ИНФОРМАЦИЯ ОБ АВТОРЕ
Жуков Сергей Викторович – кандидат юридических наук, докторант Межрегиональной Академии управления персоналом

INFORMATION ABOUT THE AUTHOR
Zhukov Sergey Viktorovich – Candidate of Law, Doctoral Student of the Interregional Academy Personnel Management

Uaftp@ukr.net

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THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE IN INTERPRETING INTERNATIONAL TREATIES: THE PROBLEMS AND PROSPECTS OF THE ICJ'S JURISDICTION

Svetlana KARVATSKAYA,
PhD in Law, Doctoral Student
at the Institute of International Relations
of Taras Shevchenko National University of Kyiv,
Associate Professor at the Department of Human Right
of Yurii Fedkovych Chernivtsi National University

SUMMARY

Interpretational opportunities of ICJ in legal practice to interpret international treaties through institutional instruments and realization of interpretational principles in international law are considered in this article.

The examples of statical and dynamic interpretation; different ways of translation, the application of *travaux préparatoires* are analyzed.

Key words: international treaties' interpretation, International Court of Justice, principles of international treaties interpretation.

РОЛЬ МЕЖДУНАРОДНОГО СУДА ООН В ИНТЕРПРЕТАЦИИ МЕЖДУНАРОДНЫХ ДОГОВОРОВ: ПРОБЛЕМЫ И ПЕРСПЕКТИВЫ ЮРИСДИКЦИИ МС

Светлана КАРВАЦКАЯ,
кандидат юридических наук, докторант
Института международных отношений
Киевского национального университета имени Тараса Шевченко,
доцент кафедры прав человека
Черновицкого национального университета имени Юрия Федьковича

АННОТАЦИЯ

В статье рассмотрены интерпретационные возможности Международного суда ООН в правоприменительной практике толкования международных договоров при помощи институциональных возможностей, реализации принципов толкования и международного права, приведены примеры возможностей реализации принципов статического и динамического толкования, различных способов толкования, применения *travaux préparatoires.*

Ключевые слова: толкование международных договоров, Международный Суд ООН, принципы толкования международных договоров.

Introduction. The UNO International Court of Justice is the main judicial organ of the United Nations Organization (hereinafter – UNO ICJ). Its activity is aimed at the achievement of one of the main UNO objectives – the promotion of international peace maintenance (article 1, item 1 of the UNO Charter) through the adoption of decisions and advisory conclusions [6]. In addition to resolving disputes between the states in essence the UN ICJ must ensure the fulfillment of contractual obligations by the participants of international treaties through the interpretation of contractual norms, that precede their implementation, and that contributes not only to equal understanding of this or that standard, but also ensures conscientious fulfillment of the obligations, arising from it [2]. That is why, the interpretation of international treaties is an extremely important aspect of their implementation within the framework of international law, especially at regional level. In particular, article 1 of the European Convention on peaceful settlement of disputes of 1957 indicates the responsibility of the countries to transmit all the interstate disputes of legal

nature to the International Court of Justice, including disputes concerning:

– interpretation of the contract;

– any question of international law;

– the existence of a fact, which, if established, will constitute a violation.

Among a number of international court the UNO ICJ is the universal body to resolve disputes, connected with the use of treaties, and most authoritative in connection with international treaties interpretation; its decisions are legally compulsory (for the parties of the dispute), and the views of scholars of authority – specialists in international law, which often simultaneously are the judges – are a source of law. No wonder, the interpretation of international treaties became the basis for the practice of judicial precedent application by the international judicial authorities, which often advert to their previous decisions, as well as the decisions of other international bodies, when dealing with judicial cases. The growing number of states' explanation and dispute resolution requests to the courts, increasing role and activity of the courts in international law interpretation, and, at the same time, the aspiration to interpret the treaty independently (authenticly) as subsequent treaties, the UNO ICJ peacemaking misiion intensification in the context of political expediency in particularly complex cases on international relations disputes, are evidence of the problem of international treaties interpretation by the UNO ICJ actualization.

The purpose of the study is to determine the role and peculiarities of the UNO International Court of Justice in international treaties interpretation in order to resolve international disputes in modern conditions, which is an integral part of the question to regulate international-legal relations between the states and international organizations in support of international law and order and security through the resolution of international disputes and international treaties interpretation.

To determine the methodological basis of research, generalization of different authors' concepts, regarding the interpretation of the contract, a universal structure is used, equalling the structure of most contracts. The analysis algorithm methodologically provided for the implementation of successive comparative steps, concerning:

1) general provisions of interpretation;

2) interpretation means in prescribed order and hierarchy [8].

The overall analysis allows using the main four schools of contractual interpretation practices, having different hermeneutic aims and, accordingly, using a set of their own ways and methods of interpretation. The intent school ascertains the intentions of the parties, the textualist school establishes the ordinary meaning of the words of the treaty, the teleological approach gives effect to the object and purpose of the treaty, and the New Haven school determines and implements the genuine shared expectations of the parties [22]. Adherents of these schools are among the leading scholars of international law, at the same time, their doctrines are additional sources of international law.

An idea is spread among the scientists to single out only three approaches to the interpretation of international treaties or theories – textualism, theory of intentions and teleological approach. Analyzing the advantages and disadvantages of each of them, E. Zverev indicates simple theoretical basis and ease in textualism application, and, at the same time, excessive fixation on the standards of the written text, and the difficulty (or almost impossibility) of extratextual means of interpretation use, even if they are needed in a particular situation, what may lead to the adoption of unlawful decisions; revelation and specification of the relevant standard author's will (regarding international contracts – will of the parties, who signed the agreement) and opportunity (sometimes exaggerated) to use preliminary materials, subsequent practice of an international treaty implementation etc., when applying the theory of intentions; elucidating of the purpose with an adopted relevant standard to gain it, and within the limits of this purpose (which could also change over time) determination of a standard's content in accordance with specific time regulations and complexity and riskiness of practical implementation of this norm in the context of teleological theory. As a result, the author proposes to apply a combination of interpretation theories – textual, theory of intentions and teleological theories [1].

The problem of international treaties interpretation in scientific doctrine impresses by variability of views and comments. Problematic questions concerning ICJ activities on treaties' interpretation are investigated both in international organisations' documents [9] and numerous scientists: Y. Vlasov, K. Djeffal, T. Ginsburg, I. Lukashchuk, O. Lukashchuk, O. Merezhko, A. Talalayev, H. Lauterpacht, M. Ris, G. Fitzmaurice, L.N. Sicilianos and others.

In particular, the representatives of Russian international law school analyze the question of the necessity to give the right of access to the Court of some territories, parts of a sovereign state, as a party of the case in essence (the example of the wall on the occupied Palestinian territory) [12] and the proposition of corresponding amendments to art. 36 of the UNO ICJ Charter; proposal to include into the list of the parties in the dispute of individuals, which means the recognition of mandatory trial principle by the states (N.N. Goncharova); the question of the legitimacy to demand advisory conclusions from international non-UN-organizations with the General Assembly's consent: regional bodies, various specialized intergovernmental organizations, international non-governmental organizations, having General Consultative Status ECOSOC, with the consent of the UNO General Meeting (N.N. Chernova).

The institutional foundations of the UNO ICJ activity are determined in Article 92 of the UN Charter, which states, that the UNO General Meeting and the Security Council elect fifteen judges. Article 9 of the ICJ Statute specifies them to represent "the main forms of civilization and principal legal nature, subject to the systems".

The jurisdiction of the court includes general and adjoining powers, which outline the range of cases, considered by the court. Article 36 of the Court's Statute determines general authorities, which include resolving disputes between the states (since only they can they can stand the trial), subject to compulsory jurisdiction of the Court: about the interpretation of the agreement; the question of international law; about the presence of the fact; about the nature and amount of reimbursement. Article 96 of the UNO Charter contains the opportunity to provide advisory opinions on abstract questions of international law at the request of any UNO body authorized to comply with such inquiries. Adjoining powers also include: international agreements interpretation, identifying and ascertaining the gaps in existing international law. According to paragraph 1, article 36 of the UN Charter the ICJ deals with all the cases, that will be sent to it by the parties, and all the questions, specially provided for in the UN Charter or applicable treaties and conventions [6].

The case handling of the ICJ is carried out under strict compliance with Jus standards Cogens, which are specified in the Vienna Convention, 1969 [16] on the basis of their mechanism of their recognition and the principles of good faith and ordinary meaning of the terms. The terms are not clearly recognised and applied to the obligations erga-omnes to genocide prohibition [5].

The ICJ has influenced the development of such a principle as the audit of change, without which the law and justice are impossible [7] and the practices of a contextual interpretation. For example, it was applied to the cases concerning nuclear tests in 1974 g. Nuclear Test Case (Australia v. France) and Nuclear Test Case (Australia v. France) (New Zealand v. France) [17; 18] and Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Test (New Zealand v. France) [13; 14], 2016. (Marshall Islands v. India, Marshall Islands v. United Kingdom), Marshall Islands v. Pakistan [19–21].

Underground nuclear explosions carried out by France in the future, according to New Zealand, also pollute the environment. The Court protects the fundamental rights of people not only in New Zealand but also Australia, Samoa, Solomon Islands, Marshall Islands and the Federated States of Micronesia. The rights of people in these territories "include the rights of the unborn descendants". These are rights, "which nation is obliged to protect" [7]. Changes in circumstances of life sometimes cause interpretative changes, as well as the cessation and obsoleteness of international treaties, the content of terms, the validity of the contract, or its parts [7].

The considerations mentioned above indicate the evolution of the rules of interpretation of the Court and the commitment to a dynamic principle, in particular. Today, in interpreting international treaties, the ICJ adheres to both the static and the dynamic principle of interpretation, when the "facts", "treaties", "conventions", clauses to treaties are interpreted evolutionary in the light of the new circumstances of new knowledge, and not only in respect of treaties that regulate the observance of human rights. If in the 70's of the twentieth century humanity was less aware of the harmful effects of nuclear testing, then, in the 90's, after the Chornobyl disaster, cases and advisory opinions were held with arguments at a new technological level [13]. Although in the history of the ICJ there were periods of a certain confrontation of different approaches. However, the application of the evolutionary principle still requires more argumentation, and the static principle is applied to their interpretation.

ICJ uses different ways of interpreting international treaties, often combining several of them. Thus, clarifying specific context of the above case to interpret the expression' foundations judgments", grammatical and special legal methods were applied, observing the principle of contextual interpretation [7]. However, the Court clearly adheres to the basic rule for the interpretation of treaties in order not to receive inappropriate results or to adopt an "absurd" decision [12].

The interpretation activity of the Court enables not only to specify the fuzzy provisions of the treaties, but also to determine the content of the treaties and the possibility of their termination. An example of such a concretization is the ICJ's decision in Namibia regarding the validity of resolution 284 (1970) [11], as two permanent members of the UN Security Council abstained from voting, the ICJ decided that such actions could be considered a "for" vote, although the court was pondering whether such an interpretation was correct, since according to Art. 27 (3) of the UN Charter 3 "Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members" [6].

An important role in the interpretative work of the Court is played by the clarification of the purpose of the contract, the normal meaning and the real and foreseeable intentions of the travaux preparations [9] especially in the historical context. In the decision on the cazse Kasikili/Sedudu Island (Botswana/Namibia) the Court applied the Agreement of 1990 as preparatory documents to find out the object and aim of the treaty. But cartographical materials being absent there was no official ground to interpret the Treaty [10]. The most succesful was the usage of the Treaties (1858 and 1886) between Costa Rica and Nicaragua – the cases Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua) (2 February 2018), because "11 doubtful clauses" were settled there. These clauses allowed to determine "validity of the 1858 Treaty and found, in its paragraph 3 (1), that the boundary line between the two States on the Atlantic side "begins at the extremity of Punta de Castilla at the mouth of the San Juan de Nicaragua River, as they both existed on the 15th of April 1858" [15]. At the same time the Court stated "the absence of "detailed information", which had been observed in the 2015 Judgment, had left the geographical situation of the area in question somewhat unclear with regard to the configuration of the coast of Isla Portillos" (pr. 70) and seeked to find out "issues of territorial sovereignty which it is expedient to examine first, because of their possibleimplications for the maritime delimitation in the Caribbean Sea" (pr. 59). Although this method is applied only as subsidiary because the intentions must be defined as forseen art. 31 VCLT. The Court works not only with the treaties' text but official state letters as well [19–21], their practice [13]. This practice must refer to treaties application.

Investigating new facts caused the termination of the case concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) (Malaysia v. Singapore) 29 May 2018 [3, 4] as new documents were found out (namely internal correspondence of the Singapore colonial authorities in 1958, an incident report filed in 1958 by a British naval officer and an annotated map of naval operations from the 1960s.). The parties terminated the trial.

The court tries to consider geographical, historical, political circumstances of the cases. It is extremely important while considering political matters to eliminate any possibility to influence situation. The example of important interpretational activity of the Court can be the cases Croatia v. Serbia on the Application of the Convention on the Prevention and Punishment of the Crime of Genocide [4]. The Court took into consideration political circumstances connected with Socialist Republic Yugoslavia splitting and independent Croatia creating. The Court found out those circumstances as the demonstration of genocide [4, pr. 62, 76, 102, 187].

The case mentioned above and the other cases concerning genocide acts during the conflict between Bosnia, Serbia and Montenegro in 1991–1995,

1999–2000 were sued by Croatia against the republic of Yugoslavia for Convention violation on genocide crimws prevention and punishment. Croatia aimed to prove that the events in the city Vukovar were Serbian armed forces actions in the response of its Declaration of Independence. It was political scenario of Belgrad federal government. The Court stated these facts and refused Serbian interpretation of Brioni transcript considering it to be aimed to exterminate civil population [4, pr. 503]. The Court interpreted Convention's article and the phrase "commited with the extent to exterminate" in particular [4, pr. 138]. Finally, the Court stated: "in the absence of thenecessary specifc intent which characterizes genocide, Croatia cannot beconsidered to have engaged in "conspiracy to commit genocide" or "directand public incitement to commit genocide", or in an attempt to commitgenocide, all of which presuppose the existence of such intent. It follows that the alternative submissions must be rejected" [4, pr. 517]. Political cases concerning Palestine territories and Cosovo independence were also very complicated.

At the same time the Court detailed some notions, in particular agression and validity of weapon usage for self defence stipulated on UNO statute and common international law.

Some thoughts, declarations and comments of ICJ' judges are very important for this process. The possibility to analyse the discussion of all seps of the trial in the court and interpretational activity of the court can be considered as the demonstration of law creation. This aspect of Court's activity is the most dynamic and unforeseen because treaties interpretation often belongs to Court composition and depends on its loyality to certain interpretational school, scientific views and the development of international law in general because it can evidently influence treaties interpretation by the Court.

Conclusions. Interpretation of international treaties by the International Court of Justice is the most authoritative form of official interpretation. In interpreting contracts ICJ relied on the text of the treaty, used the object, purpose, subsequent practice and agreement of the parties, using static and more evolutionary principles of interpretation, sometimes – a custom. Preparatory materials were important as well.

Applying law-enforcement practice in the interpretation of treaties, the ICJ promotes the elimination of gaps in law, promotes the development of international law, using the rules to specific circumstances, the Court reveals, deepens and specifies their content. Moreover, ICJ according to the demands of the time answering time requests demonstrates the desire for flexible and effective reconciliation between the parties of the dispute, contributes to better of understanding and the strengthening of the world, but we need further research to increase its authority and the capacity to implement the Court's rulings.

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ИНФОРМАЦИЯ ОБ АВТОРЕ

Карвацкая Светлана Богдановна – кандидат юридических наук, докторант Института международных отношений Киевского Национального Университета имени Тараса Шевченко, доцент кафедры прав человека юридического факультета Черновицкого национального университета имени Юрия Федьковича

INFORMATION ABOUT THE AUTOR

Karvatskaya Svetlana Bogdanovna – PhD in Law, Doctoral Student at the Institute of International Relations of Taras Shevchenko National University of Kyiv, Associate Professor at the Department of Human Right of Yurii Fedkovych Chernivtsi National University

svitlana.karvatska288822@gmail.com

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ПРАВОВОЕ РЕГУЛИРОВАНИЕ НАЛОГА НА ДОБАВЛЕННУЮ СТОИМОСТЬ В УКРАИНЕ

Любовь КАСЬЯНЕНКО,
доктор юридических наук, профессор,
профессор кафедры финансового права
Национального университета государственной
фискальной службы Украины

Наталия АТАМАНЧУК,
кандидат юридических наук, доцент,
доцент кафедры финансового права
Национального университета государственной
фискальной службы Украины

АННОТАЦИЯ

В статье рассмотрены и проанализированы основные теоретические подходы к налогу на добавленную стоимость. Рассмотрены понятие налога на добавленную стоимость, характерные признаки, функции и особенности механизма администрирования данного налога. Исследованы проблемы правового регулирования на современном этапе. Определены основные направления реформирования налога в условиях интеграции в Европейский Союз. Рассмотрен комплекс мероприятий, предложенных для решения проблем администрирования налога на добавленную стоимость в Украине.

Ключевые слова: налоги, косвенные налоги, администрирование, налоговая система, налог на добавленную стоимость, Налоговый кодекс Украины.

LEGAL REGULATION OF VALUE ADDED TAX IN UKRAINE

Lyubov KASYANENKO,
Doctor of Law, Professor, Professor at the Department of Financial Law
of National University of the State Fiscal Service of Ukraine

Natalia ATAMANCHUK,
PhD in Law, Associate Professor,
Associate Professor at the Department of Financial Law
of National University of the State Fiscal Service of Ukraine

SUMMARY

The article reviews and analyzes the main theoretical approaches to the value added tax. The concept of value added tax, characteristic features, functions and features of the administration mechanism of this tax are considered. The problems of legal regulation at the present stage are researched. The main directions of tax reform in the context of integration into the European Union have been determined. The set of measures proposed to solve the problems of the administration of value added tax in Ukraine is considered.

Key words: taxes, indirect taxes, administration, tax system, value added tax, Tax Code of Ukraine.

Постановка проблемы. Налог на добавленную стоимость (далее – НДС) является бюджетообразующим и одновременно сложным и противоречивым налогом в налоговой системе. В Украине он заменил налог с оборота и налог с продаж, став в дальнейшем важным для формирования доходной части государственного бюджета и условием вступления нашей страны в Европейский Союз (далее – ЕС). Именно в контексте Соглашения об ассоциации [1] Украина ставит целью не только адаптацию отечественного законодательства о НДС с законодательством ЕС, но также заимствование и внедрение лучших элементов системы НДС с целью устранения торговых барьеров между Украиной и ЕС и совершенствования отечественных норм. Однако,