

‘Contemporary Meaning’ in Treaty Interpretation in the WTO and ICJ Cases

Yang Yu*

Treaty interpretation is one of the most crucial roles of international dispute settlement bodies. They can decide the case in the most reasonable way by legally justified interpretation of treaty. In some cases of the WTO and the ICJ, there exist certain types of facts which closely relate to the evolution of the meaning of a term. This research compares the four ICJ cases to the two WTO cases in order to ascertain both similarities and dissimilarities of those cases. Significant is the dissimilarities concerning the related principle on the economic or environmental aspect enshrined in certain agreement. In the context of the WTO dispute settlement, the contemporary meaning could only be adoptable after adequately justifying treaty interpretation by means of the two-step semantic generic-related interpretative approach. Without the second step of principle-related analysis, problems may arise especially from the economic perspective.

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I. INTRODUCTION

Treaty interpretation is one of the most crucial roles for international dispute settlement bodies. They can decide the case in the most reasonable way by legally

* Associate Professor at Shanghai University of International Business and Economics School of WTO Research and Education; Research Fellow in Shanghai Center for Global Trade and Economic Governance. Ph.D. (Fudan). This paper is supported by the Shanghai 085 Project of Higher Education Connotation Construction, Shanghai Center for Global Trade and Economic Governance & China's Economic Forum(SC-GTEG) and the WTO chairs program. Special gratitude extends to Professor Dr. Josef Drexl, Managing Director of Max Planck Institute for Innovation and Competition. The research as a visiting scholar in the Institute facilitated the completion of this article. <http://orcid.org/0000-0001-5467-6397> The author may be contacted at: wtoyuyang@suibe.edu.cn

justified interpretation of treaty.

Treaty may not be always interpreted in accordance with an original meaning. International dispute settlement bodies should sometimes consider the evolution of specific terms in order to interpret them fairly and correctly. A noticeable example is the “exhaustible natural resources” in the case of *United States - Import Prohibition of Certain Shrimp and Shrimp Products*¹ in which the Appellate Body finally adopted the contemporary meaning of this phrase.

Terms in a treaty would have different connotations following the circumstances. When the meaning of a treaty term is presumed to be evolving, the one has to decide whether to adopt the contemporary or original meaning. There are such cases in the WTO dispute settlement body and the ICJ where contemporary usage of some terms supplanted their original meanings.² A few questions arise in such cases: Is there any possibility to analyze the conventional legal interpretation from a different perspective?; Should the contemporary meaning always be legally adopted in all related cases?; and Will liberal interpretation be criticized as ‘judicial activism’?³

The primary purpose of this paper is to answer these questions by analyzing several WTO and ICJ cases. This paper is composed of six parts including an introduction and conclusion. Part two will briefly summarize existing cases that addressed interpreting treaty terms based on their contemporary meaning. Part three will comprehensively analyze four ICJ cases in which the Court adopted the ‘contemporary’ meaning of certain terms. Part four will examine two cases that decided whether to adopt the contemporary meaning of certain words, particularly the contrast with two of the ICJ cases. This part is also to compare the dispute settlement mechanism between the WTO dispute settlement body and the ICJ regarding the legal application of the contemporary meaning of certain terminologies. Part IV will be devoted to discussing the jurisprudential meaning of treaty terms.

II. BRIEF OVERVIEW: SIX CASES DISCUSSING ‘CONTEMPORARY MEANING’⁴

A. The ICJ cases

The four ICJ cases have discussed the ‘contemporary meaning.’ They may be