Systemic Integration: An Operationalisation

This chapter will undertake the application of the three-tiered framework of operationalisation developed for Article 31(3)(c) through a reinterpretation of the salient elements of the Article. Article 31(3)(c) provides that ‘there shall be taken into account, together with the context, any relevant rules of international applicable in the relations between the parties’. A framework for the operationalisation of this Article has been developed in the previous chapters. The first tier of the framework of operationalisation is the identification of relevant rules. The second tier of the operationalisation looks into the content and scope of the rules of international law ‘applicable in the relations between the parties’. For this purpose, the analysis conducted on ‘rules of international law’ through an interactional perspective reveals the shared legal understanding of the parties undertaken in a practice of legality on a rule of international law, which indicates the common understanding of the parties, including their intentions as to the applicability of the rule.

The interactional understanding of the ascertained rules of international law necessitates the identification of ‘the parties’, who are the members of the enterprise of law-making who partake in the interactional and reciprocal process of the making of law. Subsequently, the ‘common intention’ of the parties as to the applicability of the rules of international law will be discovered through the analysis of the rules of international law via the prism of an interactional understanding of law. The final stage of the operationalisation, after the identification of relevant rules of international law applicable in the relations between the parties, is the systemic integration of these rules in accordance with the direction stipulated in Article 31(3)(c). This is undertaken in the third tier of the framework where the normative weight to be accorded to the relevant rules in the interpretative process shall amount to ‘take into account together with the context’ of the interpreted treaty.¹ The obligatory nature of ‘shall be taken into account’² restricts the discretion exercisable by the interpreter. The context assumes the role of an immediate qualifier of the

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¹ Refer to Ch. 7 of the book on a detailed analysis on the interpretation of the phrase ‘shall take into account together with the context’, where the chapter proposes an architecture that guides the deliberation process undertaken for the incorporation of relevant external rules in accordance with Art. 31(3)(c) of the 1969 Vienna Convention.

² Draft Articles 1966, at p. 222, para. 18.
ordinary meaning of terms used in the treaty, and together with the phrase ‘take into account’, the context conditions the extent to which the relevant rules of international law should be taken into account in the interpretation of a treaty term or provision.

This chapter undertakes the execution of each stage of the operationalisation of the analytical framework developed for Article 31(3)(c) through the interpretation of the obligation to preserve ecosystems of international watercourses in light of its systemic environment presented in Articles 2.1 and 4.1 of the Ramsar Convention and Article 8(a) and (d) of the Biodiversity Convention. The integration of rules relevant to the obligation to preserve via the legal technique of interpretation codified under Article 31(3)(c) demonstrates the systemic integration potential of this Article.

1 Stage I: Relevant

An integrated interpretation of Article 20 of the 1997 Watercourses Convention necessitates taking into account contemporary concerns of the community of nations on the preservation of the environment, where an analytical framework is proposed through the operationalisation of Article 31(3)(c) of the 1969 Vienna Convention. Contemporary concerns of the community of nations on the preservation of the environment are found in various conservation-centric MEAs. Two most relevant MEAs are identified, namely the Biodiversity Convention and the Ramsar Convention. Chapter 2 of this book demonstrates the relevance of these rules, where both of them deal with, or are closely germane to the subject matter of the ecosystem and the application of an ecosystem approach in the management of such ecosystems. The use of the term ‘ecosystems’ in Article 20 indicates the explicit recognition of the ecosystem approach where the primary target of the ecosystem approach is the maintenance of the ecological integrity, and the safeguarding and protection of the

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3 See Ch. 7.1 and 7.2.
4 See Ch. 7.4 for a detailed discussion on the normative weight accorded to ‘shall be taken into account, together with the context’.
5 Fitzmaurice, Elias, and Merkouris (eds.) Treaty Interpretation and the VCLT, at pp. 236–237.
6 Refer to Ch. 2 for justification of how the two MEAs are relevant for the interpretation of Art. 20 of the 1997 Watercourses Convention.
7 See Ch. 2.1 and 2.2 on the threshold developed for the interpretation of ‘relevant’, as informed by the emergence of the ecosystem approach.