6 International Law and the Vienna Convention on the Law of Treaties

This chapter deals with two separate but related matters: First, it gives an overview of international law, a significant part of which is concerned with treaties; and second, it looks at the Vienna Convention on the Law of Treaties.

1) International Law

International law is important both to the areas that give rise to supranational disputes (territorial and maritime boundary disputes and investor-State disputes) and to the supranational bodies that deal with these disputes.

Systems of law can be divided into three types:

i) municipal law;
ii) private international law;
iii) public international law.

i) Municipal law

Municipal law, or national law, is the domestic system of law that operates within a State. This law regulates the relationships between the State and its citizens and between citizen and citizen within that State.

English law, for example, comprises a complex and extensive framework of law based on both the Common Law and Statute. This framework covers criminal and civil matters. In the civil field, for example, statutes such as the Sale of Goods Act govern the relationships between buyers and sellers. In the field of dispute resolution, the Arbitration Act 1996 deals primarily with arbitration in the domestic sphere but in addition contains provisions dealing with the recognition and enforcement of *"certain foreign awards"* – namely, Geneva Convention awards and New York Convention awards.[5]

Written law in England dates back to the Anglo-Saxons (see Box 2). The Laws of King Alfred the Great (about AD 886) contained a series of 77 laws. While including the 'tariff' of compensation payable for wrongs and injuries caused, his laws also included other provisions: for example, provisions dealing with traders. The first of King Alfred's list of Laws is of particular interest:

> *"First we insist that there is particular need that each person keep his oath and his pledge carefully. If anyone be compelled to give either of these wrongly, either to support treachery to his lord or to provide any unlawful aid, then it is better to forswear than to fulfil. But if he pledge himself to that which it is right for him to fulfil*

5 The Geneva Convention of 1927 was the predecessor of the New York Convention.

and fails, let him submissively hand over his weapons and his possessions to his friends to keep, and stay 40 days in prison in a property of the King. Let him undergo there whatever the bishop prescribes as penance...."[6]

A sanctity of contracts rule? An Anglo-Saxon law on *pacta sunt servanda* (Latin: pacts must be respected / promises must be kept)?[7] Compare this to the Vienna Convention on the Law of Treaties, which came into force over a thousand years later. Article 26 provides that: *"Every treaty in force is binding upon the parties to it and must be performed by them in good faith."*

Box 2: Early English Law

Following the migration to Britain in the middle of the fifth century of the Germanic peoples – the Angles, the Saxons and the Jutes – the first written English laws were those of the Anglo-Saxon King Aethelbirht of Kent. Dated about the year 600, these were concerned with what might broadly be described as criminal matters. For example, they included a 'tariff' of compensation to be paid for crimes or injuries caused to others. The compensation for slaying a man was 100 shillings. The compensation to be paid for stabbing through the thigh was six shillings.

In the ninth century Alfred the Great, King of the West Saxons, collated earlier laws. The Preface or Introduction to his Laws is based on biblical material, especially Mosaic Law. The intention seems to have been to associate the concept of human law with divine law. The Preface refers twice to *'foreigners'*. The West-Saxons were warned not to *"harass visitors from abroad, and foreigners, for you were formerly strangers in the land of the Egyptians"*. And later: *"Do not behave unkindly to foreigners and visitors from abroad; do not harass them with unjust acts."*

Winston Churchill, in his *History of the English-Speaking Peoples*, states that King Alfred's Book of Laws set out the existing laws of Kent, Wessex and Mercia and *"attempted to blend the Mosaic code with Christian principles and old Germanic customs"*.[a] Later Churchill says that the Laws of Alfred *"continually amplified by his successors grew into that body of customary law, administered by the shire and hundred courts which, under the name of the Laws of St Edward (the Confessor), the Norman kings undertook to respect, and out of which, with much manipulation by feudal lawyers, the Common Law was founded"*.

Note: a Generally on the Anglo-Saxon Dooms, AD 560-975: see *The Medieval Source Book*: www.fordham.edu/halsall/source/560-975dooms.html.

6 Bill Griffiths, *An Introduction to Early English Law*, Anglo-Saxon Books, 2000.

7 The Preamble to the Vienna Convention notes that " the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized..."

ii) Private international law

Private international law relates to the law within a State where there is a 'foreign' element. A trading contract made between two Englishmen in England is governed by English municipal law, but a trading contract between an Englishman and a Frenchman made in England and to be performed in France involves a foreign element. Unless the parties have made express provisions stating which law is to apply and which country's courts are to have jurisdiction, disputes may arise as to whether the contract is governed by English or French law, and whether the courts of England or France have jurisdiction over the contract and any dispute relating to it. Proceedings instituted in the English courts might, for example, involve an English judge applying French law for the purpose of resolving a dispute between the parties.

Many such 'foreign' cases are heard in the English courts. For example, it is estimated that approximately 80 per cent of the cases heard in the Commercial Court in London (part of the Queen's Bench Division of the High Court of Justice) involve a foreign element and/or foreign parties.

One of the functions of the Commercial Court is to deal with the enforcement of New York Convention arbitration awards.[8] In this context the English Court is operating in a ' foreign' as opposed to municipal or domestic sphere, i.e., the enforcement in England of a foreign arbitral award.

The New York Convention is one of the three conventions mentioned earlier in the Manual as being of particular significance to international dispute resolution – and therefore to international trade generally. It is considered later in the Manual in the context of pure international commercial disputes (as opposed to supranational disputes).

iii) Public international law

Public international law is concerned with the relationship between States. It is a separate system of law. Unlike municipal law, public international law has no central law-making process and no system of courts.

Public international law – which will from now on be referred to simply as international law – derives from a number of sources. It is generally accepted that the Statute of the International Court of Justice (ICJ) sets out in Article 38 what can be regarded as the sources of international law (the Statute will be considered in more detail in Chapter 11 in the context of the ICJ itself).

Article 38 (1) provides that the Court:

> *"... whose function is to decide in accordance with international law such disputes as are submitted to it" is to apply:*
>
> *"a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;*

8 As mentioned earlier, the provisions of the New York Convention were implemented into English law by the Arbitration Act 1996.

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law." [9]

For the purposes of this brief overview of international law, it may be convenient to take each of these sources in turn.

a) International conventions

The first of the four categories referred to in Article 38 is concerned with conventions, also referred to by a number of different terms including treaties and agreements.

Article 38 (1) (a) refers to general and particular conventions. These can be broadly divided into:

(i) 'law-making' treaties, which are intended to have a general application to many States, and

(ii) 'treaty-contracts', which apply only to the limited number of States that are the parties to that particular treaty.

Treaty-contracts will involve only a small number of States and will be concerned with a specific, limited area. One example is bilateral investment treaties (BITs), which are considered in Chapter 11 in relation to investor-State disputes. These treaties involve two States and are concerned with attracting inward investment. Another example is the Agreement between Britain and Norway relating to the laying of submarine pipes under the sea between the British and Norwegian coasts (see Chapter 8).

Examples of general law-making treaties are the Hague Conventions of 1899 and 1907, considered later in relation to the Permanent Court of Arbitration (PCA), and the various Geneva Conventions dealing with the treatment of prisoners and the protection of civilians. A further example is the New York Convention of 1958 dealing with the recognition and enforcement of foreign arbitral awards. Law-making treaties involve a large number of States and seek to set out general principles of international law in a certain field – over 130 countries are parties to the New York Convention, for example.[10]

Treaties may have a relevance in relation to international custom, the second of the sources of international law referred to in Article 38 of the Statute of the ICJ. It may be that a treaty will be evidence of customary law. An early example is a commercial treaty made between King Offa and the Emperor Charlemagne (see Box 3) where reference is made to reciprocity of royal protection "according to the ancient custom of trading".

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9 When quoting from Statutes, Arbitration Rules and the like, I have retained the spelling used in the original. This results at times in both the English and American spellings of a word appearing in the Manual.

10 While the United Kingdom ratified the New York Convention in 1975, the Arbitration Act 1996 that implements it into domestic law applies in England, Wales and Northern Ireland, but not in Scotland. For the sake of brevity, reference will be made to 'English' and 'England'.

Box 3: The First Commercial Treaty in English History

The first commercial treaty in English history was made over 1,000 years before the New York Convention. In AD 796 a treaty was made between the Anglo-Saxon King Offa and the Holy Roman Emperor Charlemagne. Sir Frank Stenton in his *Anglo-Saxon England* stated that King Offa *"was the only ruler in western Europe who could attempt to deal on equal terms with Charlemagne. The materials for English diplomatic history begin with the letters which passed between the two kings."*[a]

Relations were not always easy between them. A dispute that arose following a proposal by Charlemagne that his son should marry one of Offa's daughters led to the closure to English traders of ports in Charlemagne's territory. This suggests that *"in normal times there was regular trade between England and the Frankish kingdom"*. When friendly relations between King Offa and Charlemagne were restored some years later *"the two kings proceeded to conclude the first commercial treaty in English history. In 796, they agreed that traders entering Gaul from England or England from Gaul should have the protection of the public authorities in the country which they were visiting, and the right of access to the King in case of trouble."*

Winston Churchill refers to Charlemagne's marriage proposals, noting that Offa stipulated that his son must simultaneously marry the daughter of Charlemagne: *"the founder of the Holy Roman Empire appeared at first incensed at this assumption of a equality, but after a while he found it expedient to renew his friendship with Offa. It seems that 'the King of the English' had placed an embargo upon Continental merchandise, and the inconvenience of this retaliation speedily overcame all points of pride and sentiment. Very soon Offa was again the Emperor's 'dearest brother', and Charlemagne is seen agreeing to arrange that there should be reciprocity of royal protection in both countries for merchants 'according to the ancient custom of trading'. Apparently the commodities in question were 'black stones', presumably coal, from France, in return for English cloaks. There were also questions of refugees and extradition."*[b]

Notes: a Frank M Stenton, *Anglo-Saxon England*, Oxford University Press, 1971.
b Winston Churchill, *A History of The English-Speaking Peoples*, Abridgment, Cassell & Co, 1957.

A treaty evidencing general principles accepted by many States (the third of the sources cited to in Article 38) can be seen in sections of the 1982 UN Convention on the Law of the Sea (UNCLOS III) – referred to later in this part of the Manual in connection with disputes relating to the territorial sea and the continental shelf.

In the *Gulf of Maine* case the Chamber of the ICJ looked at the relationship between international customary law and international treaty law. A Special Agreement between Canada and the United States requested the Chamber *"... to decide, in accordance with the principles and rules of international law applicable in the matter as between the*

Parties, the following question: What is the course of the single maritime boundary that divides the continental shelf and fisheries zones of Canada and the United States of America...."

The Chamber described the background to the dispute:

> *"Beginning with a reference to the Truman Proclamations of 1945, the Chamber summarizes the origins and development of the dispute, which first materialized in the 1960s in relation to the continental shelf, as soon as petroleum exploration had begun on either side, more particularly in certain locations on Georges Bank. In 1976-1977 certain events occurred which added to the continental shelf dimension that of the waters and their living resources, for both States proceeded to institute an exclusive 200 mile fishery zone off their coasts and adopted regulations specifying the limits of the zone and continental shelf they claimed. In its account of the negotiations which eventually led to the reference of the dispute to the Court, the Chamber notes that in 1976 the United States adopted a line limiting both the continental shelf and the fishing zones and the adoption by Canada of a first line in 1976 (Map No. 2)."*

The Chamber referred to applicable principles and rules of international law:

> *"After observing that the terms 'principles and rules' really convey one and the same idea, the Chamber stresses that a distinction has to be made between such principles or rules and what, rather, are equitable criteria or practical methods for ensuring that a particular situation is dealt with in accordance with those principles and rules. Of its nature, customary international law can only provide a few basic legal principles serving as guidelines and cannot be expected also to specify the equitable criteria to be applied or the practical methods to be followed. The same may however not be true of international treaty law.*
>
> *"To determine the principles and rules of international law governing maritime delimitation, the Chamber begins by examining the Geneva Convention of 29 April 1958 on the Continental Shelf, which has been ratified by both the Parties to the case, who both also recognize that it is in force between them. In particular the Chamber examines Article 6, paragraphs 1 and 2, from which a principle of international law may be deduced to the effect that any delimitation of a continental shelf effected unilaterally by one State regardless of the views of the other State or States concerned is not opposable by those States. To this principle may conceivably be added a latent rule that any agreement or other equivalent solution should involve the application of equitable criteria. The Chamber goes on to consider the bearing on the problem of various judicial decisions and to comment upon the work of the Third United Nations Conference on the Law of the Sea, noting that certain provisions concerning the continental shelf and the exclusive economic zone were, in the Convention of 1982, adopted without any objections and may be regarded as consonant at present with general international law on the question."*[11]

The Gulf of Maine case demonstrates the relationship between treaty law and principles of international law.

11 The ICJ Case Summary of the *Gulf of Maine* case is available at www.icj-cij.org/icjwww/idecisions/isummaries/icpsummary501120.htm.

b) International custom

Custom relates to a practice that has general recognition among States. By their very nature customary rules have no written source. The ICJ has stated that a degree of uniformity among States is required to demonstrate the existence of custom.

An example of the application of international custom is the Asylum Case (Columbia v Peru). The origin of the dispute lay in

> *"... the asylum granted on January 3rd, 1949, by the Colombian Ambassador in Lima to M. Victor Raúl Haya de la Torre, head of a political party in Peru, the American People's Revolutionary Alliance. On October 3rd, 1948, a military rebellion broke out in Peru and proceedings were instituted against Haya de la Torre for the instigation and direction of that rebellion. He was sought out by the Peruvian authorities, but without success, and after asylum had been granted to the refugee, the Colombian Ambassador in Lima requested a safe-conduct to enable Haya de la Torre, whom he qualified as a political offender, to leave the country. The Government of Peru refused, claiming that Haya de la Torre had committed common crimes and was not entitled to enjoy the benefits of asylum. Being unable to reach an agreement, the two Governments submitted to the Court certain questions concerning their dispute; these questions were set out in an Application submitted by Colombia and in a Counter-Claim submitted by Peru."*

Colombia maintained before the Court that

> *"... according to the Convention in force – the Bolivarian Agreement of 1911 on Extradition, the Havana Convention of 1928 on Asylum, the Montevideo Convention of 1933 on Political Asylum – and according to American International Law, she was entitled to qualify the nature of the offence for the purposes of the asylum. In this connection, the Court considered that, if the qualification in question were provisional, there could be no doubt on that point: the diplomatic representative would consider whether the required conditions had been satisfied, he would pronounce his opinion and if that opinion were contested, a controversy would then arise which might be settled according to the methods provided by the Parties."*

The Court referred to the various treaties that had been invoked and finally dealt with the contention based on American international law. In relation to that the Court stated that *"as regarded American international law, Colombia had not proved the existence, either regionally or locally, of a constant and uniform practice of unilateral qualification as a right of the State of refuge and an obligation upon the territorial State. The facts submitted to the Court disclosed too much contradiction and fluctuation to make it possible to discern therein a usage peculiar to Latin America and accepted as law."*[12]

The decision in the *Asylum Case* shows some of the difficulties faced by a party seeking to rely on international custom.

12 The ICJ Case Summary of Judgment of 20 November 1950 in the *Asylum Case (Columbia v Peru)* is available at www.icj-cij.org/icjwww/idecisions/isummaries/icpsummary501120.htm.

c) General principles of law recognised by civilised nations

Where no direct authority from some other source is available, resort may be had to what can be described as general principles: rules of law that have long been accepted nationally and internationally. One example is the principle concerning the sanctity of contracts, *pacta sunt servanda*, or that breaches of agreements involve an obligation to make compensation. This is demonstrated by a case that came before the predecessor of the ICJ, the Permanent Court of International Justice, in 1928. The *Chorzow Factory* case involved a dispute between the German and Polish Governments in connection with the seizure by Poland of a factory in Upper Silesia.[13]

On receipt of the German Government's case in the suit in March 1927, the Polish Government raised a preliminary objection denying the Court's jurisdiction to hear the suit brought before it, and submitting that the Court should, *"without entering into the merits, declare that it had no jurisdiction".*

In the application the Court was asked:

> *"(1) to declare that the Polish Government, by reason of its attitude in respect of the Oberschlesische and Bayerische Companies, which attitude the Court had declared not to be in conformity with the Geneva Convention, is under an obligation to make good the consequent damage sustained by those Companies;*
>
> *(2) to award compensation, the amount of which is indicated in the application, for the damage caused to each of the respective Companies;*
>
> *(3) to fix the method of payment, and among other things to order the payments to be made by the Polish Government to be effected to the account of the two Companies with the Deutsche Bank at Berlin."*

The Court stated that:

> *"It is a principle of international law that the reparation of a wrong may consist in an indemnity corresponding to the damage which the nationals of the injured State have suffered as a result of the act which is contrary to international law. This is even the most usual form of reparation; it is the form selected by Germany in this case and the admissibility of it has not been disputed. The reparation due by one State to another does not however change its character by reason of the fact that it takes the form of an indemnity for the calculation of which the damage suffered by a private person is taken as the measure. The rules of law governing the reparation are the rules of international law in force between the two States concerned, and not the law governing relations between the State which has committed a wrongful act and the individual who has suffered damage. Rights or interests of an individual the violation of which rights causes damage are always in a different plane to rights belonging to a State, which rights may also be infringed by the same act. The damage suffered by an individual is never therefore identical in kind with that which will be suffered by a State; it can only afford a convenient scale."*

13 Available at www.icj-ij.org/cijwww/cdecisions/ccpij/serie_A/A_09/28_Usine_de_Chorzow_Competence_Arret.pdf.

The *Chorzow Factory Case* illustrates the way in which general principles of law may have an impact on the decisions of international tribunals.

(d) Judicial decisions

The fourth and final category set out in Article 38 is concerned with *"judicial decisions and the teachings of the most highly qualified publicists of the various nations"*. The Statute of the ICJ states that this category is to be used only as a subsidiary means of determining the rules of law.

However, it can reasonably be argued that some of the decisions of the ICJ itself – and of other supranational dispute resolution bodies such as the PCA and the International Tribunal for the Law of the Sea (ITLOS) – are likely to have an influence on the development of public international law. Decisions of the ICJ, the PCA and ITLOS are referred to in various parts of the Manual.[14]

The increasing number of bilateral investment treaties (BITs) and the rapid increase in recent years of awards made under the auspices of the International Centre for Settlement of Investment Disputes (ICSID Centre) are other factors likely to have an influence on the development of international public law. Again, ICSID decisions are referred to in the Manual.

To give one example of an influential decision, the PCA *Island of Palmas* case has had considerable significance in the field of territorial sovereignty (and is discussed further in Chapter 7). It concerned a territorial dispute between the Netherlands and the United States in relation to the Island of Palmas. During the course of his award, Max Huber, the sole arbitrator, made a number of observations concerning territorial sovereignty. He said:

> *"If a dispute arises as to the sovereignty over a portion of territory, it is customary to examine which of the States claiming sovereignty possesses a title – cession, conquest, occupation, etc. – superior to that which the other State might possibly bring forward against it. However, if the contestation is based on the fact that the other Party has actually displayed sovereignty, it cannot be sufficient to establish the title by which territorial sovereignty was validly acquired at a certain moment; it must also be shown that the territorial sovereignty has continued to exist and did exist at the moment which for the decision of the dispute must be considered as critical. This demonstration consists in the actual display of State activities, such as belongs only to the territorial sovereign. Titles of acquisition of territorial sovereignty in present-day international law are either based on an act of effective apprehension, such as occupation or conquest, or, like cession, presuppose the ceding and the cessionary Powers or at least one of them, have the faculty of effectively disposing of the ceded territory.... It seems therefore natural that an element which is essential for the constitution of sovereignty should not be lacking in its continuation. So true is this, that practice, as well as doctrine, recognizes... that the continuous and peaceful display of territorial sovereignty (peaceful in relation to other States) is as good as a title. The growing insistence with which international law, ever since the middle of the 18th century, has demanded that the occupation shall be effective would be*

14 The President of ITLOS, Dolliver Nelson, when addressing the UN General Assembly in November 2004 said that the Tribunal *"has already made some contribution to the development of international law"* in a number of areas (see Box 8).

inconceivable, if effectiveness were required only for the act of acquisition and not equally for the maintenance of the right. If the effectiveness has above all been insisted on in regard to occupation, this is because the question rarely arises in connection with territories in which there is already an established order of things." [15]

Conclusions on public international law

Public international law plays a major role in the areas of supranational disputes considered in this part of the Manual, and it is of great significance to the supranational dispute resolution bodies dealing with those disputes.

With the expansion of world trade, and with the increasing need of many countries to encourage inward investment, the role of public international law is perhaps now of greater importance than ever.

2) The 1969 Vienna Convention on the Law of Treaties

The provisions in the Vienna Convention that are of particular relevance to the area of supranational disputes are those in Articles 31 and 32 that deal with the interpretation of treaties. In addition, the Convention in Article 66 contains provisions dealing with judicial settlement, arbitration and conciliation in relation to disputes concerning the invalidity, determination, withdrawal from or suspension of the operation of the treaty. The Annex to the Convention contains provisions dealing with the conciliation process.

The Preamble refers to the *"fundamental role of treaties in the history of international relations as a source of international law"* and to the ever-increasing importance of treaties *"as a source of international law"*.

It notes that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognised, and affirms that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law. It also states the belief that *"the codification and progressive development of the law of treaties"* achieved in the Convention will promote the purposes of the United Nations – set out in the UN Charter – for the maintenance of international peace and security.

The Preamble concludes by affirming that *"the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention"*.

Part 1 of the Convention comprises an introduction, which includes definitions. Part II contains provisions dealing with the conclusion and entry into force of treaties. Means of expressing consent to be bound by a treaty include signature; an exchange of instruments constituting a treaty; ratification, acceptance or approval; and accession. Part III deals with the observance, application and interpretation of treaties. Article 26 contains the *pacta sunt servanda* provision: *"Every treaty in force is binding upon the parties to it and must be performed by them in good faith"*.

15 The decision of the PCA in the *Island of Palmas* case (1928) is available at www.pca-cpa.org/ENGLISH/RPC/EY/2ch1ER-YE.htm.

Articles 31 and 32 contain the significant provisions relating to interpretation of treaties (see Box 4). The primary approach to interpretation is textual: in construing a treaty, the words of the treaty are to be given their natural and ordinary meaning. The treaty should be construed as a whole. If there is ambiguity in the text, the object and purpose of the treaty can be considered in an effort to resolve the ambiguity. The 'context' of the treaty for the purposes of interpretation includes not only the treaty and its preamble and annexes, but also any agreement or instrument made between the parties in connection with the conclusion of the treaty. Additionally, the context is to include, for interpretation purposes, any subsequent agreement regarding the interpretation or application of the treaty, any subsequent practice in the application of the treaty and any relevant rules of international law.

Box 4: Articles 31 and 32 of the Vienna Convention on the Law of Treaties

Article 31 – The general rules of interpretation

"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended."

Article 32 – The supplementary means of interpretation

"Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable."

"Supplementary means" of interpretation can be applied either to confirm the interpretation obtained by applying the general rules, or to determine the meaning when interpretation in accordance with those general rules either still leaves the meaning of the treaty ambiguous or obscure, or alternatively leads to a result that is *"manifestly absurd or unreasonable"*. The supplementary means include the preparatory work of the treaty and the circumstances of its conclusion.

Interpretation of treaties may be of considerable importance in the context of supranational disputes, particularly because of the growing number of BITs and the increasing number of investment treaty arbitrations.

Part IV deals with amendment and modification of treaties.

Part V contains provisions dealing with invalidity, determination and suspension of the operation of treaties. Article 65 sets out procedures to be followed in relation to challenges to a treaty. Article 66 states that, if no solution is reached within 12 months following the date on which an objection was raised, any of the parties may apply to the ICJ in relation to disputes concerning Article 53 of the Convention (treaties conflicting with a peremptory norm of general international law – *jus cogens*) or Article 64 (the emergence of a new peremptory norm of general international law). In relation to a dispute concerning any of the other Articles in Part V of the Convention, the application is to be submitted to the UN Secretary-General (such applications are dealt with in the Convention's Annex).

Part VI contains miscellaneous provisions. Part VII deals with depositaries, notifications, corrections and registration. Part VIII contains the Final Provisions.

The Annex contains provisions dealing with conciliation in relation to Article 66. A list of conciliators consisting of qualified jurists is to be drawn up and maintained by the UN Secretary-General. When a request to the Secretary-General is made under Article 66, it is to be brought before a Conciliation Commission consisting of five conciliators, one acting as chairman.

The Commission may invite any party to the treaty to submit its views orally or in writing. Decisions or recommendations of the Commission are to be by a majority vote of the five members. Paragraph 4 states that the Commission *"may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement"*. It is to hear the parties, *"... examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute"*.

The Commission is to report within 12 months of its constitution. The report is deposited with the Secretary-General and is transmitted to the parties to the dispute. It is not binding: *"The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute"* (paragraph 6).

The Secretary-General is to provide the Commission with such assistance and facilities as it may require, and the expenses of the Commission are to be borne by the United Nations.

Conclusions on the Vienna Convention

Treaties play an important part in public international law, and the Vienna Convention on the Law of Treaties plays a significant role in relation to the operation and development of trade and investment on a global basis: for example, in the field of investor-State disputes.

The Vienna Convention may additionally be relevant in the area of territorial disputes. Two of the cases considered in the next chapter involved arguments based on treaties: the *Island of Palmas* case and the *Temple of Preah Vihear* case.