Chapter Four

Interpretation of Clauses Submitting to Jurisdiction

General Principles

It is to be supposed that the general principles of interpretation of treaties would apply equally to instruments submitting to the jurisdiction of international tribunals. According to these principles the ordinary meaning of the text in context would be given a certain primacy with good faith and teleology having an important place. Arbitral tribunals have applied these principles in interpreting compromissory clauses. In the Interpretation of Article 79, §6(c) of the 1947 Peace Treaty (No. 196) the arbitrators stated that in the international field there was no room for a “specially extensive” interpretation of arbitration clauses, presumably meaning that the natural meaning must be accepted. In Filleting within the Gulf of St. Lawrence, the tribunal referred to the common intention of the parties as the basis of the Compro- mis and emphasized that it was “dans les termes de ce compromis” rather than in the conclusions of the parties submitted to the tribunal that the scope of the tribunal’s jurisdiction was to be found. There are other principles that are applicable within the scope of the above three principles while there are supplementary rules of interpretation referred to in Article 32 of the 1969 Vienna Treaty Convention. In interpreting a jurisdictional clause to a large extent the relevant principles would be applicable to the particular case taking into account all the circumstances.

For the principles positively applicable to the interpretation of jurisdictional texts, there is no need to look beyond the 1969 Vienna Treaty Convention. Pursuant to Article 31(1) of that Convention finding the ordinary meaning in context and in the light of object and purpose on the assumption

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2 (France v. Italy, 1955), 13 UNRIAA at p. 431.
of good faith is basic to construction of treaties and will be primarily applied in interpreting jurisdictional instruments. Furthermore the rest of Article 31 (i.e., paras. (2)–(4)) is no doubt applicable to interpretation of jurisdictional clauses. Supplementary means referred to in Article 32 of the Vienna Treaty Convention may be used in the appropriate circumstances. These include reference to the travaux préparatoires and the circumstances of the conclusion of the jurisdictional clause. As an example of the resort to such supplementary means may be cited the Salem Case which was decided before the Vienna Treaty Convention came into effect, where the tribunal said:

[Int]erpretation is however only admissible if the wording of the compromise allows of several meanings of which none can be recognized as the clear will and purpose of the parties. In this case the Arbitral Tribunal has to investigate which meaning agrees with what has been the joint will of the parties when they concluded the compromise. Now, in order to ascertain the joint will of the parties, an arbitral tribunal is likewise entitled, according to the predominating international practice, to refer to the discussions and negotiations which led to the compromise.4

In Romak S.A. (Switzerland) v. the Republic of Uzbekistan5 the arbitral tribunal referred to articles 31 and 32 of the Vienna Treaty Convention and applied those provisions in an arbitration under a BIT, in deciding whether there was an “investment” as required by the BIT. The tribunal took the view that the articles correctly reflected general international law apart from the Convention.6

Articles 31 and 32 of the Vienna Treaty Convention read as follows:

ARTICLE 31 – GENERAL RULE 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:

4 (1932, Egypt v. USA), 2 UNRIAA at p. 1181. In a transnational arbitration involving a state as a party surrounding material was considered relevant to interpretation: see Lubelski v. État du Burundi (1968), 113 JPA at p. 88. See also for a similar approach in a true international arbitration the Gold of the National Bank of Albania (1953), 12 UNRIAA at p. 35. The provisions of Articles 31 and 32 of the Vienna Treaty Convention are cited fully below. They reflect general international law dehors the Convention.

5 (2009), PCA. See the website of the PCA: <www.pca-cpa.org>. This arbitration affords a good example of how the general principles reflected in the Vienna Treaty Convention are to be applied; see ibid. pp. 39–42.

6 Ibid. at p. 41, citing cases decided by the ICJ for the proposition.