

Contents

<i>Table of Cases</i>	xvii
<i>List of Abbreviations</i>	xxiii
<i>List of Contributors</i>	xxix

I. INTRODUCTION

1. Playing the Game of Interpretation: On Meaning and Metaphor in International Law	3
<i>Daniel Peat and Matthew Windsor</i>	
Introduction	3
I. Interpretation in International Law—The State of Play	4
II. In Search of Meaning	9
III. What's in a Game?	16
IV. The Game Plan	28
Conclusion	33
2. The Game of Interpretation in International Law: The Players, the Cards, and Why the Game is Worth the Candle	34
<i>Andrea Bianchi</i>	
I. The Game	34
II. The Object	36
III. The Players	39
IV. The Cards	43
V. Strategies	49
VI. Playing the Game of Game Playing	52
VII. Why is the Game Worth the Candle?	54
VIII. Conclusion	57

II. THE OBJECT

3. Rhetoric, Persuasion, and Interpretation in International Law	61
<i>Iain Scobbie</i>	
I. The Art of Rhetoric	61
II. Rhetoric—Legal Argumentation as an Interpretative Mechanism	62
III. Blame it all on the Ancient Greeks	65

IV. Rediscovering the Past—The Resurgence of Rhetoric in the Twentieth Century	66
V. The Elements of Effective Rhetoric—Audience, Topics, Choice	68
VI. Rhetoric, Interpretation, and Law	73
VII. The Value of Rhetoric	77
4. The Existential Function of Interpretation in International Law	78
<i>Duncan B Hollis</i>	
Introduction	78
I. The Expository Function of (Treaty) Interpretation in International Law	80
II. The Existential Function of Interpretation in International Law	84
III. The Consequences of Interpretation's Existential Function	101
Conclusion	108
5. The Multidimensional Process of Interpretation: Content-Determination and Law-Ascertainment Distinguished	111
<i>Jean d'Aspremont</i>	
Introduction	111
I. Committed Interpretation and the Necessary Feeling of 'Out-There-Ness'	113
II. A Dichotomic View on the Game of Interpretation	116
III. Conclusion: Salvaging the Game of Interpretation?	128
III. THE PLAYERS	
6. Interpretation and the International Legal Profession: Between Duty and Aspiration	133
<i>Andraž Zidar</i>	
Introduction	133
I. Interpretation of International Law as a Complex Process	134
II. International Legal Professions and the Interpretive Process	135
Conclusion: The Duty and Aspiration of Interpretation	144
7. Interpretive Communities in International Law	147
<i>Michael Waibel</i>	
Introduction	147
I. The Role of Interpretive Communities in Interpretation	148
II. Diverse Interpretive Communities and Fragmentation	154
III. Interpretive Communities as Advocates of Distinct Normative Visions of International Law	160
Conclusion	164

8. Interpretative Authority and the International Judiciary	166
<i>Gleider Hernández</i>	
Introduction	166
I. Interpretative Theory	168
II. The Fallacy in the Interpretation and Application Distinction	175
Conclusion: Judicial Interpretation and the Claim to Normative Authority	181

IV. THE RULES

9. The Vienna Rules, Evolutionary Interpretation and the Intentions of the Parties	189
<i>Eirik Bjorge</i>	
Introduction	189
I. Vienna Rules and the Search for Intention	192
II. A Re-reading of the Vienna Rules	198
Conclusion	203
10. Accounting for Difference in Treaty Interpretation Over Time	205
<i>Julian Arato</i>	
Introduction	205
I. Old and New Explanations of Difference	209
II. The Nature of the Obligation	217
Conclusion	226
11. Interpreting Transplanted Treaty Rules	229
<i>Anne-Marie Carstens</i>	
Introduction	229
I. An Overview of Transplanted Treaty Rules	231
II. The Framework for Interpreting Transplanted Treaty Rules	235
Conclusion	247

V. THE STRATEGIES

12. A Genealogy of Textualism in Treaty Interpretation	251
<i>Fuad Zarbiyev</i>	
Introduction: Taking Historicity Seriously	251
I. Textualism: The Dominant Interpretive Paradigm in Modern International Law	255
II. The Official Victory of Textualism: Situating a Success Story	257
Conclusion	266

13. Theorizing Precedent in International Law	268
<i>Harlan Grant Cohen</i>	
Introduction	268
I. Precedent's Purpose	271
II. Precedent as Practice	275
III. Telling Precedent's Story	281
Conclusion	288
14. Interpretation in International Law as a Transcultural Project	290
<i>René Provost</i>	
Introduction	290
I. Interpretation in International Law	292
II. The Transcultural Nature of Interpretation in International Law	303
Conclusion	308
 VI. PLAYING THE GAME OF GAME-PLAYING	
15. Towards a Politics of Hermeneutics	311
<i>Jens Olesen</i>	
Introduction	311
I. Against a Politics of Interpretation	313
II. Nietzsche and the Interpretive 'Will to Power'	315
III. Enter Language Conventions	322
Conclusion: On Decoding Ideology	327
16. Cognitive Frames of Interpretation in International Law	331
<i>Martin Wählisch</i>	
Introduction	331
I. Cognitive Frame Theory and the Sociology of Law	332
II. Case Studies and Examples	339
Conclusion	347
17. Is Interpretation in International Law a Game?	352
<i>Ingo Venzke</i>	
Introduction	352
I. Like a Game of Chess	354
II. The Grammar of the Game	356
III. The Nature of the Game Reconsidered	359
IV. International Law as a Practice	365
V. And if There Was No Language to Play With?	367

VII. CONCLUSION

18. Interpretation—An Exact Art	373
<i>Philip Allott</i>	
Introduction	373
I. What is Interpretation?	373
II. The Illusion of Meaning	375
III. Legal Interpretation	376
IV. The Moments of Interpretation	380
V. Deontology of Interpretation	382
Summary	392
 <i>Index</i>	 393