in the creation process of Law as well as in its application, despite the limits it is progressively subjected to as a result of the development of International Law as a whole and the material conditions of contemporary life. With regard to the former, the incidence of State sovereignty is clearly evident in the initial phase of the formation

process of the international norm: the time when the contrasting interests of the Parties are sifted to obtain a general consensus, or even a formal international agreement. Concerning this last aspect, since the interpretation of the international norm usually occurs on the occasion of its application to a specific case. As P.M. DUPUY reminds us, one of the features of the international legal order derives from the fact that, within it, in principle, each subject has the competence, to interpret the meaning and scope of the rights and obligations he has by virtue of the international norms. This task is carried out by each State "depending on the representation of its interest in a specific situation and the distrust it has of its partners"[1].

In the initial phase, sovereignty is involved in specifying the content of the norm, with the peculiarity that, depending on the type of norm, the behaviour of the Parties or the language chosen by them is the vehicle used to express the sovereign will of the State.

In order to reach agreement, which is both the result and the instrument of international co-operation, language continues to be the fundamental tool insofar as written norms are concerned. It is through language that international rights and obligations are constructed, and these make up the written expression of the will and consent of the State.

In this regard, it would be wrong to think that States are interested in the clear determination of rights and obligations in a given situation when they act in the international field. In the majority of the cases this is not usually the case. On the contrary, the willingness of the State to be bound will be more easily achieved if there is sufficient flexibility to satisfy the proposals and counter-proposals that will give rise to the text of the agreement once these proposals have undergone a process of negotiation. In this process, the language, the terms, constitute the tools and the more general the terms in which the obligations are couched, the easier it will be to reach an agreement on the text. This fact is easy to verify in conventional international practice, especially in regard to the drafting of multilateral treaties. The other side of the coin is the difficulty encountered afterwards in practice when the time comes to determine the content of an obligation drafted in fuzzy language, which can be read at the discretion of the reader, but did make the agreement possible. Such use of very vague terms is often the price that States pay to facilitate a minimum of organised international co-operation assumed by them voluntarily and entailing progressive limitation of their sovereignty. But this vagueness of the language employed is also a source of controversy and discrepancies when the time comes to apply the norm.

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[1] DUPUY, P.M., *Droit international public,* Dalloz, Paris1992, p. 218 et seq. Institutional norms should be added to the list of norms drawn up by this author. See also, the general treatment given by MCDOUGAL, M.S., LASSWELL, H.D., and MILLER, J.C., *The Interpretation of International Agreements*, M. NIJHOFF, Dordrecht, 1994 and LEIBIGER, M., *Die souveränitätsfreundliche Auslegung im Völkerrecht*, Frankfurt am Main, Berlin, Bern, Wien, Lang, 2005.

However, it is also true that the problems of interpretation of norms does not disappear when the obligation is drafted in clear language. In this case, the discrepancy can come about as a result of the concurrent, though divergent interpretation made by the Parties when the norm is applied to a specific case. In other words, the clarity of the norm in its initial formulation is not a guarantee of convergent interpretations at the time of application because of the discretionary competence that States have in order to interpret as a result of their sovereignty. Thus, despite the aphorism of VATTEL[2] *in claris non fiat interpretatio* clarity is not the presupposition of interpretation, but its result. The existence of divergence is sufficient to necessitate interpretation. As REMIRO points out concerning conventional norms, it will always be necessary to "determine the sense, establish the scope, clear up obscure points and ambiguity in provisions, possibly deliberately inserted by the negotiators, before applying them to specific cases"[3]. That is why SIMON speaks of the "omnipresence" of the process of interpretation which comes across more strongly in International Law than in the other branches of Law, due to the specific nature of the former.

In fact, in domestic law the extent of the lack of determination of the legal norms leading to the need for interpretation is, generally speaking, less frequent, owing both to the hierarchy of the norms and to the centralising of the essential function of interpretation in the hands of the Judge[4]. At international level, as we have already pointed out, the situation is completely different as it involves an international society characterised by the co-existence of sovereign states[5].

These problems take on a new dimension during the process of institutionalisation of the International Community which, rather than simplify these problems, makes them even more acute to the extent that obtaining agreement requires a high dose of flexibility when drafting the aspirations of the different states in a text at the risk of making the international norm unworkable. The price again entails language which is sufficiently ample to satisfy the opposing interests. As is stressed in the doctrine, the International Organisations have not replaced the

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[2] VATTEL, E., *El Derecho de Gentes o principios de la Ley Natural aplicados a la conducta y a los megocios de las naciones y de los Soberanos,* Translation by Pascual Hernández, M.M., Vol. I, Madrid. 1834, p. 474: "The first general maxim on interpretation is that *it is not licit to interpret what does not require interpretation"* (the italics are from the original).

[3] REMIRO BROTONS, A., *Derecho Internacional Público. 2 Derecho de los Tratados,* Tecnos, Madrid, 1987, p. 306: Similarly VOICU, I "In order to be applied every legal norm must be interpreted, even if the proceedings are taking place *sub silentio"* (*De l'interprétation des traités internationaux,* Pedone, Paris, 1968, p. 4).

[4] However, as we shall see, problems can arise concerning the interpretation of treaties by domestic judges to the extent that he may address the matter unaware of the interpretative rules proper to International Law.

[5] Vid SIMON, D., *L'interprétation judiciaire des traités d'Organisations Internationales,* Pedone, Paris, 1981, p. 7.

sovereign States, but they have meant a channel for transformation as they enable greater effectiveness and provide new dimensions to the functions and scope of international legal norms. Unlike classical International Law, which was presided over by the principle of reciprocity which was involved in the creation, execution and sanction of the international legal obligations, contemporary International Law has been modified both as regards regulation and as an institutional mechanism. This regulation currently aspires to forge social reality by creating conditions of peace and by ceasing to be a Law limiting the competence between sovereign States, a Law which was "exclusively formal and procedural to become a law for regulating which defines the conduct of States as regards the satisfaction of the general interests of the International Community as a whole, that is to say, with regard to the promotion and achievement of the common good"[6] or, also of a greater or lesser group of States. Insofar as the instruments for achieving these general interests are usually the treaty and the institutional norm (both of which make up the expression of international co-operation), the use of language which is wide enough to enable a consensus on the text of the norm to be reached continues to be the means for achieving this. Consequently, the problems of interpretation do not disappear. We will have the chance to check this out in this book when we address the problems of institutional norms from the perspective of the resolutions of the United Nations General Assembly.

Moreover, within the environment of the United Nations, worrying interpretations of the Charter have been made. Recent practice in the Security Council reveals the existence of *political* interpretations of the Charter which call into question the principle of legality which ought to govern the interpretation and application of international norms. One of the most significant examples of this tendency is observed in Resolution 748 (1992) of the Security Council adopted with regard to Libya in the *Lockerbie case* by which the problem was placed within the framework of Chapter VII of the Charter. Such an interpretation does not fit in with the demands of the Charter itself. As international doctrine has pointed out the basic underlying problem in this matter is the dangerous interpretation of Chapter VII of the Charter proposed by the United States and the United Kingdom by which "the Security Council, which has been introduced into this chapter on request, can adopt any decision including those which are *para* or *contra legem* and the ICJ cannot participate or acknowledge an environment of immunity as regards the Council when it acts in order to maintain international peace and security, and convert this chapter – as SUY stated- into the *"domaine réservé"* or the "*casse gardée*" of the Council"[7]. Later on we will address this issue in depth[8].

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[6] CARRILLO SALCEDO, J.A., *El Derecho Internacional en un mundo en cambio,* Tecnos, Madrid, 1984, p. 192.

[7] ANDRES SAENZ DE SANTA MARIA, M. P., "'De maximis non curat praetor'. The Security Council and the ICJ in the Lockerbie Case", *R.E.D.I.*,1992/2, p. 344.

[8] See pages 185-189 of the present work.

The situation described in the preceding pages shows the relevance and the consequences that state sovereignty has in the process for the formation of international norms and in the time it is applied; characteristics which are also involved when the norm is adopted and applied within the institutions of International Organisations.

The predominant state structure of the International Community, which is also found in the structures of the International Organisations and their organic structures, together with the principle of the autonomy of the will of the parties or of the Members of the Organisation in question as a consequence of sovereignty, condition and infuse all the formation and application process of the international norms and this is obvious from the drafting of the norm and the later application which is when the necessity for interpretation arises as we have pointed out previously.

The same situation also appears regarding the customary norms and unilateral declarations but with different features. Thus, in the firsts, the difficulties become more acute as the states manifest their will and exercise their sovereignty through their conduct in practice. Consequently, this practice must be analysed in order to determine the existence of the norm in question, its content, the appropriateness of its application to the specific case and its interpretation in the event that the previous verification has been positive. In addition, there are no rules for interpretation to help those carrying out this task.

Finally, in unilateral declarations, sovereignty is expressed through the terms employed in the declaration; these terms express the will of the State as regards a situation of fact or of law. As in the previous case of the customary norms, there are no rules for the interpretation of unilateral declarations so, in accordance with the case law of the ICJ, the determination concerning whether the declaration in question produces legal effects or not must be done by interpreting the act and analysing the intention of the author of the declaration. These are some of the criteria laid down by the Court. Despite this fact, difficulties exist insofar as the institution called on to interpret the declaration in the event of controversy enjoys wide autonomy and freedom to carry out its work, and its interpretation might not coincide with the real intention of the author of the declaration. ICJ case law provides examples of this type.

Thus, it can be stated that interpretation is a problem which lies "at the heart of the application of international law"[9] but is not confined to the Law of Treaties, though it extends to the totality of international regulations[10].

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[9] SIMON, D., *L'interprétation judiciaire*, *op. cit.*, p. 6.

[10] In the words of DUPUY,P.-M.: "In fact, interpretation plays an important role in the totality of international law and not only in the law of treaties because it, to a great extent, conditions its application" (*Droit international public, op. cit.*, p. 218). Consequently, the task of interpreting arises as regards conventional law, customary norms and institutional norms as well as unilateral legal acts.

At *doctrinal level* there is discussion on whether the interpretation of the norm precedes application or whether the opposite is true[11]. In our opinion, as we have stated before, the interpretation of international norms generally, though not exclusively, arises in the event of its application to a specific case. When the norm is applied to a specific case is when the controversies might arise between the Parts affected and, in fact, controversy concerning interpretation is frequent as evidenced by the examination of international judicial and arbitration case law[12]. Thus, the determination of the meaning and the scope of the norm constitute problems which delay or condition its application[13]. Therefore, if the application of the norm cannot be regulated by harmonising the range of interpretations provided by the Parties concerned, the application leads to questioning, at least, the usefulness of the norm, its operative efficacy, and even its very existence.

At a material level, this interpretation has two forms which are "in fact inseparable when a problem of application arises, therefore successive forms: establishing the general sense of the norm by abstract interpretation, seeking to fix its meaning in a particular case by specific interpretation. In the latter case, it is used together with the interpretation of the circumstances at the base of its application"[14]. However, when it is a question of customary norms both ways for interpreting appear obscure as it is first necessary to demonstrate the existence of the custom in order to interpret it and apply it to the specific case. On the other hand, the

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[11] In the presentation of its articles, the Vienna Convention of May 22, 1969 on the Law of Treaties places the application of the treaties (Part III, 2nd Section) before their interpretation (Part III, 3rd Section).

[12] For example, the *case of the interpretation of the Peace Treaties with Bulgaria, Hungary and Rumania (*ICJ, *Reports 1950,* pages 65-78*); the case of the interpretation of the Agreement of March 25, 1951 between the WHO and Egypt (*ICJ, *Reports 1980,* pages 67-98*); the case regarding the arbitration Ruling of July 3, 1989 (*ICJ, *Reports 1989,* pages 53-76*); the case of the Questions of Interpretation of the Montreal Convention of 1971 as a result of the Lockerbie Air Incident (*ICJ, *Reports 1992,* pages 114-127*); the case of territorial dispute (*ICJ, *Reports 1994,* pages 6-42*).* As regards arbitration one example is the Arbitration Ruling of December 22, 1963, concerning the *case of the interpretation of the Franco-American Agreement on International Air Transport* (See on this case: COTT, J.P., "L'interprétation de l'accord franco-américain relatif au transport aérien international (Judgement Arbitral du 22 décembre 1963)", *AFDI*, 1964 pages 352-383.

[13] As underlined by doctrine "the natural destiny of a legal rule is its application to social relations for which it was laid down. In order to be sure that it is applied and to what extent it is applied to a specific case, it is often necessary to previously dissipate the uncertainty and ambiguity it almost inevitably contains due to its general nature, in order to restitute its true meaning. This is the task of interpretation. It consists of unravelling the precise meaning and the content of the applicable legal rule in a determined situation" (QUOC DINH, N., DAILLIER, P. and PELLET, A. *Droit International Public,* 4th de. LGDJ, Paris 1992, p. 245). Along the same lines see VOICU, Y., *op.cit*., p. 4).

[14] SUR, S., *op. cit*., p. 194.

way the customary norm is applied may be the basis of its interpretation through the posterior analysis of the states which are the parts involved in the application. In the event, the practice may be the element to determine the meaning and the scope of the norm. SALMON, on the other hand, considers that the interpretation and the application are concomitant, not successive, operations. This is because "when a specific case comes up against a norm whose application is to be taken into account, often the norm requires the addition of something, so that its sense be made more precise in accordance with the particular situation"[15].

But the problem of interpretation of international norms has a third aspect: the institution responsible for deciding on the controversy. Decentralisation of political power in the International Community is known to lead to the absence of obligatory international jurisdiction. Consequently, controversies regarding interpretation can only be decided by a third party if the parties in disagreement previously consent to this (which may require the previous interpretation of the agreement or the declarations of acceptance of the jurisdiction in the case of the ICJ) or if this measure is stipulated in a treaty to which they are parties. In both cases, the third party will dictate a non-authentic interpretation, as it does not proceed from the parts, but will be imposed on them as they have accepted its jurisdiction (either in general, or for this controversy or through the treaty)[16].

The analysis of international arbitration and judicial practice shows precisely that the appeal to judicial methods for solving controversies as regards interpretation is exceptional, so, except in the aforementioned circumstances or where the parts themselves are able to solve the problem through an agreed interpretation which satisfies their respective positions, which, as we have mentioned, is exceptional, the controversy will persist, and this will have its repercussions on the application of the norm.

Thus, in order to avoid such problems, in some multilateral treaties, the States stipulate that an institution be responsible for deciding on the problems regarding interpretation or its submittal to arbitration proceedings[17].

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[15] SALMON, J., "Le fait dans l'application du droit international", *R. des C.*, t. 175 (1982-II), p. 343.

[16] The case may also arise in which the parts request the interpretation of the ruling issued regarding the controversy in question, in which case the interpretation will be authentic as it has been given by the same institution which dictated the previous one. A recent example is the Judgement pronounced by the International Court of Arbitration (Argentina/Chile) on October 13, 1995 in the *case requesting revision and interpretation in assistance submitted by Chile concerning the Judgement of October 21, 1994*.

[17] For example, the *Vienna Convention of August 23, 1978* on the succession of states regarding treaties (articles 41-45); the *Vienna Convention* on the succession of states regarding state goods, archives and debts, of April 8, 1983 (articles 42-46); the United Nations Convention of December 10, 1984 regarding the fight against torture and other cruel, inhuman or degrading treatment or punishment (article 30) and the Agreement on the prevention and punishment of the crime of genocide on December 9, 1948 (article IX).

The advantage of such treaties is undeniable since, when the States express their consent to be bound by the treaty, they automatically accept to submit to the procedure laid down therein as regards interpretation. In such cases, state sovereignty is limited voluntarily so as to decide on the issues of interpretation. But this does not mean that the express or tacit consent of the State is not decisive. What happens is that this consent "included within a tighter and complex network of international obligations and different types of conduct lacking formalisation appeared in the legal reality as relative, multiple"[18].

It can be said, on the other hand, that the attitude of the States as regards submitting their controversies on interpretation to international jurisdiction will also depend on how such jurisdiction acts concerning the problems submitted. In a way, the fact that the States tend to submit controversies on interpretation to international jurisdiction is closely related, to a greater or lesser extent to the attitude of the international judge in the sense that he confines himself to the strict interpretation or takes advantage of the chance to create Law, which at times is a mere pretext of a state dissatisfied with the decision of the judicial body. On this matter, it has been stated that the function of international jurisdiction is to interpret Law, extract the rules of custom and the general principles. But this function of interpretation, in practice, can sometimes lead to the exercise of the judge's quasi-power to dictate norms, as occurs, for example, with the case law of the European Community Court of Justice (hereinafter ECCJ) This Court "through a process which was always meant to be 'constructive' and for that very reason has given rise to spirited controversy, has completed and extensively prolonged the community law in the texts. Hence, the resistance of certain national jurisdictions"[19].

This fact is true. What happens in practice is that the creation of Law by the international judicial or arbitration organisms is closely related to the scope of jurisdiction. In fact, the examination we have carried out enables us to confirm what earlier studies on the problem of interpretation had warned of. Namely, that the creative work of the organism responsible for the interpretation is seen to be more ample in the case of organisms with obligatory jurisdiction, to which the parts are compelled to appeal in order to decide on any question of interpretation. Such is the case of the ECCJ, and in this regard, the obligatory jurisdiction laid down by the 1957 Treaty of Rome concerning interpretation has led to a considerable increase in the obligations contained in the Community Treaties and, consequently, to a reduction in the state competence and sovereignty of the Member States.

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[18] SUR, S., *op. cit.,* p. 121.

[19] ABRAHAM, R. *Droit international, droit communitaire et droit français*, Hachette, Paris, 1989, pages 20 et seq. On the interpretation of Community Law see BREDIMAS, A. *Methods of interpretation and Community Law,* North-Holland Pub., Amsterdam, 178, CARTOU, L., "La Cour de Justice des Communautés Européenes et le droit Communitaire" in the collection *Mélanges offerts à Marcel Waline,* LGDJ, Paris, 1974, pages 163-171; CHEVALIER, R.M., "Methods and Reasoning of the European Court in its Interpretation of Community Law*" Common Market Law Review*, 1964/1965, pages 21-35.

Examples are the pronouncements of the aforementioned Court on the judicial nature of the Community and the Community regulations, as well as the principles which inspire these which are those concerning uniform, direct and immediate application, primacy, and the principle of the direct effect of the Directives.

On the contrary, in the case of organisms without compulsory jurisdiction, as is the case of the ICJ, the interpretative function, which it is granted voluntarily by the Parts which are involved in controversy over the interpretation of a particular international norm, is transformed quantitatively into a very minor incidence, though not less important, from the viewpoint of the creation of Law. Moreover, as regards the interpretation of treaties, the ICJ is restricted both by the existence of interpretative rules which it is obliged to use and by the fact that it must give reasons for its decision, which forces it to act with prudence.

Consequently, if the I.C.J. wishes to have an increasing number of States choosing it to resolve their disputes, it must be very prudent and apply international norms while not providing them with the power to expand, in order not to limit state sovereignty, a fact that could arise if the Court applies innovations to the rules existing in the different sectors of the international legal order when matters and consultations are submitted to it. Despite all this, as we will have the opportunity to confirm throughout this work, the interpretation of international norms by the I.C.J. has contributed to the development and precision of the legal system applicable in different sectors of this legal order and it has been especially innovative, for example, in the constructions it has built up on unilateral declarations, international custom and Sea Law.

The manner in which the I.C.J. acts in interpretative matters has also another dimension through the procedure of interpretation by means of advisory opinions, regulated in article 96 of the United Nations' Charter, in Chapter IV (articles 65-68) of the Statute of the Court, as well as in Title IV (articles 102-109) of its Rules.

In accordance with article 96, the following are entitled to request an advisory opinion: the General Assembly, the Security Council, as well as other organisms of the United Nations and the specialised agencies of this Organisation when they are authorised by the General Assembly[20].

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[20] In this regard, the intervention of the States is limited to the following cases: where the advisory opinion requested concerns a legal question "currently pending between two or more States" (article 102 of the Regulations of the ICJ) or when "due to collateral agreements, which do not affect the way the Courts works, the States have agreed to accept the advisory competence either as an alternative to contentious jurisdiction or where there is no contentious jurisdiction" (ROSENNE, S., *The Law and practice of the International Court of Justice*, M. Nijhoff, Dordrecht, 1993, pages 699 et seq.). This author quotes as examples the issues of *the Southwest African (vote)* and *the Southwest African Committee* in which the advisory opinion was issued without the participation of South Africa.

Regarding the objective of the advisory opinion, in article 96 of the Charter as well as in Chapter IV of the I.C.J. Rules this is stated generally as dealing with: "any legal question"[21].

Unlike the judgements pronounced by the Court in contentious issues, the advisory opinions are not binding although they do have the authority inherent to all the pronouncements of the I.C.J. as the judicial interpreter of International Law. On the other hand, in addition to the value of these advisory opinions as jurisprudence of the only international judicial organ of a universal nature, they are usually followed by resolutions of the General Assembly which, generally speaking, adopt the criterion stated by the Court. The problem then arising is that of the value or legal effects of the resolution in question, especially if it is not voted by all the States which are members of the General Assembly[22]. However, independently of this aspect, the value of the advisory opinions as interpretations of judicial questions of International Law submitted to the Court and later reaffirmed and developed in its judgements, cannot be denied[23].

In recent practice of the I.C.J. we have several examples of requests for advisory opinions. The first was posed by the WHO on May 14, 1993 concerning whether the use of nuclear weapons by a State in the course of a war or other armed conflict would constitute a breach of its obligations under International Law (including the constitution of the WHO)[24]. The second was drawn up by the General Assembly through its Resolution 49/1975 K of December 15, 1994, on the legality of the threat or use of nuclear weapons under any circumstances[25]. More recently, the request for advisory opinion drawn up by the General Assembly concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*[26].

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[21] In the event that the request originates in other organisms of the United Nations or specialised organisms, article 96 states precisely that it must deal with legal questions arising within the scoper of its activities. In this regard see ROSENNE, S, *The Law and Practice ..., op. cit.,* pages 698 et seq.; SINGH, N., *The role and Record of the International Court of Justice,* M.Nijhoff, Dordrecht, 1989, Szafarz, R., *The Compulsory Jurisdiction of the International Court of Justice*, M. Nijhoff, Dordrecht, 1993.

[22] Concerning this issue see Chapters III and X of this work.

[23] Forming the jurisprudence referred to in article 38.1 d) of the Statute of the ICJ which constitutes *auxiliary means* to determine the rules of law and which the Court must apply on deciding on the controversies submitted to it. Vid JENNINGS, R., "Le rôle et le fonctionnement de la Cour" (ICJ, *Annuaire 1991-1992* No. 46, the Hague, 1992, pages 219-227.

[24] ICJ, *Reports 1993,* pages 467-468. In 1946 the General Assembly authorised the WHO to request advisory opinions from the ICJ on judicial issues arising in the framework of its activity in accordance with articles 96.2 of the Charter, 76 of the constitution of the WHO and X.2 of the agreement between the UNO and the WHO.

[25] ICJ, *Reports 1995,* pages 3-4.

[26] ICJ, *Reports 2003,* pages 3 et seq.

In fact, owing to the predominantly state nature of the International Community and the principle of autonomy of the will of the Parts on issuing consent, in the interpretation, as in other sectors of international regulation, the consent of the State, and therefore sovereignty, also occupies a preferential position. It is in this sense that it is said that the competence of interpretation is an attribute of state sovereignty. In other words, as far as interpretation is concerned, the sovereignty recognised to the State by International Law, implies the right of the State to appreciate and to interpret the relevant obligations and rights or those recognised as the State's by the regulation itself. This appreciation is valid "with regard to all the elements concerned in the interpretation: facts, acts or situations comprised by the Law, customary or conventional norms"[27]. So, this leads to a concurrence of interpretations proceeding from the various States involved in the problem of interpretation and this implies opposing but equal legal pretensions which have equal value. None of these interpretations is an authentic or quasi-authentic interpretation of law because they are unilateral, although they do validly establish the legal position of the State as regards the norms in question. Nevertheless, under certain conditions, especially "the tacit or non tacit consent of the other States or the intervention of a jurisdictional organism, such an interpretation can be recognised as authentic"[28].

The fact that the State has freedom to appreciate the rights and obligations recognised by International Law does not imply that this freedom is unlimited. It is modulated by the rules contained in Article 53 of the Vienna Conventions of 1969 and 1986 on the Law of Treaties and in article 103 of the United Nations Charter, as well as by the "principle of good faith" by which the discretion of the State as regards the interpretation of the norms must be checked[29].

International doctrine as well as international practice underline the fundamental nature of this principle in international relations, but recourse to this does not, in fact, prevent the persistence of the discrepancy as a consequence of the diverging interpretations of the same norm made by the Parties. What is the meaning of good faith? To what extent does this principle affect the valuation made by the State of its international obligations in the specific cases when that valuation, as occurs in practice, is made in the light of the political interests of the State in respect of that situation? Does good faith allow the Parts to undermine the interpretation? Can the interpretative rules of Articles 31 to 33 of the Vienna Conventions from 1969 and 1986 concerning international treaties guide the application of the principle of good faith as they obliged States to interpret in accordance with these rules?

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[27] SUR, S., *op. cit*., p. 123.

[28] *Ibid.*

[29] Likewise the limitations arising from the attitude the Parts may adopt owing to the *reciprocity* of the obligations or as a consequence of the self-tutoring authorised by International Law (methods of counter-measures and unarmed reprisals for example).

As we can see, there are few tasks as difficult as specifying the content of this normative principle that is supposed to be always present in the behaviour of the State. We find the same difficulty while attempting to prove that the State in question at a specific time is not acting in good faith when it supports a certain interpretation of the norm. Is it possible to have a different interpretation of the same norm when this is done in good faith? What is the usefulness of this principle?

We are faced with a principle with blurred borders on which the formation as well as the application of international norms are based. The question lies in the fact that, as a consequence of the difficulty involved in specifying, the problem itself does not disappear. We are faced with a dilemma which is difficult to solve. In fact, sovereignty must be exercised in accordance with a principle which is very dependent on it and the violation of which can only be proved if the existence of bad faith can be proved.

2 The efforts to modulate the power of discretion of the State: Good faith or a principle with blurred edges

As a consequence of its nature as a general norm of international law, the *principle of good* faith plays a fundamental role in the interpretation of international norms. It was envisaged with regard to conventional norms in Articles 31 of the Vienna Conventions of 1969 and 1986 on the Law of Treaties, this principle is also present in the interpretation of other types of written norms (institutional), unwritten (custom), as well as unilateral declarations. We will go into these matters later.

Concerning doctrine as well as international jurisprudence and codification there is general agreement on the "structural" or "fundamental" character of this principle in the contemporary international legal order. It has been said that it is one of the principles expressing the fundamental values which inspire the general structure of this legal order at a specific time within its historical evolution, and so, it occupies a central place within the system as a whole[30].

This "fundamental" or "structural" character which is a result of the fact that it is expressed in the United Nations Charter and, therefore, is confined to the international obligations undertaken by virtue of the Charter[31], has been strengthened as a consequence of the higher ranking of the obligations contained in the Charter owing to what is laid down in article 103[32].

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[30] Cf. GONZALEZ CAMPOS, J.D., SANCHEZ RODRIGUEZ, L.I. and ANDRES, SAENZ DE SANTA MARIA, M. P., *Curso de Derecho Internacional Público*, 3rd ed. revisited, Civitas, Madrid, 2003, p. 26.

[31] Thus, article 2.2 of the Charter states, "the members of the Organisation will carry out the obligations undertaken by them in good faith in accordance with this Charter in order to ensure the rights and benefits inherent to their condition of members".

[32] Which states, "in the event of conflict arising between the obligations undertaken by the Members of the United Nations by virtue of this Charter and their obligations undertaken by virtue of any other international agreement, the obligations under this Charter will prevail".

Later on, this principle acquires a universal character, unlimited by the obligations undertaken under the Charter, as a consequence of Resolution 2625 (XXV), approved by the General Assembly on October 24, 1970, which contains the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations". In the final general provision the General Assembly underlines the fundamental character of the principle by stating that,

> "The principles of the Charter incorporated into this Declaration constitute the basic principles of international law and, consequently, it urges all the States to be guided by these principles as regards their international conduct and to develop mutual relationships on the basis of strict compliance with these principles".

This conclusion is already stated in the fifth paragraph of the preamble of this Resolution when it is said that the principle of "the fulfilment in good faith of the obligations undertaken by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the implementation of the other aims of the United Nations". The sixth paragraph adds that "the great political, economic and social changes and the scientific progress which have taken place in the world since the adoption of the Charter gives increased importance to these principles and to the need for their more effective application in the conduct of States wherever carried on".

But it is in the framework of the two last principles of this Resolution where the principle of fulfilment in good faith of the international obligations is developed to a greater extent. Firstly, in paragraph f) of the principle of sovereign equality of States, where it is said,

> "f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States".

Secondly, within the framework of the principle of good faith:

> "Every State has the duty to fulfill in good faith its obligations under the generally recognized principles and rules of international law.
>
> Every State has the duty to fulfill in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law"[33].

In conclusion, Resolution 2625 (XXV) universalises the principle of compliance in good faith with international obligations by extending this not only to the obligations contained in the United Nations Charter but also to those assumed by virtue of the generally acknowledged principles and norms of international law, as well as through valid international agreements.

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[33] The first paragraph of this principle states the duty of all States to comply in good faith with the obligations assumed by virtue of the United Nations Charter and the final paragraph repeats the primacy of the obligations assumed under the Charter.

Concerning its *legal nature*, this principle has a double nature: custom and convention, custom in its origin, conventional, due to the fact that it has been included in United Nations Charter and in the Agreements on the Codification of the Treaty Law of 1969 and 1986.

On many occasions, doctrine has highlighted the fundamental character of the principle inspiring the general structure of the international system of regulations in a Society characterised by relativism and the decentralisation of political power. Thus, for example, CARREAU, who states that this principle is inherent to international society and to the stability of the legal relationships among members. In fact, "is it possible to imagine a legal system based on bad faith?"[34]

In spite of the existence of major agreement on the fundamental character of good faith, the problem persists because the question lies in the determination of its content: whether this principle is the source of a precise obligation falling on States. Actually, the difficulty lies in the definition of "good faith". While practice shows its repeated involvement in many conventional and institutional norms as well as in international jurisprudence, its exact configuration continues to be blurred. This is the reason why some wonder whether good faith does not "appear rather as a moral aspiration than a rule with its own legal content"[35]. What is its content?

These difficulties lead ZOLLER to say that in spite of the existence of a certain unanimity on the particular importance of the principle of good faith in international relations, that agreement is not so unanimous as regards its content. In fact, the concept of good faith has not been defined and the few definitions that have been attempted "call forth the ideas of sincerity, loyalty, correctness, rectitude, honesty". In this sense, efforts have focused more on the judicial consequences of the principle of good faith rather than on the definition of the concept. Consequently, the result is "the definition of the legal regime of a concept that nobody can clarify"[36].

In order to make this clarification, the maximum which has been achieved is to state that good faith "is the opposite of formalism, the rejection of the absurd, and the consecration of good sense"[37]. Any attempt to go into the matter in depth

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[34] CARREAU, D., *Droit International,* 2nd Edition, Pedone, Paris, 1991, p. 73. Likewise CAHIER, Ph., *op.cit.,* p. 84. In Spain, for example, GONZALEZ CAMPOS, J:D:, SANCHEZ RODRIGUEZ, L. I. and ANDRES SAENZ DE SANTA MARIA, M. P., who state that Resolution 2625 "reaffirms this fundamental norm extending the duty to comply in good faith with the international obligations assumed 'under the generally acknowledged principles and rules of international law', whether these have been created by custom or by treaties" (*Curso ...*, *op.cit.,* p. 253).

[35] CAHIER, Ph., *op.cit.*, pages 84 and 89 et seq.

[36] ZOLLER, E., in the work of COT, J.P., and PELLET, A., already quoted, on p. 100. Cf. Also O'CONNOR, J.F., *Good Faith in International Law,* Dartmouth, Aldershot, 1991, p. 10 and KOLB, R., "La bonne foi en droit international public", *R.B.D.I.*, 1998, vol. XXXI, nº 2, pp. 661-732.

[37] ZOLLER, E., *op. cit.*, p. 100.

comes up against difficulties due to the question, What does it mean to comply with the obligations assumed by virtue of the United Nations Charter or by virtue of the generally acknowledged principles and norms of international law, or under international agreements valid under the generally acknowledged principles and rules of international law? What are the consequences of the obligation to interpret an international treaty in good faith? At this point the difficulties and doubts arise, especially in the international arena, where sovereignty takes a specific leading role as regards interpretation, both concerning the initially identical values of the unilateral interpretations issued by each State and in the absence of obligatory jurisdiction in order to decide on the problems of interpretation.

From the analysis of doctrine, what appears is the existence of an agreement about the principle of good faith as a *behavioural obligation*, implying the adoption of a determined standard of behaviour, with the difficulties deriving from this conclusion when proving its infringement. In theory, with regard to the obligations of behaviour, it is sufficient to determine that the State involved did not adopt the attitude expected of it in accordance with the obligation, in order to reach the conclusion that there has been an infringement of an international obligation. But, in practice it is not so easy to prove this unless the obligation in question has a precise content. For example, the obligation to execute a treaty or its interpretation can be hampered by the ambiguous or vague drafting of the text of the norm in question[38]. On the other hand, even in the event of *prima facie* perfectly defined specific cases, a State could defend an interpretation which protects its own interests in apparent contradiction with the written text. In this case, would it be acting in bad faith? How is bad faith demonstrated? Which body is to be appealed to? One example of this type of conduct is the argument of the United States of America justifying the trade embargo ordered on May 1, 1985 against Nicaragua by an Executive Order of the President of the United States. In its judgement, the I.C.J. declared that the direct attacks on ports, oil installations, as well as the mining of Nicaraguan ports were contrary to the1956 bilateral Treaty of Friendship, Commerce and Navigation[39]. Likewise the trade embargo which, in the opinion of the

[38] As QUOC DINH, N., DAILLIER, P. and PELLET, A. point out, the obligation to execute a treaty "is more difficult to determine when the conventional norms are ambiguous. Through appropriate drafting, the parties can reduce the scope of their commitments, either because their obligations are couched in sufficiently vague terms so that they can play with this ambiguity for their own benefit, or they reserve the possibility to detach themselves from the commitment under certain circumstances" (*op. cit.*, p. 213).

[39] On which he stated that "it would be difficult to imagine less appropriate acts for strengthening the bonds of peace and friendship which traditionally existed between the parts, to cite the preamble to the Treaty" (ICJ, *Reports 1986*, p. 138). A statement of the I.C.J. in the same line can be found in the case concerning *Oil Platforms* (Islamic Republic of Iran v. United States of America) (ICJ, *Reports*, 2003).

ICJ, constitutes an infringement of the obligation not to deprive the treaty of its purpose and aim[40].

If such problems arise with regard to written norms, the difficulty becomes greater in relation to customary norms because of the necessity to previously determine their existence and their content, as well as their appropriateness or not regarding the conduct in question. And this has to be done from an analysis of the conduct of the State.

In the *case of the nuclear tests* the ICJ declared that the principle of good faith was present in the creation and execution of all types of legal obligations, when it stated that "one of the basic principles governing the creation and performance of legal obligations, whatever their source, is that of good faith. Mutual trust and confidence are inherent to international cooperation, in particular in an age when this cooperation is becoming increasingly essential in many fields"[41]. However, on the Law of Treaties, the structural principle of good faith takes on a double projection: firstly, in its formation process. Then, at the time it the treaty is applied and executed. This fact was pointed out by the I.L.C. in its Draft Articles on the Law of Treaties where it stated that, "it is true that the principle of good faith is applied to all international relation, but in treaty law it is especially important and this is repeated in article 27 on the interpretation of treaties"[42].

Along similar lines, the doctrine of Public International Law states that, as in the process of formation of international norms, its application is governed, from the legal point of view, by two fundamental principles of the international legal order: good faith and equity. It adds that although good faith is not the only condition on applying the Law, it is undoubtedly the most important, without good faith an agreement between two parts is impossible, and it is absolutely necessary for the application of international customary Law"[43].

A good example of all this can be found in articles 18 and 26 of the Vienna Conventions of 1969 and 1986 on the Law of Treaties. According to article 18, the States and the International Organisations are obliged not to defeat the objective and purpose of a treaty prior to its entry into force. In this sense, they are obliged to refrain from acts which would defeat the objective and purpose of the treaty. On the basis of this Article some authors consider it as the content of the performance of a treaty in good faith, in spite of being a conception which is "perhaps too wide, therefore too vague, because it does not sufficiently characterise the other side of the coin which is bad faith. Acting in good faith should be defined as that type of act which excludes all attempts to 'defraud law', all cunning, and requires positive

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[40] Cf. *ibid.*, p. 140. In addition, it stated that the United States "has committed acts which are contradictory to the terms" of the bilateral treaty of 1956 (*ibid*.).

[41] ICJ, *Reports 1974*, p. 268.

[42] Report on the work carried out at its 18th session. Draft Articles on Treaty Law (*ILC Yearbook,* 1996, vol. II, p. 232).

[43] GONZALEZ CAMPOS, J.D., SANCHEZ RODRIGUEZ, L.I. and ANDRES SAENZ DE SANTA MARIA, M. P., *op. cit.*, p. 253.

fidelity and loyalty to commitments. In any case, a definition is necessarily abstract; and must be clarified in practice"[44].

By virtue of Article 26, every treaty in force is binding upon the parties to it and must be performed by them in good faith. In relation to this article, the I.L.C. stated that acting in good faith and respect for the rule *pacta sunt servanda* are so intimately joined that they constitute two complementary aspects of the same principle. It added, that in the matter of interpretation of treaties, the interpretation "made in good faith and in accordance with law is absolutely necessary so that the rule *pacta sunt servanda* might have real meaning"[45].

We can conclude that we are faced with a structural or fundamental principle of international law which constitutes obligatory conduct whose content is difficult to determine and this acquires a special focus in the field of the Law on Treaties.

As we have stated above, the principle of good faith is projected over the initial as well as over the final phase of the formation process of international norms, in general, and of treaties in particular.

As regards the *initial phase*, and within this the *negotiation*, the principle of good faith is defined fundamentally by an obligation to abstain from or not to do. Thus, for example, the obligation to abstain from making the content of the negotiations public. As was pointed out by the I.C.J. in the C*ase of the North Sea Continental Shelf*, during the negotiation the Parties are under "an obligation to conduct themselves in such a way that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without considering any modification"[46]. Or, to put it another way, the Parts must "conduct the negotiations in such a spirit that each must in good faith pay reasonable regard to the legal rights of the other party"[47].

As ZOLLER holds, good faith required during the negotiation of a treaty "is above all a criterion of interpretation of the legal conduct of the parties, rather than a subjective quality of each of them"[48]. The point is that the divergent interpretation the parties involved might make of such conduct will, of necessity, require the

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[44] QUOC DINH, N., DAILLIER, P. and PELLET, A., *op. cit.*, pages 212 et seq. They also add that the obligation to act in good faith persists "no matter what the uncertainties regarding the Treaty are" and the Parts "are not less bound to respect the provisions" (*ibid.).*

[45] ILC, Report on the work carried out during its 18th period of sessions. Draft Articles on the Law of Treaties, *Yearbook ILC*, 1966, vol. II, p. 240. The quotes are taken from the original. It adds that, "the interpretation in good faith follows directly from the rule *pacta sunt servanda*" (*ibid.* p. 242). In the doctrine, see, for example, GONZALEZ CAMPOS, J.D., SANCHEZ RODRIGUEZ, L.I. and ANDRES SAENZ DE SANTA MARIA, M.P., *op. cit.*, p. 253. Along the same lines, QUOC DIHN,N., DAILLIER, P. and PELLET, A, *Droit International Public, op. cit.,* p. 212; O'CONNOR, J.F. *op. cit.*, p. 124. As regards this matter, see the examples cited in the notes (39) and (40) in this work.

[46] ICJ, *Reports 1969,* p. 47.

[47] *Case of Competence in the Matter of Fishing Grounds (fondo),*(ICJ, *Reports 1974*, p. 33).

[48] ZOLLER, E. *La bonne foi en Droit International Public*, Pedone, Paris, 1977, p. 68.

intervention of a third party in order to decide if the conduct in question is in good faith or not. And it is at this point that we come up against another hurdle: States are not obliged to submit their disputes to any political or judicial mechanisms for the settlement of disputes[49]. Thus, the discrepancy as regards the interpretation and classification of this conduct may be perpetuated with no legal consequences whatsoever[50].

During this initial phase, once the negotiations have been finalised, good faith is also specified negatively as the obligation not to frustrate the reason and end of the treaty. This is deduced from article 18 a) of both Vienna Conventions in 1969 and 1986. However, this does not mean that the principle of good faith entails the requirement to be bound by the treaty in question as the state remains free to bind itself or not.

As in the negotiation phase, the difficulty of determining the breach of good faith persists during the adoption and authentication phase. This must be carried out objectively, that is to say, through the analysis of the conduct of the party in question. If we add to this the identical value of the unilateral interpretations of this conduct made by the States affected, we are once more faced with the imperfection of this principle and a third party is needed in order to decide whether or not there has been a breach. But, it must not be forgotten that this appraisal is made through the concept of good faith the interpreting party has.

In the *final phase* of the declaration of consent to be bound by the treaty, and before it comes into force, as understood from article 18 b) of the Vienna Conventions of 1969 and 1986, the same obligation not to frustrate the reason and end of the treaty persists. But, unlike the initial phase, where it is difficult to appreciate the presence or non-existence of good faith from the analysis of the conduct of the State, in this final phase, during the stage which goes from the consent to be bound and the entry in force of the treaty, "the principle of good faith can be taken into account because there is an objective criterion to enable

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[49] Except in the following cases: acceptance of the jurisdiction of a judicial or international arbitration body, either in general or exclusively for the dispute at issue; that this measure be imposed by a treaty drawn up between the two parts; or in the case of a dispute foreseen by article 37 of United Nations Charter.

[50] Except those originated by the attitude that the other part might adopt (or the parts as the case may be) due to the reciprocity of the obligations, or as a consequence of measures involving self-control authorised by International Law (measures involving non-violent reprisals, for example). Likewise, the cases laid down in article 33 and those that follow in the United Nations Charter.

Concerning the peaceful settlement of disputes within the scope of the United Nations, cf. BADIA MARTIN, A *El arreglo pacífico de controversias en la Organización de las Naciones Unidas*. Also from the Spanish standpoint cf. ANDRES SAENZ DE SANTA MARIA, M. P., *El arbitraje internacional en la práctica convencional española (1794-1978)*, Servicio de Publicaciones de la Universidad de Oviedo, Oviedo, 1982; Asociación Española de Profesores de Derecho Internacional y Relaciones Internacionales, *El arbitraje internacional*, Zaragoza, 1989.

its appreciation, which is the text of the agreement made between the parts"[51]. According to this opinion, the existence of a text would allow the evaluation of whether or not the attitude of the State conforms with the principle of good faith. However, and despite the advantages provided by the fact that there is a text, it should not be forgotten that differing interpretations can arise when there are apparently clear texts.

Finally, it should be pointed out that the cases of culpability, corruption and coercion as regards the representative of the State and dealt with in articles 49, 50 and 51 respectively of the Vienna Conventions on the Law of Treaties also directly affect the declaration of consent and are examples of the absence of good faith, as well as coercion of the State by threatening or using the force stipulated in article 52 of both conventions.

Once the treaty comes into force, we enter the environment of article 26 of the Vienna Conventions of 1969 and 1986, that is to say, the *execution* of the treaty in good faith.[52]

As REUTER points out "the obligation of good faith is fundamental to any conduct which can be judged under international law and in the execution of all its obligations"[53]. In the Law on Treaties, the Vienna Conventions of 1969 and 1986 apply this in relation to the conduct of the parts or the future parts on conclusion, interpretation, etc. of the treaties. In the opinion of the I.L.C., the principle of good faith forms part of the regulation *pacta sunt servanda* "and means, generally speaking, that the obligation entailed by the conventional commitment must not be eluded by a purely literal application of the clauses"[54]. In ZOLLER's opinion "essentially good faith plays the role of main regulator in relation to the principle *pacta*. It also provides some other things…"[55] which materialise in the prevalence of the spirit over the letter of the text and prevents the principle *pacta sunt servanda* from degenerating into an "intellectual or material fraud" and good faith constitutes the "dominant aspect of all conventional treaties"[56]. In any event, both the principle *pacta sunt servanda* and the principle of good faith demand that the treaty *be applied* by the signatories.

It is in this phase of application of the treaty and its execution that questions regarding *interpretation* may arise. As we have repeatedly stated, the fundamental principle, the consequence of the sovereignty of States, is the identical value of the interpretation initially made by all States. Thus when a problem arises, none of the interpretations issued is entitled to prevail over the others. This principle is also

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[51] ZOLLER, E, *La bonne foi en …, op. cit.,* p. 78.

[52] This article states that:

> "All treaties in force oblige the parts and must be complied with in good faith".

[53] REUTER, P., *Introduction au …, op.cit.,* p. 124.

[54] I.L.C. *Yearbook*, 1966, vol. II, pages 229 et seq.

[55] *La bonne foi en …, op. cit.,* p. 82. The words in italics are in the original.

[56] *Ibid*., p. 81.

based on the legal equality of the States[57]. However, the difficulty of determining the content of this "good faith" in the light of which the interpretation is to be evaluated continues to persist.

Despite the fact that good faith is a difficult notion to specify, it is possible to conclude that it obliges the contracting parts and the Judge or arbitrator requested "to interpret the treaty in a reasonable way while respecting the rule of law and the will of the authors"[58]. Thus, as regards treaties, interpreting good faith would mean that in the interpretation "of a clause not only the text should be taken into account, but also its reason and the aim of the treaty, that is to say, its spirit"[59].That is to say, the general rule for interpretation. In other words, according to the work of the I.L.C. and international case law, good faith "demands" the continued fidelity to the intention of the parts, and not causing it to fail due to a literal interpretation, nor reducing the reason and the aim of the treaty to nothing"[60].

In conclusion, once the obligatory character of acting in good faith has been determined, its weaknesses do, however, persist. We are faced with a structural or fundamental principle of a conventional or customary nature, which is difficult to specify and, therefore, there is scant possibility of proving that it has been breached[61]. As REUTER stresses, at the same time it is a question of an obligation which "is fundamental for all conduct which may be judged under international law and for the execution of all obligations"[62], which govern the process by which

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[57] See BASTID, S., *Les traités dans la vie internationale. Conclusion et effets*, Economica, Paris, 1985, p. 127. ZOLLER stresses this same aspect when she states that the International Society is a society dominated by the principle of relativism, that is to say, … a society in which the interpreters of the legal regulations are often those they will be applied to. In fact, it is in the environment of the interpretation that the reference to good faith acquires its full sense" (Commentary to article 2, paragraph 2 of the United Nations Charter in the work of COT, J-P. and PELLET, A., *La Charte des Nations Unies,* Economica, Paris, 1985, p. 98) See also CARREAU, D., *op. cit.*, p. 141.

[58] CARREAU, D., *op. cit.,* p. 141.

[59] CAHIER, P., "Cours général…" *op. cit.*, p. 87.

[60] REUTER, P., *Introduction au ..., op. cit.*, p. 124. An example of the contrary attitude is the trade embargo ordered on May 1, 1985 by the United States against Nicaragua, and declared contrary to the objective and the aim of the Bilateral Friendship, Commerce and Navigation Treaty by the ICJ (Cf. *Reports 1986,* p. 140).

[61] This occurs despite the efforts to define good faith from the reports of the ILC and international case law as a principle "which demands fidelity to the intention of the parts, without causing it to fail due to literal interpretation, nor reducing the objective and the end of the treaty to nothing" (*Introduction au droit des traités, PUF, Paris, 1985, p. 124).*

[62] *Ibid*. also GONZALEZ CAMPOS, J.D., SANCHEZ RODRIGUEZ, L.I., ANDRES SAENZ DE SANTA MARIA, M. P., *op. cit.*, p. 254.