Justice in February 2017 may be read through this lens as responding to Europe's imaginary encounter.[13] The opinion ends with the image that Mann's book begins with: the picture of the body of Aylan Kurdi washed ashore on the Turkish coast, which stirred the conscience of people worldwide. Relating to it, Mengozzi writes: 'It is commendable and salutary to be outraged. In the present case, the Court nevertheless has the opportunity to go further, … by enshrining the legal access route to international protection. … Make no mistake: it is not because emotion dictates this, but because EU law demands it.'[14] The Court did not follow Advocate General Mengozzi.[15] But this does not end reflections about the rights of encounter and law's demands.

Dana Schmalz

Max-Planck-Institute for the Study of Religious and Ethnic Diversity
Göttingen, Germany
Email: schmalz@mmg.mpg.de

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Andrea Bianchi, Daniel Peat and Matthew Windsor (eds). ***Interpretation in International Law***. Oxford: Oxford University Press, 2015. Pp. 432. £70.00. ISBN: 9780198725749.

One may make the argument that at the same time all and very few international law books deal with interpretation. In books about international law, questions arise as to the meaning of certain norms and, consequently, these norms are being interpreted. Yet, quite surprisingly, there are few books that can claim to be *about* interpretation in international law. A book about interpretation requires proper reflection and a specific take on the issue of interpretation. The editors and authors of *Interpretation in International Law*, in my view, have managed to write a book about interpretation. In this review, I focus on the first and the last contributions and briefly introduce the other contributions with a noteworthy sentence from their chapters.

In the book' s first chapter 'The Game of Interpretation in International Law', Andrea Bianchi describes the process of interpretation as a game of cards. For him, the notion of a game is a metaphor that can be applied to interpretation since the central features of a game – like players, rules, strategies and objects – are also present in interpretation. His approach is characterized by a close observation of the actual practice of interpretation without detailed epistemological explanation. His observation reveals that the rules of treaty interpretation are contingent in nature and have changed siginificantly over time. The object of interpretation is to persuade the audience; it has a rhetorical function. Regarding the players, the game of interpretation is generally open to everyone, but different perspectives have different weight. As he later states, the 'fight is about controlling the discursive policies of the discipline' (at 43). He perceives interpretation as a card game, the cards being 'mostly those contained in the Vienna Convention on

[13] Case C-638/16, *X. and X. v. State of Belgium*, Opinion of the Advocate General M. Paolo Mengozzi, delivered on 7 February 2017, (ECLI:EU:C:2017:93). Paolo Mengozzi. The case did not concern an interdiction at sea but the responsibility possibly triggered by a request for humanitarian visa filed by a Syrian family at the Belgian embassy in Beirut. Advocate General Mengozzi interprets European Union (EU) law to require the granting of a visa under those particular circumstances of the case. Since EU law is applied, he argues, the Charter of Fundamental Rights of the European Union, Doc. 2012/C 326/02, 26 October 2012, also finds application and turns the possibility of delivering such visa into an obligation, since the applicants otherwise face inescapable harm to their lives and safety.

[14] *Ibid.*, at, para 175.

[15] Case C-638/16, *X. and X. v. State of Belgium*, judgment of 7 March 2017 (ECLI:EU:C:2017:173).

the Law of Treaties' (VCLT) (at 43–44).[1] Bianchi also reflects on the metaphor of game playing on a more general level and describes the effects of such a metaphor. It can reveal the intentions and goals of those engaging in the activity. Bianchi's analytical account has great clarity. He also ties in insights of other in-depth studies. These concern, for example, the law of immunities or the fixation of international lawyers on the judicial perspective. The chapter offers a very exact and insightful observation on the international practice of interpretation using the accessible, but far-reaching, metaphor of interpretation as a game.

Philip Allott's chapter, the last contribution to the book, is certainly a text that merits being read more than once. Its structure is straightforward (i. what is interpretation?; ii. the illusion of meaning; iii. legal interpretation; iv. moments of interpretation; v. deontology of interpretation). Yet, within this structure, Allott ignites a firework of thoughts in his unmistakable voice as well as a thunderstorm of ideas that he develops himself or borrows from other writers from many fields. On an abstract level, he questions common assumptions about interpretation, meaning and communication in a radical manner. These parts of his contribution shed light on some thoughts previously expressed such as the famous quote: 'A treaty is disagreement reduced to writing'. He later asks whether the freedom of the interpreter knows any limits and suggests different levels of context that could help in determining those limits.

The author raises fundamental problems by invoking seeming contradictions on several levels. These range from terms like interpretation as an 'exact art' – a variation of the "interpretation as an art or science" theme to his research layout, in which he oscillates between a well-reasoned philosophical argument, essayistic reflections, linguistic analysis and a critique of legal drafting. The liberty he takes with his text reflects his free thinking. Allott does not limit himself to theoretical inquiry into interpretation but, rather, gives some interesting examples interpreting certain provisions in international treaties. He criticizes several provisions in the United Nations (UN) Convention on the Law of the Sea or the UN Charter, applauds the referential technique in the United Kingdom's (UK) European Communities Act 1972 and describes it as follows: 'Hermeneutic heaven. Things not said, but contained, in the European Community Treaties are not said, but are contained, in the Treaty of Accession, and are not said, but are contained, in the 1972 Act of Parliament.'[2] Allott describes Article 31 of the VCLT as a 'poem about interpretation'. Should we view Allott's text as a poem, a parable, a philosophical or legal treatise or an essay? The author escapes clear categorization. Yet it is certain that the efforts to understand his text do pay off.

In 'Rhetoric, Persuasion, and Interpretation in International Law', Iain Scobbie gives a general account of rhetoric focusing on Chaïm Perelman. He concludes: 'In playing the interpretation game, much depends on the skill of the rhetor and the rhetorical choices he makes. Rhetoric can provide the method and technique by which interpreters achieve the object of securing the audience's adherence to their argumentative stance, but even a skilled rhetor cannot guarantee a successful outcome' (at 77). Duncan B. Hollis inquires into 'The Existential Function of Interpretation in International Law' in order to highlight the role interpretation plays regarding the validity of an international rule. Or, in his own words, '[s]imply put, *all interpretations of international law have an existential function*. The very act of interpreting validates the existence of that which is being interpreted' (at 79, emphasis in the original). Jean d'Aspremont reflects on the distinction between the determination of the content of a norm and the ascertainment of its legal quality in 'The Multidimensional Process of Interpretation'. He starts his contribution with the following sentence: 'The world any human or corporate person operates in is an aggregation

[1] Vienna Convention on the Law of Treaties 1969, 1155 UNTS 331.

[2] Convention on the Law of the Sea 1982, 1833 UNTS 3. European Communities Act 1972, c. 68, s 2(1), (4).

of normative universes which are all individually structured around the possibility of right and wrong, of permissible or impermissible, of valid or invalid' (at 111).

In 'Interpretation and the Legal Profession', Andraž Zidar reviews the different actors of interpretation and their rationalities while linking the concept of interpretation to Fuller's conception of morality. Commenting on the role of legal advisers, he observes: 'Acting as a conscience obliges legal advisers to argue against policies that are lawful but awful that, although strictly legal may not be in the best long-term interest of a country or an institution' (at 136). Michael Waibel reflects on the 'Role of Interpretative Communities in Interpretation'. He thinks that the 'central insight is that the various actors that populate a regime exert an important influence on its operation, including through interpretation' (at 149).

In 'Interpretative Authority and the International Judiciary', Gleider Hernández develops the thought that judges and the judicial function have an authority inherent to their position in the legal system: 'It is the interpreter who stands in the foreground when a text or a rule is interpreted, even when the claim is advanced that there is a "correct" interpretation which is presupposed to exist independently of the interpreter' (at 167). Eirik Bjorge argues in 'The Vienna Rules, Evolutionary Interpretation, and the Intentions of the Parties' that the aim of the process of treaty interpretation was to arrive at the 'objective intentions' of the parties of the treaty, and he states: 'The received wisdom about the approach to treaty interpretation opted for in the VCLT has been that the general rule of interpretation put paid to the notion of interpreting in accordance with the "intentions of the parties"' (at 189). Julian Arato in 'Accounting for Difference in Treaty Interpretation over Time' distinguishes between three types of obligations, namely integral, reciprocal and interdependent obligations and argues that this distinction has a bearing on deciding questions of interpretation over time. Regarding integral obligations, he observes: '[I]t appears that by incorporating such obligations states establish norms over and above themselves that are beyond their grasp' (at 222). Anne-Marie Carstens in 'Interpreting Transplanted Treaty Rules' inquires into how to 'shoehorn' legal transplants that she calls source rules into the framework of the VCLT. She summarizes her argument as follows: 'This chapter contends that the VCLT is sufficiently flexible to allow more predictable and consistent consideration of source rules, but only if interpreters and other commentators develop effective and transparent "rules of play" for interpreting transplanted treaty rules with reference to source rules' (at 231).

In 'A Genealogy of Textualism in Treaty Interpretation', Fuad Zarbiyev gives an account of textualism as opposed to intentionalism and argues that the rule of interpretation is contingent in nature. In explaining his genealogical approach, he indicates that there is a link between the formalist nature of the convention and the formalist tradition in the UK: 'Vattel's famous example of an Englishman who married three wives in order to avoid breaching the law which prohibited marrying two was a caricature, it was not a completely unwarranted one in view of the way in which written contracts were construed in English law until very recently' (at 258). Harlan Grant Cohen reflects on current approaches to precedents and 'what a full story of international precedent would need to incorporate'. He advocates a sociological account as a supplement for rationalist and jurisprudential accounts and summarizes its function as follows: 'In essence, the sociological account provides the context of the game in which precedent-based moves will either succeed or fail' (at 284). René Provost offers a general reflection on interpretation that focuses on actors, practices and the 'cultural difference'. One of the metaphors he arrives at is the following: 'To be a legal interpreter is to be the architect of a bridge linking the imagination of the authors of a legal norm to the aspirations of those who invoke it' (at 305).

In 'Towards a Politics of Hermeneutics', Jens Olesen inquires into the political aspect of interpretation and relies mainly on Friedrich Nietzsche and John Austin. He concludes: 'Applying the morphological approach to textual interpretation allows us to decode the ideological underpinnings of our interpretive claims and thus generates greater reflexivity in the interpretation of

texts' (at 329). In 'Cognitive Frames of Interpretation in International Law', Martin Wählisch discusses how the insights of cognitive frame theory could be applied to legal interpretation. He states: 'Although rules of interpretation in international law do not touch on cognitive issues yet, legal practitioners should be mindful of the fact that assumptions, communication, and the interpretation of law are closely interlinked' (at 351). Ingo Venzke's chapter 'Is Interpretation in International Law a Game?' inquires into the metaphor of international law as a language and combines this with the metaphor of game playing. He opens as follows: 'International lawyers of contrasting colours converge in thinking of international law as a language' (at 352).

In their introduction, two of the three editors, Daniel Peat and Matthew Windsor, state that the 'objective of this book is to provoke a reappraisal of interpretation in international law, both inside and outside the VCLT framework' (at 4). In their sharp and lucid analysis, they inquire into the current scholarly discourse on interpretation in international law and comment on the concept of meaning, the game metaphor and the 'game plan' of their book. The authors openly express their intention to move beyond the 'myopic' focus of scholarship on the VCLT. They indeed succeed in conveying some very good ideas to the reader and provoking further questions. In the same spirit, in order to enhance 'methodological self-reflectivity', I would like to raise a few points inspired by this text (at 33). One of the general narratives in which the authors situate themselves is that research on interpretation should go beyond the VCLT. They do not, however, use the word 'beyond' as Giorgio Gaja did in his famous Hague lectures talking about the scope of application of the VCLT.[3]

The authors state: 'In their mantra-like recital of the VCLT as a formal methodology for the interpretation of international legal rules, international lawyers till a bounded field, largely insulated from interdisciplinary influence or insight' (at 8). While the two scholars wish to overcome the focus on the VCLT, they nevertheless dedicate large parts of their article to the rule of interpretation contained in the VCLT. Their comments on the rule of interpretation produce a number of insights. The authors reveal, for example, how they interpret a legal text. Consider this quote: 'Although Article 31 does not employ the language of intention, the orthodoxy amongst positivist international lawyers is that "the aim of treaty interpretation is to give effect to the intentions of the parties".' This interpretation contrasts with Fuad Zarbiev's contribution who thinks that intentionalism is marginalized (at 262ff). What is more, the notion of intention itself is very contested. Would Gerald Fitzmaurice, whom the authors quote, concur with Eirik Bjorges' concept of objective intentions?

The fact that the authors assume a very specific version of the VCLT can be derived from this quote: 'Yet the situationality of interpreters and the constitution of meaning inherent in international legal interpretation are obscured by the VCLT, which purports to "uncover the meaning in a process which totally determines the encounter of the interpreter and interpreted"' (at 15). This is a possible reading of the VCLT, but one that is based on many assumptions. The first assumption is that the function of the rule of interpretation is hermeneutic. This refers to the question of whether the rule works in the context of discovery or in the context of justification. The authors also consider that the rule operates in the context of justification, which shows that it is not entirely clear at the outset what the function of the rule is (at 12). The second assumption is that the rule of interpretation gives no discretion to the interpreter. The fact that Article 31 of the VCLT establishes an obligation for the interpreter to take certain techniques into account indicates, however, that the interpreter has discretion.[4] I shall not go deeper into the issue whether these assumptions are correct, but it should be noted that Peat and Windsor choose a particular interpretation and later criticize aspects of this particular interpretation. If one were to use their methodology, the next

[3] Gaja, 'Jus Cogens Beyond the Vienna Convention', 172 *Receuil des Cours* (1981 III) 271.

[4] See Nolte, 'Introduction', in G. Nolte (ed.), *Treaties and Subsequent Practice* (2013) 2.

step would be to look at the game they are playing: what are the strategic reasons for their assumptions and why do they not explain how they arrive at the meaning they have chosen?

The way Peat and Windsor interpret the rule of interpretation as contained in the VCLT gives rise to an even more general point: if one criticizes a proposition – be it a theory or a legal rule, which is open to interpretation – the success of the criticism will depend upon whether the strongest and best possible interpretation of the proposition is chosen. Of course, a scholar can easily choose a rather weak interpretation in order to then contradict it. To give an example, if it is argued that the VCLT obscures the 'the situationality of interpreters' and the 'constitution of meaning' as it 'totally determines the encounter of the interpreter', it is obvious that this is neither the best nor the most obvious interpretation of the VCLT. Does a norm that obliges the interpreter 'to take into account' a few factors aim to determine the process fully? Contrast this rule with the complex systems of Hugo Grotius or Emer de Vattel and it becomes apparent how much leeway the VCLT affords to interpreters. The function of the rule of interpretation is much better described as justificatory; it structures the process of interpretation by giving certain classes of arguments more weight than others. To acknowledge the justificatory function of the rule of interpretation would be more in line with its wording and with its actual use. The justificatory function as 'an obligation to decide based on legal arguments relating to the interpretative issue in the treaty'.[5] It might be harder to criticize this reading of the rule of interpretation and even harder to come up with a better solution. In order to provide for a valid criticism, Peat and Windsor would need to choose the best conceivable version of the VCLT. In essence, to go beyond the VCLT requires first to delve into it. The authors of this chapter have begun to do that, and they have done much more. They have provided an interesting framework to think about interpretation in international law.

This book is a most valuable contribution that will surely be well received and widely quoted. It circles around the metaphor of game playing, which helps to explain many aspects of the interpretative process. Interpretation is a fascinating topic, and I do hope that this well-researched and well-written book prompts further research on interpretation in international law, its theory and its practice.

Christian Djeffal

Alexander von Humboldt Institute of Internet and Society
Berlin Germany
Email: christian.djeffal@hiig.de

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Individual contributions

Daniel Peat and Matthew Windsor, *Playing the Game of Interpretation: On Meaning and Metaphor in International Law*;
Andrea Bianchi, *The Game of Interpretation in International Law: The Players, The Cards, and Why the Game Is Worth the Candle*;
Iain Scobbie, *Rhetoric, Persuasion, and the Object of Interpretation in International Law*;
Duncan B. Hollis, *The Existential Function of Interpretation in International Law*;
Jean d'Aspremont, *The Multidimensional Process of Interpretation: Content-Determination and Law-Ascertainment Distinguished*;
Andraz Zidar, *Interpretation and the International Legal Profession: Between Duty and Aspiration*;
Michael Waibel, *Interpretive Communities in International Law*;

[5] Christian Djeffal, *Static and Evolutive Treaty Interpretation: A Functional Reconstruction* (Cambridge Studies in International and Comparative Law, Cambridge University Press 2016) 140, for a review of different approaches to legal interpretation in international law from Gentile and Grotius to the present see *ibid.* 83–108.

Gleider Hernández, *Interpretative Authority and the International Judiciary*;
Eirik Bjorge, *The Vienna Rules, Evolutionary Interpretation, and the Intentions of the Parties*;
Julian Arato, *Accounting for Difference in Treaty Interpretation over Time*;
Anne-Marie Carstens, *Interpreting Transplanted Treaty Rules*;
Fuad Zarbiyev, *A Genealogy of Textualism in Treaty Interpretation*;
Harlan Grant Cohen, *Theorizing Precedent in International Law*;
René Provost, *Interpretation in International Law as a Transcultural Project*;
Jens Olesen, *Towards a Politics of Hermeneutics*;
Martin Wählisch, *Cognitive Frames of Interpretation in International Law*;
Ingo Venzke, *Is Interpretation in International Law a Game?* and
Philip Allott, *Interpretation: An Exact Art*.

Mathias Albert. ***A Theory of World Politics***. Cambridge: Cambridge University Press, 2016. Pp. 278. €94.58. ISBN: 9781107146532.

Great news: world society exists! In his fascinating new book, Mathias Albert tells the story of the evolutionary emergence and organization of world politics, situating it in a sophisticated theoretical framework for which social differentiation is the key to understanding the evolution of society in general and, thus, also the key to understanding world society (Part 1) and world politics (Part 2). Even though Albert is professor of political science (at the University of Bielefeld), *A Theory of World Politics* is mainly written for an international relations audience and is informed by sociology and history, this book is a valuable read for international legal scholars as well. If you are prepared to face some theoretical challenges, you can learn a lot about how world politics emerged and how it is organized today, which is arguably an important field for international lawyers in an insecure 'Trump era'.

On the basis of several theoretical assumptions (to be mentioned in due course), Albert ascertains that a 'system of world politics as a specific form of politics took shape in a long process that lasted roughly from the late eighteenth to the late nineteenth and early twentieth centuries' (at 1). The evolutionary emergence of world politics as described in the book is firmly situated within the orbit of Niklas Luhmann's systems theory, differentiation theory and evolutionary theory. This allows Albert to capture highly complex and diverging aspects of world politics within the frame of a clear and concise theoretical language. For those familiar with Luhmann's work, the 'existence' of world society comes as no surprise.[1] However, for those who do not sport systems-theory glasses, such a statement might arouse curiosity. The reasons for the 'existence' of world society are theoretical assumptions, introduced by Albert in a reader-friendly and comprehensive way. In fact, this achievement alone deserves praise.

What are the theoretical preliminaries? In order to delve into the oeuvre, the reader first has to accept that social systems are, by definition, only generated through communication. Hence, society is not subject centred, as, for instance, in Jürgen Habermas' work, but observation centred (at 36). It follows, second, that people are not part of society but, rather, 'only observations of people, including the ascription of agency, and communication are' (at 36). World society, thus, has to be taken as the '*entirety of communication*' (at 6; emphasis in original), and it exists

[1] See already Luhmann, 'Die Weltgesellschaft', 57(1) *Archiv für Rechts- und Sozialphilosophie* (1971) 1; N. Luhmann, *Soziale Systeme: Grundriß einer allgemeinen Theorie* (1984) (English translation by J. Bednarz, Jr, with Dirk Baecker, *Social Systems* [1995]); N. Luhmann, *Gesellschaft der Gesellschaft*, 2 vols (1997) (English translation by Rhodes Barrett, *Theory of Society*, 2 vols [2012], vol. 1; [2013], vol. 2). While Albert uses the English translation of 'social systems' but the German original of '*Die Gesellschaft der Gesellschaft*', this is only or mostly for pragmatic reasons according to Albert.