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The Interpretation of Treaties – A Re-examination

Preface

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Several interconnected factors call for a re-examination of treaty interpretation. I will mention only three of many. First is the much noted – and contested – notion of fragmentation of international law. Here the focus is on the emergence of different regimes, self-contained or otherwise, which manage different jurisdictions and confront different materials. One important question which follows is, do they or should they all share a similar hermeneutic? Related to this is the question of whether they, in fact, share the same deep hermeneutic structure and yet have developed or are developing distinctive hermeneutic languages or idioms?

Associated with this, though a distinct phenomenon, is an increasing degree of recourse to agreed binding dispute settlement with specialized tribunals and a very rich emerging case law – WTO, Investment, Law of the Sea, the various International Criminal Law Tribunals are among the more noted ‘new – or not so new – kids on the block’. The World Court is also an invigorated body with a pulsating docket and the Human Rights tribunals continue to churn out judgments. Treaty interpretation is at the core of this jurisprudence. All of these various and varied institutions in principle apply international law; indeed, many even claim to be following the universal rules of the Vienna Convention when it comes to treaty interpretation. And yet we note the emergence of different hermeneutics across the landscape of judicial treaty interpretation. For instance, the Appellate Body of the WTO has a very distinct vocabulary and hermeneutic sensibility compared to, say, the World Court or the International Criminal Law tribunals.

Finally, there have been some important developments in both the general theory of international law (such as GAL and the Turn to Governance) and theories dealing with the relationship between International Relations and International Law, which have an impact on the understanding of treaty interpretation.

With these questions flowing from this focus on the hermeneutics of treaty interpretation, *EJIL* invited a group of young scholars to both track and examine contemporary treaty interpretation in the light of these and other problems. As you will see, a number of our papers, like the one by George Letsas on the European Court of Human Rights, trace the developments of a treaty-specific hermeneutic. Others, like Luigi Crema’s paper proffer a more generalized framework. It is our hope that this symposium will inspire wider discussions on this phenomenon.