

# Chapter 2

## Treaty Interpretation as Opposed to Statutory, Constitutional and Contractual Interpretations

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## 2.1 Interpretation of Different Legal Texts

### 2.1.1 *Different Legal Texts Needed Interpretation*

There are many types of legal documents/instruments which are of different natures. Some of the legal documents/instruments (such as a statute and a constitution of a jurisdiction) are domestic norms to govern relevant matters in a jurisdiction. Some others (such as bilateral, regional and multilateral treaties) are international norms to govern relevant matters beyond a specific jurisdiction. Still some other documents (such as contracts and articles of incorporation of companies) are private norms established by private parties to govern their private relations. No matter what their respective natures are, they all need interpretation when a controversy as to the “correct meaning” of a term or a provision in the documents/instruments arises.

The general issues of interpreting these documents/instruments are quite similar. They are basically interpreted by adjudicators. For statutory interpretation, the

interpreters are domestic judges or arbitral tribunals. For constitutional interpretation, the interpreters are constitutional courts or the highest courts in relevant jurisdictions. For contractual interpretation, the interpreters are also judges or arbitral tribunals. For treaty interpretation, the interpreters are mainly international tribunals (such as the International Court of Justice and the panel or the Appellate Body of the WTO conducting interpretation for the Dispute Settlement Body). But, as will be further discussed in Chap. 8 of the book, sometimes the treaty interpreters could also be domestic courts. These interpreters are entrusted with the power to adjudicate disputes. So the interpretation activities of these documents are very important component of judicial function under various dispute settlement mechanisms.

Interpretations of all types of legal documents are always started with the texts of such documents. So the textual wording is the starting point of all interpretations, whether it is interpretation of a provision in a statute, in a constitution, in a contract or even in a treaty. However, as to when the textual wording can be avoided, what role should be given to context and what should be the scope of context, whether the intent of the drafter should be respected more or less, and to what extent the object-and-purpose of a legal document should guide its interpretation, there are still differences in these interpretations.

Another point worth mentioning is that treaty interpretation, statutory interpretation and constitutional interpretation are basically legal issues and the decisions can be appealed to a higher court or the highest court in charge of legal review, whereas contractual interpretation is a fact-finding activity performed by a court. Unless a rule of contractual interpretation has been breached by the fact-finding court, otherwise the result of contractual interpretation is an issue of fact and hence cannot be appealed to the court which is in charge of reviewing legal issues.

### ***2.1.2 No Uniform Rules for Statutory, Constitutional and Contractual Interpretations, but International Constraints Still Exist***

It was mentioned in Chap. 1 of the book that all legal interpretations are based on certain pre-established rules. But unlike treaty interpretation, which is governed by a pre-established set of international rules under the VCLT, there are no uniformed rules for statutory, constitutional and contractual interpretations for all jurisdictions. Different legal systems have their own rules and principles of statutory, constitutional and contractual interpretations either provided in their laws or developed through jurisprudence. However, there are some commonly found rules or principles in regard to these interpretations. They reflect the essence of these interpretation activities and are useful basis to be compared with treaty interpretation.

Another important aspect about statutory, constitutional and contractual interpretations concerns their possible international constraints. The fact that there is a

lack of international rules deciding or governing the interpretation of statute, constitution and contract does not mean that these interpretation activities are entirely immune from international rules. Actually, international rules could affect such interpretations in a number of ways, although there are no comprehensive international rules to impose restraints on such interpretations.

An interpretation of domestic laws and regulation is a part of their “administration” of rules. Such administration can be subject to some international requirements. For instance, Article X:3(a) of the GATT 1994 provides that “Each contracting party shall *administer in a uniform, impartial and reasonable manner* all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.” (Emphasis added).<sup>1</sup> This is basically about the administration of domestic laws, regulations, decisions and rulings governing international trade in goods. The administration of such domestic trade rules can be conducted by government agencies in charge of administering and implementing such rules. But this is not the only situation. A domestic court can also affect the administration of such domestic trade rules through its interpretation activities. Hence, if the domestic courts are interpreting their domestic trade rules not in a uniform, impartial and reasonable manner, there could be a violation of such requirement under GATT Article X:3(a). In other words, although this GATT provision does not provide methods for statutory or constitutional interpretation, it actually sets a limit for such interpretation in the situation where the interpreted provision falls within the scope of domestic trade rules provided in Article X:1. The limits are that statutory or constitutional interpretation for domestic trade rules should be conducted in a uniform, impartial and reasonable manner. If the same statutory or constitutional provision governing international trade is interpreted by the court in an apparently different or capricious manner in different cases, it is possible for other WTO Members to argue that the provision is not administered in accordance with the requirements under GATT Article X:3(a).

However, sometimes it could be difficult to draw the line between the consistency and the inconsistency with the requirement of “a uniform, impartial and reasonable manner” arising from different interpretations of the same trade rules in different cases. This is because all judges are conducting their interpretation activities in accordance with their beliefs of correct understanding of the interpreted rules. By nature, it is possible (and even quite common) that different judges could have different views on the proper interpretation of certain governing rules. If

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<sup>1</sup>Article X:1 of the GATT 1994 in turn provides in part: “Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them...”. Such laws, regulations, judicial decisions and administrative rulings of general application are collectively called in this Chapter as “domestic trade rules”.

domestic courts' decisions are strictly required to be consistent with each other, it is actually requiring that all countries are required to adopt the doctrine of *stare decisis*. However, this should not be the situation. GATT's requirement in Article X:3(a) should not be interpreted in such way as to require WTO Members to adopt the doctrine of *stare decisis*. So the key basis to decide whether a domestic trade rule has not been interpreted in "a uniform, impartial and reasonable manner" should be whether the inconsistency is so capricious and systemic, and whether there is a mechanism in the judicial system to correct or reduce such inconsistency.

Another example of international rules affecting statutory, constitutional and contractual interpretation is that an interpretation of a domestic law provision can become a specific challenged measure. Let's assume that an interpretation of a domestic trade law provision by a domestic court is consistent with the requirement of "a uniform, impartial and reasonable manner". Let's further assume that the textual wording in trade law is not clear as to whether a specific kind of government measure to restrict international trade is mandatorily required by the trade law. If the court's "uniform, impartial and reasonable" interpretation leads to the result that the government authority is required to restrict certain trade activities, such interpretation has made a trade restriction mandatory. The interpretation becomes an integral part of the trade law to mandatorily restrict international trade. Hence the interpretation, together with the interpreted law, can become the challenged measure. Based on the same reason, a constitutional court's interpretation of a constitutional provision which affects international trade could also make such constitutional interpretation becoming a measure which restricts international trade and can thus be challenged by other WTO Members.

Domestic court's interpretation of investment contract between its government and a foreign investor can also become a challenged measure if, for instance, a court's interpretation leads to the nullification of this investment contract. Nullifying an investment contract would make the investor economically suffer. It is possible that such contractual interpretation leading to nullifying a contractual right is challenged as an expropriation of a foreign investment. Such contractual interpretation could be examined by an investor-to-State arbitral tribunal based on a bilateral investment treaty. Through this way, a domestic court's contractual interpretation could be constrained by the country's international obligations.

## **2.2 Statutory Interpretation and Its Comparison with Treaty Interpretation**

### ***2.2.1 Statutory Interpretation***

Depending on the types and natures of law being interpreted, rules and methods for statutory interpretation could be vastly different. For instance, for statutory provisions governing civil matters, an extensive interpretation or an analogical

interpretation could be permitted or even needed. For those statutory provisions governing the scope and extent of criminal punishment, they are always subject to the restrictive interpretation; no extensive or analogical interpretation so as to expand the scope and extent of punishment should be permitted. However, there are still some statutory interpretation rules (such as reliance on the plain meaning of the text, reliance on systemic/contextual interpretation, and, to different extents, reliance on the legislative intent and teleological interpretation) applicable or relevant to civil, administrative and criminal law provisions.

As mentioned above, there are no internationally uniform rules of statutory interpretation for all jurisdictions. Hence, statutory interpretation is subject to domestic rules, which could be quite diverse from jurisdiction to jurisdiction. However, there are still some rules commonly resorted to for statutory interpretation in many jurisdictions. From theoretical perspective, there are debates between textualist, intentionalist and purposivist. From practical perspective, textualism is almost always the fundamental element of statutory interpretation in all jurisdictions. Other elements (i.e. the legislative intent and the object-and-purpose of the interpreted statutory provision) are to supplement or modify the ordinary/plain meaning of textual wording. So the first common rule for statutory interpretation is the reliance on the textual wording and the interpretation of the text based on its ordinary/plain meaning. This is basically to require literal interpretation of an interpreted provision.

There are advantages of relying on ordinary/plain meaning of an interpreted statutory provision.<sup>2</sup> First, it provides certainty to the regulated parties about the contents of regulation, because the regulated parties will be able to predict what to expect from the provision based on their “ordinary understanding” of the norm. Second, the plain meaning rule also provides equality for all regulated parties, because they will have common “ordinary understanding” on the same provision and they are regulated by the same rule based on their same “ordinary understanding”.

Although the ordinary/plain meaning rule seems to suggest that there must be a single ordinary/plain meaning of an interpreted term which is “clear and certain, not susceptible of doubt”,<sup>3</sup> actually many terms could be very far from “plainness” or “ordinariness”. A related issue is how to find or decide the ordinary/plain meaning. One criterion is to decide the ordinary/plain meaning based on the reasonable person’s understanding of the meaning. But there could be problems of identifying the group of persons to serve for the benchmark and for deciding whether they are really reasonable persons.

There are some commonly used methods to identify the plain meaning of the word, including checking the statutory definition and looking for reference in case law or administrative regulations or decisions. As a secondary source, it is also

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<sup>2</sup>Sullivan R, The Plain Meaning Rule and Other Ways to Cheat at Statutory Interpretation. <http://aix1.uottawa.ca/~resulliv/legdr/pmr.html>. Accessed 30 July 2017.

<sup>3</sup>Id.

possible, in many jurisdictions, for a judge to rely on a dictionary for the purpose of identifying the ordinary/plain meaning of a statutory provision. Legislative history or legislator's intent could be considered as a secondary source to identify the ordinary/plain meaning.<sup>4</sup> But in many jurisdictions, legislative history or legislator's intent is not necessarily a "secondary" source but a constantly relied-on source. It is not only used to identify the ordinary meaning of a statutory term, but also used as an independent method of statutory interpretation.

States could adopt different rules concerning the exceptions to the "plain meaning rule". For instance, in the United States, the "absurdity" rule allows a court to avoid the literal meaning of a statutory provision so as to obviate an absurd result arising from the ordinary meaning of the interpreted term.<sup>5</sup>

Concerning the case law for statutory interpretation, it should be noted that different States have different approaches concerning the reliance on previous court decisions for statutory interpretation. Generally speaking, common law countries have the *stare decisis* rule. Hence, previous interpretation of a particular statutory provision has binding force on later decisions. Whereas, civil law countries do not adopt the *stare decisis* rule. And hence the interpretation of a statutory provision does not have a binding force on the later court decisions. However, even in civil law countries, previous decisions on the interpretation of a statutory provision are always "useful references" for judges in later cases to interpret a statutory provision. The jurisprudence could even have a de facto binding force on later decisions in civil law countries.

In addition to the recognition of the importance of ordinary/plain meaning and precedent in virtually all jurisdictions, they also generally recognize the relevance of statutory purposes, the legislative works and the need to put a particular provision into its statutory context.<sup>6</sup>

### 2.2.2 *Comparison with Treaty Interpretation*

International treaties also have different categories. Except for those treaties relating to or governing civil/private matters (which will be discussed in Chap. 9), there are also treaties dealing with criminal matters (such as the *United Nations Convention against Transnational Organized Crime*, which criminalizes the participation in an organized criminal group, the laundering of proceeds of crime, and the corrupting practices) and treaties of other natures. They are all subject to the same interpretation rules under the VCLT, which does not distinguish the natures and categories of interpreted treaties. Whereas statutory interpretation for provisions governing

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<sup>4</sup>Clark and Connolly (2006).

<sup>5</sup>Farber (1996), p. 514.

<sup>6</sup>Id. at p. 516.

civil matters and those governing criminal punishments could be subject to different interpretative approaches, although there are still common interpretation methods.

Concerning the issue of finding or deciding the ordinary/plain meaning, a domestic court which conducts statutory interpretation could look at the reasonable persons' understanding of the meaning, although sometimes there could still be problem of deciding the scope of reasonable persons. But in treaty interpretation, it is difficult to rely on "reasonable persons' understanding" because people in different States could have different understandings and it would not be possible for anyone to argue that the people in one country is more reasonable than those in another country for the purpose of deciding their understanding of an interpreted term. Hence, in treaty interpretation, the approach of "reasonable persons' understanding" is not used.

Also in domestic context, when deciding the ordinary meaning of a statutory term, the court usually looks for reference in case law as the primary means (no matter whether it is in a civil law or common law country) and checks dictionary as the secondly means. However, as will be discussed, in treaty interpretation, international adjudicators usually check the dictionaries as the first step to look for definitions to decide the ordinary meaning of a treaty term and then rely on jurisprudence to support their understanding of the ordinary meaning. But it must still be said that in statutory interpretation, countries rely on previous decisions quite extensively whether or not the doctrine of *stare decisis* is applied. This is similar to treaty interpretation, to the extent that previous interpretations are actually and extensively cited and constantly referred to.

In many jurisdictions, legislative history or legislator's intent is a very important source for interpreting statutory terms. It can be used to identify the ordinary meaning of a statutory term. It can also be used to identify the object-and-purpose of the legislation. It can even be used as an independent method of statutory interpretation. However, for treaty interpretation, the drafter's intent as reflected in the preparatory work is a secondary means. It is used only to confirm the meaning resulting from the application of VCLT Article 31, or to determine the meaning when the interpretation according to Article 31 leaves the meaning ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable.<sup>7</sup> Preparatory work is not to be used to identify the object-and-purpose of a treaty.

In treaty interpretation, context can be very broad to refer not only to other parts of the treaty text, its preamble and annexes, but also to other treaties. This will be further discussed in Chap. 12 of the book. But in statutory interpretation, the method of contextual or systemic interpretation generally is not used so as to extend to other statutes. Basically, the context is limited to relevant parts in the same statute.

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<sup>7</sup>See Vienna Convention on the Law of Treaties, Art. 32, *opened for signature* 23 May 1969, 1155 U.N.T.S. 331.

## 2.3 Constitutional Interpretation and Its Comparison with Treaty Interpretation

### 2.3.1 *Constitutional Interpretation*

Constitutional interpretation is both similar to and different from statutory interpretation. Both of them are guided by the ordinary/plain meaning of the text and by the context of the norms. Prior judicial decisions are also important both in statutory interpretation and in constitutional interpretation, either serving as a binding source or as valuable reference (depending on the legal systems). But the unique aspects in constitutional interpretation are that social, political and economic/financial consequences could affect the interpretation and that the natural law could be brought into guide or assist constitutional interpretation.<sup>8</sup> Also it is not crystal clear concerning the weight to be given to the drafter's intention. The following points are some important issues specifically arising from constitutional interpretation.

First, social, political and economic/financial consequences have possible impact on or implication for constitutional interpretation. Since constitution is the highest norm in a jurisdiction, its operation will affect not only the legal system and practice there, but also the fundamental rights of the people in the jurisdiction. When interpreting a constitutional provision, judges in the constitutional court or in the highest court in the jurisdiction could not avoid considering various consequences, in addition to their beliefs in constitutional values (such as the democracy and the respect of human dignity). The most commonly identified consequences include social consequence (such as whether a certain way of interpretation will create positive or negative serious implications for the society), political consequence (such as whether certain interpretation will give rise to a political turmoil or whether it will help improve political stability) and economic/financial consequence (such as whether certain interpretation will lead to requiring the government to immensely reallocate the resource or to greatly increase spending). Although such consequences are not formally introduced as part of constitutional interpretation method, they definitely could affect individual judges' decisions.

Second, the natural law and certain external values can become the guidance in constitutional interpretation. This is because the main part in the constitutions of most countries is to ensure the protection of fundamental rights and human dignity. When a constitution is not sufficient in providing such protection or is not entirely in line with such expectation of full protection of the fundamental rights, the natural law could be introduced as the higher norm to guide the interpretation of the constitutional provisions. Also certain external values of high importance being universally recognized (especially those provided in human rights conventions) have the potential of being introduced into the operation of a constitution. There are two possible ways to bring external values required in human rights treaties into the

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<sup>8</sup>Linder D, Exploring Constitutional Conflicts—Theories of Constitutional Interpretation. <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/interp.html>. Accessed 30 July 2017.



operation of a constitutional system. One way is to directly apply such treaties by a constitutional court or the highest court in a jurisdiction. But there could be complicated legal/constitutional issues concerning whether or not a treaty can be directly applied by the court. Another possible way is to rely on constitutional interpretation so as to have such treaties shedding light to the constitutional provisions and helping understand their meanings. Through this way, the result of interpreting constitutional provision will be in line with relevant human rights treaties.

Third, a related issue is the desirability of ensuring a living constitution through constitutional interpretation so that it can keep up with the changes in different generations, without amending the text of the constitution.<sup>9</sup> Although the concept of living constitution can be controversial to some people, it is of high importance in the operation of a constitution. This is because constitution is a fundamental document concluded through complicated political and legal processes. Any change of a constitutional provision is a difficult task. In many countries, their constitutions are quite “old”. If new elements cannot be brought into the constitutional framework through interpretation, it would transform the oldness of the constitution into obsolescence of it.

Fourth, another related issue in this context is the possible adoption of an “evolutive interpretation” so as to give new meanings to an aged constitutional provision. This is particularly important if there are new contents of fundamental rights being developed or recognized at international level (such as a treaty recognizing a new kind of human rights being concluded) and if the contents of such rights are in contradiction with the intent of the drafter of the constitution, the new element must be brought into the process of constitutional interpretation. This approach will help a constitution adapt to new circumstances in the society of the State and will make sure that the constitution will not hinder the progress of the society. This approach will also ensure that a constitution will evolve and improve over time and would also reduce the need of amending the text of a constitution.

Fifth, the drafter’s intent is important, but not critical, in constitutional interpretation. Constitution is not merely a legal document. It is definitely a political document. Drafting constitution is a political process. Its contents are the result of political decision. They need to be fully respected. Interpreters of constitutional provisions are not in a position to wilfully change the intents of the drafters. However, it is also true, as mentioned above, that a constitution can be “old” in its age and that it should be desirable to make the constitution a living one. Hence, a respect to the drafter’s intent and the need of making it a living constitution must be properly balanced.

Sixth, when interpreting a constitutional provision, balancing various factors and competing rights/interests could be very important. In many countries, the principle of proportionality is explicitly provided or impliedly embedded in their constitutions to decide the constitutionality of a restriction of constitutional rights. In some

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<sup>9</sup>Different perspectives on living constitution is explained in Rehnquist (2006), pp. 402–403.

other countries, there is a necessity requirement, which is quite similar to the principle of proportionality. This principle/requirement basically expects that the interpreter of the constitution must consider some related factors and must “weight and balance” these factors so as to decide the constitutionality of a measure or a law provision. In addition to the process of weighing and balancing these factors, the constitutional interpreter in many countries also develop different tests (such as rational basis test, heightened scrutiny test or strict scrutiny, depending upon the importance of the rights being infringed) to help interpret constitutional provisions.

### ***2.3.2 Comparison with Treaty Interpretation***

Treaty interpretation in a rule-based dispute settlement procedure is basically not affected by the possible social, political and economic/financial consequences in a jurisdiction. In this regard, treaty interpretation is quite different from the interpretation of a constitutional provision, the interpreter of which could be practically affected by the possible impact on or implication for the social, political or economic/financial situation.

Concerning constitutional interpretation, there are supports of maintaining or ensuring living constitution so that the constitution can either lead social development or at least is not to be left behind from the development of the society. Also it is desirable to incorporate important human values developed in international treaties (especially human rights treaties) into the constitution system through interpretation of the constitutional provisions. For treaty interpretation, although there is no apparent recognition of “living treaty”, it is still desirable, as argued in Chap. 18 of this book, to introduce some eternal values of high importance into a treaty through its interpretation.

In constitutional interpretation, evolutive interpretation should be used so as to adapt to the new development or situation of the society. In treaty interpretation, especially for those treaties which govern State’s behaviours (such as those for the protection of human rights) , evolutive interpretation could also be desirable. But it must be noted that for trade and economic treaties, it is also very important to maintain the balanced results (i.e. the results of “gives and takes” by the contracting parties) arising from negotiations.

For constitutional interpretation, the drafter’s intent is important and must be properly respected. However, the intent should not be an “absolute guidance” because the constitution needs to be operated in a way to keep up with the new development of the society and the new values being widely recognized domestically or international. For treaty interpretation, the drafter’s intent, as reflected in the preparatory work, is merely a secondary and supplementary means to assist treaty interpretation, as provided in Article 32 of the VCLT.

For constitutional interpretation, balancing competing rights and interests is a constant exercise. When deciding the constitutionality of a statute or a government measure, related public interests to be pursued by the statute or the measure, and the

importance and extent of infringement to the fundamental right need to be weighted and balanced. For treaty interpretation, in many situations (for instance, when deciding whether a measure is necessary to protect human health or life under GATT Article XX (a) and (b)), it is also needed to balance related competing interests. The latter situation will be discussed further in Chap. 16 of this book.

## 2.4 Contractual Interpretation and Its Comparison with Treaty Interpretation

### 2.4.1 *Contractual Interpretation*

Contractual interpretation is different from statutory, constitutional and treaty interpretations in that the latter are to interpret the norms which are to be applied to decide the rights and obligations of the disputing parties, whereas the former is to interpret the private norm created by and for the disputing parties in private relations. Since the interpreted contractual provision is a written document, relying on the plain meaning (literal meaning) of the textual wording is still the key guiding principle. In addition to this, there are some unique aspects for contractual interpretation.<sup>10</sup>

First, there are situations where a contract term is ambiguous, unclear or reasonably susceptible to more than one interpretation. A court will have to rely on other methods to interpret the term. In many jurisdictions, the court is required by its law to look for the parties' intent so as to understand the meaning of the contract term to be interpreted. Parties' intent is usually identified by the negotiation history of the contract and the related documents associated with the negotiations. But if the term is clear, the court generally has no power to resort to the parties' intent so as to distort the clear literal meaning of the contract term.

Second, there could be limited situations where a contract term can be interpreted contrary to its literal meaning. For instance, if the literal meaning of a contract term would lead to absurdity in the circumstance or would be inconsistent with the key part or the majority part of the contract, such term should be interpreted in a way to avoid such absurd or inconstant result. One interpretation method to avoid such absurdity and inconsistency is to resort to the intent of the parties when they negotiated the contract.

Third, there is another situation where the literal meaning or the parties' intent can be disregarded. When parties to a contract are not in equal footing when negotiating their contract, especially when a party is apparently weak in its economic or negotiation position, a contract term can be interpreted in the weaker party's favor when a contractual provision is susceptible to two different interpretations. In such situation, the court should not rely on the party's intent so as to

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<sup>10</sup>Martorana (2014).

decide the meaning of the provision. Otherwise, it would result in favoring the economically-stronger party because during the negotiation, the stronger party might dominate the process and hence the negotiating history could reflect the stronger party's intent. This is undesirable result. A similar situation is in the pre-drafted contract form. If a contract is pre-drafted by a party and if there is ambiguity in the term used in such "form contract", laws in many countries would require the adjudicator to also interpret the term in favor of the drafting party's opposing side, who are usually the weaker party. This is to avoid resorting to parties' intent, which usually turns out to be the intent of the drafter of the contract.

Fourth, since a private contract between parties of equal footings is basically an outcome of exchanged rights and obligations, it is of importance to maintain the balance of rights and obligations between the parties. Contract interpreters are not vested with the power to readjust the parties' rights and obligations through contractual interpretation, unless very high public interests justify readjusting such balance. In the latter situation, the readjustment of the balance could be conducted through contractual interpretation, as mentioned in the preceding paragraph. The readjustment can also be required by domestic legislation.

#### ***2.4.2 Comparison with Treaty Interpretation***

In contractual interpretation, the drafter's intent is given much weight in deciding the meaning of a contract term when there is a doubt about the true meaning of the term. This means that subjective interpretation method is preferred in contractual interpretation. However, in treaty interpretation, drafter's intent as reflected in the preparatory work for a treaty is not given much weight. It only plays a supplementary and secondary role as explained above. Hence treaty interpretation prefers objective methods, including ordinary meaning of textual wording, context, and object-and-purpose.

For contractual interpretation, there are some situations where textual wording must be interpreted so as to provide better protection for the weaker party to the contract. But in treaty interpretation, there is no such principle or guidance of interpreting a treaty so as to provide better protection for the weaker contracting State. If a weaker party under a treaty is to be better protected or to be given favors or privileges, such favors or privileges must be reflected by textual wording.

For the interpretation of a private contract between parties who negotiated the deal based on equal footing, it is important to maintain the balanced result when a court is to interpret the contract provisions. This is quite similar to the interpretation of those treaties governing trade and other economic relations, which are basically the results of exchange of concessions. Interpretation of such treaties should not add to or diminish the rights and obligations of the parties, nor rebalance the concessions. But as mentioned above, if it is an interpretation of a treaty governing the behavior of its contracting parties, there is no such issue of balancing or rebalancing the rights and obligations between the parties.

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