for example, that most people in developing countries do not care as much about human rights than people in Western societies (at 372), could be challenged.

Despite these criticisms, the book under review merits praise, for it draws necessary attention to the notable lacuna between international legal discourse as currently conducted and the normative ideal of a legitimate and representative international law that adapts to the shifting paradigm of power in international relations. In elaborating on the 'trans-civilizational' perspective as a solution, Yasuaki Onuma undoubtedly makes a thought-provoking and original contribution to extant debates about the legitimacy and constitutionalization of international law.

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Philip Liste. ***Völkerrecht-Sprechen: Die Konstruktion demokratischer Völkerrechtspolitik in den USA und der Bundesrepublik Deutschland [Speaking International Law: The Construction of Democratic Politics of International Law in the US and the Federal Republic of Germany]***. Baden-Baden: Nomos, 2012. Pp. 304. €46. ISBN 9783832966225.

Ingo Venzke. ***How Interpretation Makes International Law. On Semantic Change and Normative Twists***. Oxford: Oxford University Press, 2012. Pp. 352. £70. ISBN: 9780199657674.

Once upon a time, quite a long time actually, international lawyers were not terribly interested in the linguistic aspects of their craft. Treaties, obviously, would depend on language, and sometimes the two or more languages would be designated as equally authentic, but, even so, international lawyers trusted that their professional skills would enable them to solve linguistic issues without too many problems. Occasionally scholars would write something on the interpretation of treaties, typically in the form of fairly brief articles and often inspired by a particular episode or incident, but there was fairly little attention to doctrines of interpretation in the abstract, and little enthusiasm for establishing firm legal rules to structure the process of interpretation. Grotius and Vattel both formulated a handful of guidelines, but no hard and fast rules (despite the occasional use of the term 'rules') emerged. And many would agree that the guidelines or maxims identified served mainly as justifications *ex post facto*, having arrived at a preferred interpretation through more intuitive means.

When codifying the law of treaties, the four special rapporteurs appointed by the ILC were remarkably sanguine about possible rules for interpretation. Brierly, the first of the special rapporteurs on the law of treaties, never got round to discussing interpretation, and probably would not have been terribly enthusiastic at any rate, given his general aversion to legislating common sense.[1] Likewise, Lauterpacht never got round to discussing interpretation, although he did write several reports on the topic in a different capacity, as rapporteur for the Institut de Droit International.[2] Fitzmaurice positively opposed the idea that interpretation could ever be

[1] See Brierly, 'The Codification of International Law', 47 *Michigan L Rev* (1948) 2.

[2] In these, he essentially questioned the doctrine of the 'plain meaning' of texts, and advocated a broad recourse to the *travaux préparatoires* without, however, thinking of interpretation as being something that can meaningfully be subjected to legal instruction. Lauterpacht's work on interpretation is largely brought together in E. Lauterpacht (ed.), *Hersch Lauterpacht. International Law: Collected Papers* (1978), iv.

captured in a rule: happy as he was to produce some maxims of interpretation, he was all too aware that interpreters do not mechanistically follow rules. And even Waldock, under whose stewardship the Vienna Convention on the Law of Treaties would come to encompass some rules on treaty interpretation, was lukewarm rather than enthusiastic: to him, a codification of the law of treaties would have to include something on interpretation, so he ended up formulating a rule of great generality. But, clearly, to write a rule on interpretation was not something he considered terribly important.

In fact, this benign neglect of rules on interpretation would last until the 1990s. On occasion the odd study would be published, and on occasion the odd tribunal might mention that it found inspiration in the rules of the Vienna Convention, but by and large interpretation was considered, as the classic maxim goes, as 'an art rather than a science'[3] or, in Jennings' perky re-statement, as an art 'masquerading' as a science.[4]

But somehow something seems to have changed in the 1990s. International lawyers have started to take the existence of rules on interpretation very seriously indeed and, in the last decade alone, an unprecedented number of monographs on treaty interpretation have been published, as well as the odd collection of articles.[5] It is perhaps interesting to speculate on the reasons for this sudden flurry of interest in the possibility of rules on interpretation. One reason may have been the end of the Cold War: where earlier it had been clear that East and West would interpret the law in accordance with their own insights and there was little point in arguing about rules of interpretation, the end of the Cold War suggested the possibility of a more unified world order: unification through interpretation. Secondly, the recognition of the fragmentation of international law may also play a role: in a legal order composed of fragmented regimes, there is a sense that a common approach to interpretation may be the glue that holds the system together. Thirdly, more curiously perhaps, it may be that the rules on interpretation have come to act as a substitute for proper methodological devices in international law. No science can do without method, and all sciences have their methodological quibbles. While the rules on interpretation are primarily directed at states, nonetheless it would seem that they are the closest international law academics can get to methodology within the broad church that is positivist international law.[6]

Finally, and perhaps less charitable, critical legal studies had pointed out that international rules tend to be indeterminate and, accordingly, that he (usually he) who has the power to interpret therewith has the power to determine the indeterminate. Interpretation, thus, is about power, and power often is most acceptable when presented in the form of rules.[7] Hence, the struggle about interpretation can be seen as a banal struggle for power.

In a classic case of conflating the baby and the bathwater, those emphasizing the utility of rules of interpretation often failed to realize that these rules too, like any others, lack a specific meaning. As Koskenniemi wrote in 1989, 'The problems of treaty interpretation lie deeper than in the unclear character of treaty language. They lie in the contradiction between the legal

[3] Words to this effect grace the relevant chapter in A. Aust, *Modern Treaty Law and Practice* (2nd edn, 2007), at 230.

[4] See Jennings, 'General Course on Principles of International Law', 121 *Recueil des Cours* (1967/II) 323, at 544.

[5] See, e.g., R. Gardiner, *Treaty Interpretation* (2008); M. Fitzmaurice, O. Elias, and P. Merkouris (eds), *Treaty Interpretation and the Vienna Convention on the Law of Treaties: 30 Years On* (2010); see also Michael Waibel's review essay on 6 monographs on treaty interpretation at 22 *EJIL* (2011) 571.

[6] This applies perhaps all the more so upon the realization that the distinction between practice and academia has, in law, usually been quite porous. For useful discussion see JM Smits, *The Mind and Method of the Legal Academic* (2012).

[7] See, e.g., Kennedy, 'The Turn to Interpretation', 58 *S California L Rev* (1985) 251.

principles available to arrive at an interpretation.'[8] It is one thing to solve problems of indeterminacy by agreeing on interpretation at some later date;[9] it is quite another to expect rules of interpretation to be helpful in this task.

Either way, a small new wave of studies takes the critical point seriously, and accordingly delves more deeply into linguistic theories in order to get a handle on international law. This applies, albeit in dramatically different ways, also to the two books under review, both written by young German scholars with an interdisciplinary background.[10]

Venzke's book is the easier to read. He starts, effectively, from Philip Allott's glorious phrase that treaties are disagreement reduced to writing, and then traces how interpretation comes to give meaning (in the mundane sense of the term) to international legal norms, singling out two settings in particular: refugee law, and the law of exceptions in the WTO Agreements. Venzke's underlying approach is rather eclectic: he finds inspiration in Wittgenstein as well as Fish, in Koselleck as well as Habermas (curiously perhaps, Gadamer is missing). This is not a weakness but, instead, one of the strengths of the book: Venzke does not lose himself in a strict theoretical framework, but borrows useful elements from a variety of thinkers about language, and in doing so respects the circumstance that he is, after all, engaged in a legal study. For, for all their insights, Wittgenstein, Fish, Koselleck, and Habermas have come to their main insights not so much by studying law (much less international law) but by doing other things: strictly following any of them might have entailed the risk of losing track of the specifically legal nature of his enterprise.

The heart of Venzke's study is formed by his detailed analysis of how interpretation has helped to shape the contours of the refugee regime and the world trade regime. Focusing on the refugee regime allows him to pay a good deal of attention to the role of the international bureaucracy and its leadership, as it turns out that the meaning to be given to key terms in refugee law is largely the result of the driving influence of the UNHCR. Venzke traces the development of, in particular, the definition of refugee with great care and detail, and concludes that what nowadays is essential for refugee status is that a person is in need of protection, instead of (as the text of the Refugee Convention and its 1967 protocol might suggest) being limited only to those in fear of public persecution. Moreover, the notion of non-refoulement has been made important (despite being tucked away somewhere in the middle of the Refugee Convention, in Article 33) and has, therewith, taken on considerable strength. Yet, while generally positive about these developments, Venzke is also keen to sketch the opportunity costs: the UNHCR may have focused on non-refoulement, but 'has largely washed its hands of the issue of asylum' (at 133). Moreover, he is not naïve about the possible motivations behind the UNHCR's appeal to the interests of refugees: it may well have been driven, in part, by the UNHCR's own interest in seeing itself expand.

If the chapter on refugee protection focuses on the interpretive role of the bureaucracy, the chapter on the WTO focuses rather on the role of the international judiciary in 'developing' a text. The chapter explores in particular how Article XX GATT (the general exceptions article, allowing states to maintain barriers to trade for certain selected policy reasons) has fared over time, focusing on the requirement of 'necessity'. Since exceptional measures are considered justifiable only when 'necessary', obviously a lot comes to depend on how the requirement of necessity is construed. Venzke here concludes, again upon careful examination of a number of cases, that necessity is not so much related to the importance of the goal pursued or whether

[8] See M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (1989), at 298–299.

[9] See also Koskenniemi, 'The Politics of International Law', 1 *EJIL* (1990) 1, at 28: '[m]odern international law is an elaborate framework for deferring substantive resolution elsewhere: into further procedure, interpretation, equity, context, and so on'.

[10] Note also the reliance on Wittgenstein in J. d'Aspremont, *Formalism and the Sources of International Law: A Theory of the Ascertainment of Legal Rules* (2011), and the reliance on Fish and Habermas in I. Johnstone, *The Power of Deliberation* (2011).

less onerous alternatives were available to the state in question, but has come to be largely about how far the WTO panels and Appellate Body can intervene in domestic settings or, in other words, 'about what adjudicators can legitimately do' (at 194).

Venzke's final substantive chapter is devoted to finding a plausible explanation for the interpretative work of the UNHCR and WTO panels in terms of positive law, and it is here that he voices considerable doubts. To capture the interpretive authority of the UNHCR and WTO in terms of 'subsequent practice', justified under Article 31(1) of the Vienna Convention on the Law of Treaties, hardly seems to do the trick when the new meaning departs considerably from the terms used in the pertinent treaties, and especially when the interpretations are the work of institutional actors rather than states. In turn, frameworks for dealing with institutional actors (think of the global administrative law approach) may not be able (yet?) to endow sufficient legitimacy upon the exercise of authority by institutional actors. In the end, then, Venzke comes to advocate the classic, well-nigh Aristotelian point that responsible governance demands responsible governors, and this demands 'that attitudes reflect a sensibility for the repercussions of interpretations in a grand normative pluriverse' (at 261).

If Venzke's argument is, for all its twists, relatively straightforward despite being eclectic, Liste's reflects pretty much the reverse: while the argument is embedded in a strict and coherent theoretical framework, it is not very straightforward, and at times difficult to follow. This is caused in part, no doubt, by the source of the argument: Liste finds inspiration above all in discourse analysis and, as he hastens to add, this is not discourse analysis in any Habermasian sense, but rather as manifested in the work of Laclau and Mouffe and, more prominently still, Derrida. This comes with a vocabulary of its own, often in the form of linguistic puns, as witnessed even by the title: in German, *rechtsprechen* can mean something like deciding on the law, as well as talking about the law. Liste's study focuses on the latter rather than the former, and aims to flesh out to what extent debates in the US and Germany concerning the 2003 invasion of Iraq reflect democratic considerations and the states' respective attitudes towards international law.

Liste's empirical work is exemplary, and he proves himself to be a highly astute reader and interpreter of texts. He goes with great care for detail through discussions in official US and German political statements (for instance the speeches of political leaders) as well as in civil society (exemplified by the leading newspapers) concerning the invasion. Liste makes quite a few bright and cogent observations along the way, and ends up concluding that while the German discussions display a great respect for international law, there is a marked difference between how the debate was construed in governmental circles and civil society. By contrast, in the US, respect for international law was markedly lower than in Germany, but the congruence between government and civil society a lot closer.

The question then is what all this means, and it is here that the theory may be in need of further development. As Liste himself acknowledges, the data may be interpreted to mean that the Americans are the better democrats; but then again, the same picture could arise in dictatorships, where the congruence between official and public opinion also tends to be on the high side. Hence, this raises the issue of how to determine which is which, and discourse analysis as presented seems unable to make a principled distinction.

Liste's study raises a few additional questions as well. There is, for instance, no mention of 'opinion leaders', yet it would seem to be common ground that some people's opinions are of greater influence than those of others. In Germany, for example, it may be the case that the likes of Jürgen Habermas inspire or are followed by others; yet there seems to be no recognized way of dealing with this.[11] More generally, Liste concedes that he probably cannot take into

[11] Liste delimits his empirical materials to the period Sept. 2002 to Mar. 2003 (thus comprising the eve of the invasion), which means that he just misses out on Habermas' famous contribution on the toppling of Saddam's monument, published in the *Frankfurter Allgemeine Zeitung* on 17 Apr. 2003.

consideration all relevant articulations (at 154); this too would seem to create a methodological issue of some proportions, but it is done away with in a single sentence.

This critique takes nothing away from the quality of Liste's reading of the relevant texts: his interpretations are plausible and intelligent. Yet this too inspires a methodological question: to what extent is the quality of the analysis dependent on the quality of the analyst? It would seem that the perceptiveness and open-mindedness of the analyst is a large part of the equation, so much so that one might be tempted to quip that here, too, interpretation is an art rather than a science or, more accurately perhaps, an art masquerading as a science. *Et plus ça change*….

Be this as it may, both studies are well worth reading. Both Venzke and Liste are talented international lawyers and, in a sense, children of the critical revolution. They have taken the critical lessons to heart and realize that in order to make sense of international law, it does not suffice simply to read a text: both realize that there are all kinds of factors influencing the meaning any given legal text may acquire over time, and through the workings of a variety of actors: institutional actors and tribunals in Venzke's case, users and readers in Liste's. Both works therewith form a welcome contribution to international law.

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Claire Finkelstein, Jens David Ohlin, and Andrew Altman (eds). ***Targeted Killings: Law and Morality in an Asymmetrical World***. Oxford: Oxford University Press, 2012. Pp. 496. £95. ISBN: 9780199646470.

Roland Otto. ***Targeted Killings and International Law***. Heidelberg: Springer, 2012. Pp. 661. €117,65. ISBN: 9783642248570.

William H. Boothby. ***The Law of Targeting***. Oxford: Oxford University Press, 2012. Pp. 603. £95. ISBN: 9780199696611.

The debate about targeted killings has persisted for quite some time now. And it is not likely to go away anytime soon. Despite much opposition – mostly from scholars and NGOs but conspicuously much less from other states – the Obama administration has employed the controversial practice with growing frequency in combat operations in Afghanistan and Iraq, but also and more controversially in counterterrorism operations in Pakistan, Yemen, and Somalia. Moreover, it appears rather likely that in the future more governments will rely on targeted killing operations and the use of drones more often. With the proliferation of drone technology and the development of cheaper missiles – down from approximately US$115,000 for a Hellfire missile to only US$18,000 for the new APKWS II (Advanced Precision Kill Weapons Systems)[1] – and in light of a general shift away from troop-intensive interventions to targeted, low-risk operations in response to transnational (asymmetric) security threats, the use of unmanned aerial vehicles to execute such operations is particularly likely to grow.

Much has been written about targeted killings in recent years, 'rising to something of a crescendo of late', as Boothby puts it in his book (at 530). Most of the underlying (general)

[1] *The Economist*, 29 Sept.–5 Oct. 2012, at 77.