

Pre-translation Analysis of International Legal Discourse: From Social Semiotics to the Concepts of Lotman and Bakhtin

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Abstract

The discursive model of pre-translation analysis of international legal discourse relies on interrelated modules: the document conceptual space, with the harmonized value opposition between the concepts of "legal justice" and "compensatory justice", "common good" and "sovereignty"; the discourse addresser / addressee, embodied in the metonymic nomination "parties of the document"; the translator as an intermediate system, the semiospheres; extra-textual internalized realities. "Unifying" modules include semiospheres of international universal and basic branch documents, as well as universal human values and a shared internalized reality. The shared values underpin basic discursive strategies of consensus, solidarity, cooperation, marked by explicit and implicit intertextual means and additional strategies for minimizing imposition and hiding differences, implemented with tactics of generalization, mitigation and declarativeness based on passivation, nominalization, "marked theme", etc. Separating modules include semiospheres of the parties national legislations, marked by "without prejudice" clauses, metonymic nominations of "sovereign power", hedges scaling down the directive modality and idiomatic references to "public safety", etc.; semiospheres of recursive and procursive international branch texts that could be interpreted as conflicting with the document and are involved by 'non-affection' clauses and constative speech acts to fix the supremacy of one document over another. The document conceptual space may reflect the diverging interests and values of the parties, derived from implicit opposition between "legal justice" and "compensatory justice", harmonized by the documents. The markers of the "separating" modules are aimed at a combined strategy for predicting variable interpretation of particular norms with an indication of its source and normative harmonization.

Keywords: International Legal Discourse, Model of Pre-Translation Analysis, Unifying and Separating Semiospheres, Value Opposition, Discourse-Forming Values.

1. Introduction

Pre-translation analysis of the text (PTA), with due consideration of its information structure, modality, implicit and ethnic cultural connotations, as well as extralinguistic factors affecting the text creation and possible interpretation, is a necessary precondition for the translator's choice of an appropriate translation strategy. The most widespread models of pre-translation analysis involve linguistic, functional and communicative approaches to the PTA process. Generally accepted criteria, "traditionally" used in PTA include: subject matter, purpose, genre (text type), format, language (grammar and syntax), lexis and linguistic register, stylistic features, organization and logic, meaning, viewpoint, as well as culture and context (Cragie and Pattison 2017).

These criteria are primarily associated with the linguistic model of the PTA, which determines the formal and semantic features of the source text, as well as its genre and stylistic properties (House 2001, Gerzymishc-Arbugast 2001).

Four of the above criteria, i.e., the purpose, viewpoint, culture and context, are also relevant for functional approach focused on socio-cultural information about the original and translated texts, appropriate data about the author, his possible intentions and motives, as well as the countries and historical period in the space-time framework of the text creation and translation. This approach sets the priority of the purpose (called "skopos") of the translated text over all other determinants in the choice of translation strategies. By that a translator compares the 'function-in-culture' of the target text with the function of the source text, identifying and isolating those source-text elements which have to be preserved or adapted in translation (Nord 1991, 21).

Despite the fact that the information about the author and culture of the source text is key for both linguistic and functional models of pre-translation analysis, such data are not relevant for the study of international legal discourse (ILD) – given its specificity as intercultural, interethnic communication, with the national interests of the parties mutually agreed in favor of developing uniform standards of international behavior.

In view of this, for the translation analysis of the ILD, the communicative-pragmatic model, with elements of discourse analysis, seems to be more convenient. According to communicative approach (Steiner and Yallop 2001, 140), a source text function is identified in the framework of a particular context of situation, and PTA focuses on revealing the "situational dimensions" (in Halliday's terms, 1989), the source and target texts are embedded in.

With this in mind, the pre-translation analysis of the international legal discourse requires a complete rethinking of such a model of analysis that would take into account the international legal picture of the world, its basic, including conflicting, values, encoded, in turn, in an institutionally specific modality, language and pragmatics.

2. Theoretical Background

The paper relies on four main theoretical premises that are most consistent with the specifics of international legal discourses.

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The first approach conveys the principles of discourse-analysis in their application to pre-translational text investigation. From socio-semiotic perspective (Dunn et al. 2016, Holzscheiter 2014, Leeuwen 2005) of discourse studies, the interpretation of the ILD structural, semantic and pragmatic properties is based on identifying the basic discourse-constructing values and value hierarchy, their conflicts and supremacy, which determine the mode of signification and its associated ILD institutional strategies. In this connection the utmost importance for our study is the studies of discourse as a cognitive-semiotic wholeness with the world-modeling properties "in social values construction and maintenance" (Kravchenko and Zhykharieva 2020), derivative from the concepts of discursive formation and discursive order by Foucault (1981), and further developed within the framework of critical discourse analysis (Dijk 2008, Fairclough 1995, Leeuwen 1993).

In particular, promising for our study is the approach, explicating the ILD verbal code, pragmatic and textual structures by value opposition between the concepts of "legal justice" and "compensatory justice", "common good" and "sovereignty". Such oppositions are manifested, in turn, by a number of antinomies – preferences vs. freedom and equality, common good vs. sovereignty, homogeneity vs. heterogeneity, the eco-centric vs. eta-centric strategies, etc., which determine the synergy of the international law and its further development (Kravchenko and Pasternak 2020).

Semiotic discursive approach is carried out within the framework of M. Bakhtin's (1990) concept of an all-encompassing dialogicity of all components of discursive semiosis, taking into account such interrelated modules of discourse as: the modules of semiospheres, semiotic universum (in Lotman's term, 2005) and extra-textual internalized realities; the module of the ILD discourse addresser / addressee, embodied in metonymic nomination "parties of the document"; the module of the translator as an intermediate system.

The module of the semiosphere in relation to international legal discourse means that the process of generating legal meaning depends on the totality of previous texts – both of general systemic significance and those that form separate branches of international law. According to Yu. Lotman (2005), any text should be preceded by another text, the complex (semiosphere) is primary, and the simple (text, message in the semiosis of discourse) is secondary, and it is the semiotic sphere of previous texts that transforms the message into a message.

With regard to the ILD, it is possible to say about semiotic spaces of all international law, as well as its subsystems and national-variative semiotic spheres. The first two semiotic spheres are marked by obligatory for ILD intertextual references to texts that fix general systemic and subsystem values. Dialogizing with national heterogeneous semiospheres is necessary for forecasting and eliminating variable interpretation, which may arise while implementing the international document provisions into national legal texts.

The balance between the general and the different (taking into account the sovereign interests of states in the general norms of international behavior) is associated with the indicated dichotomy of values *common good* and *sovereignty*, manifested by normative, semantic and structural properties of any ILD.

In turn, the concept of "common good" is most often associated with the concept of "legal justice", and the concept of "sovereignty" (deviations from the general in favor of differences) – with "compensatory justice". At the same time, for ILD pre-translation analysis, it is important to establish the priority of one of these basic values, since it determines the degree of legal force and, accordingly, the modality of an international document.

2.1. Literature review and a heuristic research perspective

Critical discourse analysis. The paper applies the methodological principle of critical discourse analysis converging the microanalysis of texts using varied tools of linguistics and semiotic, and the macroanalysis of social formations, institutions, and power relations that these texts index and construct (Luke 2002, 100). This principle relies on an idea that discourse is just the medium to bring out values, beliefs, conventions, and norms of society. At the same time, the vector of macroanalysis in this research focuses on semiospheres incorporating fundamental ideological, institutional and cultural values brought out by international document. That is, the novelty of the work is in replacing the concept of context with the concept of semiotic spheres, into which the international legal text is immersed at different stages of its creation and interpretation. This approach does not contradict discourse analysis, but rather complements it by categorizing a somewhat "vague" concept of institutional context in a semiotic perspective – as a fixed set of semiotic spheres that unite and divide the parties due to their value basis and are harmonized by an international document. A critical approach of the paper is in its endeavours to make explicit homogeneous and especially heterogeneous interests and values which are frequently hidden.

The paper modified the basic terms of CDA, introduced by N. Fairclough, adopting them to the research purpose and specifics of ILD. The term "discourse", as a "way of signifying experience from a particular perspective" (Fairclough 1992, 138), a set of values, beliefs and ideas corresponds in research to the module of the document conceptual space, determined by the harmonized value opposition between the concepts of "legal justice" and "compensatory justice", "common good" and "sovereignty". The signifying properties of discourse is determined in their turn by orders of discourse as the "totality of discursive practices of an institution and relationship between them" (op. cit). The paper associates this concept with a set of "unifying" and "separating" semiospheres. The next CDA concept of "discursive practice" as "the use of language associated with a particular social activity" (op. cit) correlates with discursive institutional strategies as "a set of relatively stable conventions". In model of ILD pre-translation analysis the strategic level relates to the module of the discourse addresser / addressee, embodied in the metonymic nomination "parties of the document". Levels of discourse analysis are also somewhat reinterpreted in the study, in accordance with the research objectives (for more details see methodological part 3.3).

Yuri Lotman's models of the semiosphere in literature and culture in the context of the ILD pre-translation analysis.

Proving the semiotic sphere is not a metaphor, but a model, and Lotman defines it as a specific sphere possessing signs which are assigned to the enclosed space. Only within such a space is it possible

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for communicative processes and the creation of new information to be realized. (Lotman 2005, 207) Although Lotman uses the semiosphere model for interpretation of literature and culture (Lotman 1990, 121– 214) this concept is applied now for the understanding of other interdisciplinary phenomena: the cyberspace (Santaella 2010), art history (Duan 2018), existential therapy (Daws et al. 2019), etc.

In the same vein, this study uses the concept of the semiosphere as an operational unit of macroanalysis viewing international legal text as a sign system that is immersed simultaneously in the different semiotic spaces determining the way of its signification. This proves Lotman's idea that any semiotic spaces are characterized of being 'transected by numerous boundaries' (1990, 140), which means that the plurality of boundaries and peripheries also enclose a plurality of centers.

The criterion "unifying - separating" in relation to semiospheres is associated with the Lotman's idea about projection of ideological values onto the semiosphere in the form of semantic opposites, which prove to be material for constructing cultural models (...) and mean "valuable-not valuable", "good-bad", "one's own-another's", "accessible inaccessible", and so on (1977 [1970], 218).

Since the focus of research is not a separate semiosphere, but a model of ILD analysis, in which semiospheres are included as modules interacting with other components, the paper did not set the task of determining the center-periphery and other parameters of semiospheres although such parameters as "power asymmetries" and a "center – periphery dynamics" is reflected on the one hand, by the value opposition between the concepts of "legal justice" and "compensatory justice", "common good" and "sovereignty" in conceptual space of legal texts and, on the other hand, between the values of the uniting and separating semiospheres.

Taking into account Lotman's idea that "the semiosphere (...) is in contact with other semiospheres" and "there is a constant exchange" (1990, 142), as well as the fact that the very idea of the semiosphere is inherently deep "communicative" as far as communication, according to Lotman, is "only possible within a cultural semiosphere and that outside the semiosphere, there can be neither communication, nor language" (1990, 124), it is logical to consider the model of discursive semiosis from the perspective of Bakhtin's idea of all-encompassing dialogicity, adopted in a method of dialogical interpretation of text (see 3.3.).

The Purpose of the study is to develop a communicative-discursive model of ILD pre-translation analysis with identification of interrelated modules that provide discursive semiosis. The main goals of the research are (a) to identify the modules of ILD that determine its verbal, strategic and cognitive-semiotic parameters; (b) to justify the concept of the semiosphere as an operational unit of ILD macroanalysis with specification of semiospheres, "unifying" and "separating" parties-communicators in terms of their common and varied interests and values; (c) based on "description-interpretation-explanation" sequence of analysis, to determine the verbal markers of institutional strategies and their "unifying" or "separating" value underpinning, explaining it within the framework of the ILD semiotic modules; (d) to reveal the impact of modules of "separating" semiospheres on the strategic specifics of the ILD while identifying strategies that harmonize the diverging interests of the participants, (e) to

analyse the value opposition of the module "conceptual space of an international legal document", and normative ways to overcome it.

3. Methodology

3.1. The methodological approach

The methodology of the article is determined by the research task: to propose and substantiate a communicative-discursive model of pre-translation analysis of international legal discourse, revealing its interrelated modules that provide discursive semiosis. The methodological approach applied in the research is based on the integrative method, converging fundamental points of Critical Discourse Analysis (CDA) primarily in its social-semiotic framework ((Dunn et al. 2016, Fairclough 1995, 2003, 2009, Holzschneider 2014, Leeuwen 2005), Yuri Lotman's models of the semiosphere, added by method of dialogical interpretation of text (Bakhtin 1984, 1990, Kravchenko 2006, Selivanova 2010) and some pragmatic tools.

CDA presents basic terms and explanatory tools for integrating the microanalysis of institutional texts with the macroanalysis of institutional, social, and cultural contexts, which determine the way of signification in discourse semiosis. Focusing primarily on the semiotic properties of ILD modules, this study expands the boundaries of the analysis with Yuri Lotman's models of the semiosphere driven by Lotman's idea that fundamental ideological values of social, cultural or religious life are projected onto the semiosphere in the form of semantic opposites' (1977 [1970], 218). The paper uses the concept of the semiosphere as an operational unit of macroanalysis since the international legal text as a sign system is immersed simultaneously in the more global semiotic space of all international law, its specific branch, in the semiosphere of universal human values and interacts with national legislation. By identifying the markers of different semiospheres the paper makes explicit homogeneous and especially heterogeneous interests and values of the document parties and the way of their harmonization in the process of the text creation and interpretation. The harmonization of values is ensured by institutional and pragmatic strategies. In this respect, another theoretical viewpoint essential to the study is the pragmatic approach to pre-translational analysis highlighting the institutional discursive strategies in their correlations with pragmatic strategies of positive / proximity and negative / distance politeness.

Considering Lotman's idea about a constant contact and exchange between semiospheres (1990, 142) and Fairclough's concept of intertextuality as "bridging the gap between texts and contexts" (Fairclough 1995, 188), the study examines the model of discursive semiosis from the perspective of Bakhtin's concept of all-encompassing dialogicity, adopted in a method of dialogical interpretation of text by the Ukrainian scientist O. Selivanova (2010) and empirically explored by N. Kravchenko (2006) in the analysis of certain aspects of the ILD.

3.2. Methods of data collection

The study is based on 14 texts of international legal documents. The data have been deliberately selected from genres both of hard law in the form of Conventions and Agreements, and soft law, represented by Declarations and Principles, and within different chronological frames to show the invariant and systematic correlation between ILD semiotic modules and the verbal and strategic means of

their manifestation. The selection criteria for analysis included the presence of markers either of "unifying" or "separating" ILD modules, i.e. (a) reference formula to the texts of universal and branch international law as the explicit intertextual markers of the homogeneous parties values; (b) nomination of imperative principles, providing the international law semiotic integrity; (c) the lexical-semantic and syntactic means of metonymic objectification, passivation, nominalization generalization as the markers of scaling down imposition for the sake of the document integrity; (d) metonymic nominations of the concepts of "sovereign power" and "public safety"; (e) hedges of varying length and structural complexity that function as a reduced exemption clause, which expand a discretionary power of the participating States and weaken the obligative modality (f) semantic descriptors of heterogeneity with contradictory stylistic and semantic values (Fairclough 1995) revealing the value opposition of "legal justice" and "compensatory justice", "common good" and "sovereignty".

3.3. Methods of analysis

Identification of ILD semiotic modules with which the international document and its communicants interact relies on lexical-semantic and syntactic devices that mark discursive strategies and their underpinning values associated with corresponding modules. With that in mind the article encompasses the set of complimentary methods of analysis, which involve (a) discourse-analysis – to identify, interpret and explain the markers of semiotic modules at the verbal, strategic and value levels, (b) intertextual analysis (Bakhtin 1984, 1990, Fairclough 1995, 2003, 2009, Reisigl and Wodak 2009) – to reveal the homogeneous and heterogeneous communicators' values, (c) the method of dialogical interpretation of text (Selivanova 2010, Kravchenko 2006) and (d) certain elements of pragmatic analysis (Brown and Levinson 1987) – to identify some correlations between institutional discursive strategies and pragmatic strategies of positive / proximity and negative / distance politeness.

The paper primarily employs Fairclough's (1995) version of CDA based on three components, i.e., description – a level of analysis termed as "discourse as text", interpretation – a level of "discursive practice" and explanation – a "social practice" level of analysis. The methodological heuristics of this article is in the substantive clarification of the above levels of the analysis based on the specifics of the studied discourse and the research objective while maintaining the order of the CDA research process – from description through interpretation to explanation. The first stage of analysis focuses on lexical-semantic units, syntactic devices, and lexical-syntactic hedges, which mark institutional strategies. Specifying these strategies and their "unifying" or "separating" value basis constitutes the second principal link of analysis – its interpretation stage. The identified strategies and values are explained within the framework of the components of discursive semiosis, influencing the ILD construction and interpretation. Substantiating the "unifying" or "separating" modules constitutes the third stage of analysis, corresponding, in Fairclough's terminology, to the level of explanation.

Intertextual analysis is used both in the narrow sense as the identification of explicit references to international legal documents and in the broad sense – at the revealing of markers of unifying and separating ILD semiospheres. With that in mind, an approach used in the paper brings the understanding

of interculturality in Fairclough's terms closer to Bakhtin's concept of comprehensive dialogicity. For example, parenthetical phrase-hedges "Without prejudice to the sovereign right of the Parties to determine and establish their taxation policies" ((article 6 (2), WHO FCTC) that stipulates the conditions for fulfilling the requirements, dialogizes with "separating" semiospheres of national legislations of the document parties manifesting the strategy of preserving the integrity of the document by expanding a discretionary power of the participating States. At the same time, the lexical-syntactic reference idiom "guided by the purposes and principles of the Charter of the United Nations" associates the document with semiosphere of universal international law thus realizing the institutional strategies of consensus and cooperation.

The method of dialogical interpretation of text, which is mainly used in the analysis of literary texts and consists of seven stages of analysis (Selivanova 2010), is involved in the study in a limited way considering the specifics of the legal text. In particular, the paper involves the fourth stage of analysis, associated with the dialogical relations of the text and communicators with internalized being (in our terms – internalized reality), the fifth stage, which studies the dialogicity of the text with the semiotic universe of culture, other texts and products of culture and civilization (we specify in this vein five modules-semiospheres), and the sixth stage, which requires the researcher to address to the dialogical nature of the internal semiotic space of the text and text concepts. Our study terms it as a module of the legal text conceptual space.

The involvement of pragmatic explanatory tools, including strategies of politeness is justified by the fact that the markers of the common and the different in the ILD not only explicates the value opposition of "legal justice" and "compensatory justice", "common good" and "sovereignty", but also demonstrate a balance of positive politeness strategies of reciprocity and "common ground"; on the one hand, and negative politeness strategies of hedging and minimizing the imposition, on the other hand. For the analysis, the classification of strategies of positive and negative politeness proposed in (Brown and Levinson 1987) was used.

Thus, the methodological choice of the integrative methodology is justified by the specifics of the discursive model of translation analysis, the components of which differ in their value-semiotic properties, influencing the verbal, strategic and cognitive-semiotic aspects of the international legal text, and being identified through such aspects, which determines the integration of discursive, pragmatic, and semiotic tools and methods.

4. Discussion

4.1. Commonality: common values vs. differences

The integrity of international legal discourse is based on its participants' shared values that create the discursive identity of the ILD, which can otherwise be called a "generalized communicator" (see below for details). Such a discursive construct is primarily marked by the lexical-semantic and syntactic means of intertextuality (often in the preambles of documents), which:

- (1) introduce the document into the semiotic space of universal international legal

documents: *in accordance with international law; guided by the purposes and principles of the Charter of the United Nations; The Union ... shall contribute to the strict observance and the development of international law* (Eur-Lex. Access to European Union Law 1992, article 3 (5)). Since the basic values of international law are incorporated in its imperative principles, lexical-semantic reference to these principles is a means of implied intertextuality with the entire semiosphere of international legal discourse. *Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States*. (Council of Europe 1995, article 21).

(2) refer to the international legal discourse that forms a particular branch of international law: Recalling further the Vienna Convention for the Protection of the Ozone Layer, 1985, and the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, as adjusted and amended on 29 June 1990, Noting the Ministerial Declaration of the Second World Climate Conference adopted on 7 November 1990 (United Nations 1992, Preamble); *Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child* (United Nations Human Rights 1990, Preamble).

(3) designate the universal human values: *"which respect and promote human rights and are informed by ethical principles"*; *The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance ...* (Council of Europe 1995, article 2); *Nothing in this Declaration may be interpreted as approval for any State, other social actor, group, or person to engage in any activity or perform any act contrary to human rights, fundamental freedoms, human dignity, and concern for life on Earth* (United Nations Educational, Scientific and Cultural Organization 2017, article 12).

To show the specifics of this module, delimiting it from the semiospheres of international universal and branch law, we employ the term "semiotic universe", which is often used by Lotman as a synonym for the semiosphere, but is broader in its semantic scope, since in addition to verbal texts, it covers other sign products of civilizations that also serve as communication mechanisms in discursive semiosis.

The appeal to universal values can be one of the manipulative techniques of the ILD, equalizing the concepts of law and justice, which do not always coincide, given that not all states can exercise their international rights due to their limited resources, technologies, etc.

The intertextual means identified above refer to the "shared" discursive knowledge, embodied by metonymic notion of ILD "generalized communicator". The term "generalized communicator" reflects two-faceted communicative process of the document creation and interpretation. First of all, it refers to the supranational property of the ILD addresser, which is formed on the basis of coordination of the

states' interests, and, at the same time, acts as the document addressee-destinator. In turn, the term "generalized addresser" is a kind of metonymic simplification, because, on the one hand, the states that are parties to an international document represent particular countries, i.e. the linguistic and sociocultural communities and, secondly, they "delegate" the drafting of the document to their representatives in international organizations. "Generalized addressee", in turn, is also a metonymic objectification, as the addressee of the document is not the states themselves, but their law enforcement agencies. This categorization does not contradict the doctrine of international law, which also assumes objectification-metonymy in naming states as "subjects" of international law.

The category of "generalized communicator" is one of the manifestations of "commonality vs. differences" and is fixed in terms that denote such a discursive construct: *The member States, The Parties, The Contracting Parties*, etc.

In addition to the unifying semiotic spheres and the category of "generalized communicator", the "common ground" is also formed by referring to the extra-textual internalized reality as a factor that determines the need for a specific document. The internalized reality is marked by addressing the economic, political, social circumstances of an international scale, which contribute to constructing the ILD discursive identity.

Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community, Aware of the impact of the flows of migrant workers on States and people concerned, (...) (United Nations Human Rights 1990, Preamble); The global environment continues to suffer. Loss of biodiversity continues, fish stocks continue to be depleted, desertification claims more and more fertile land, the adverse effects of climate change are already evident, natural disasters are more frequent and more devastating, and developing countries more vulnerable, and air, water and marine pollution continue to rob millions of a decent life (UN Documents 2002, point 13).

All markers of shared knowledge relate to the marked theme, in terms of Halliday's (2004) functional grammar. At the same time, in contrast to political communication, in international legal discourse, a marked theme (non-coincidence of a topic with a phrasal subject) is not a strategy of distance and scaling down somebody's responsibility for own actions. Instead, it justifies the adoption of a document by its compliance with the system-wide, branch, and universal values, as well as the current political, economic and social realities. From viewpoint of institutional discourse strategies, the reference to "uniting" modules realizes the communicative strategies of consensus, cooperation-prescription or cooperation-recommendation and demonstration of solidarity. Additional strategies include reducing imposition, veiling differences, mitigation, achieved by tactics of generalization, declarativity and mitigation of coercion by means of the marked theme and intertextuality devices. From viewpoint of politeness, such discursive strategies correlate simultaneously with positive politeness strategies of assuming reciprocity and asserting common ground, and negative politeness strategies of minimizing the imposition, primarily through nominalization, passivation and the marked theme.

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The correlation between ILD "common ground" modules, discursive-pragmatic strategies and their manifesting verbal markers is explicated in Table 1.

Table 1: ILD "unifying" modules: verbal and strategic manifestations.

ILD modules	Discursive-pragmatic strategies	Verbal markers
Semiosphere of universal international legal documents;	Principal: consensus, cooperation-prescription, cooperation-recommendation, demonstration of solidarity. Additional: reducing imposition, veiling differences, mitigation; tactics of generalization, declarativity and mitigation of coercion; balance of positive politeness strategies of assuming reciprocity and asserting common ground; and negative politeness strategies of minimizing the imposition, through nominalization and passivation.	Intertextuality devices: (a) lexical-syntactic references to universal international legal documents; (b) nomination of imperative principles, incorporating the basic international legal values
Semiosphere of texts, constructing an international legal branch, to which the document is related		Intertextuality devices: lexical-syntactic references to the branch-forming corpus of international legal documents
semiotic universe, integrating the symbolic values of civilization		nominations and idioms to denote the universal human values
interiorized reality		References to "shared" economic, political, social problems requiring joint international efforts

The heterogeneous component of ILD discursive identity refers to the possibility of divergence of interests, values, ways of interpretation at the stage of creation and, most importantly, the application of the document.

4.2. Differences vs. commonality: from sovereign interests to discursive identity.

At the level of the normative meaning of the document, the foregrounding of heterogeneity provides for and, to some extent, eliminates the possibility of variable interpretation of the international legal text and the rules of conduct laid down in it. It is marked by implicated intertextuality devices, i.e.:

- 1) References to the texts of national legislations, usually expressed in subordinate clauses of concessions, conditions, as well as in participial and adverbial participial phrases, implicating the meanings of concession or condition;
- 2) By means of reference to previous international legal texts, which may be interpreted by the parties-addressees of the international document as those that form a normative conflict with it;
- 3) By means of internal dialogicity within the conceptual space of the document, referring to groups of subjects with opposite interests and strategies, highlighting the pre-text stage of negotiations and the difficulties in reaching consensus.

Considering that the adequate rendering of the heterogeneous component is especially problematic for translation, let us dwell in more detail on each of the above ways of its expressing.

Means of dialogization of international legal text with the texts of national laws are usually expressed by subordinate clauses of concession and condition, or by the same meaning participial

phrases, correlating with the structure of the normative clause, which expands in a particular way the powers of the parties-addressees to avoid conflicts of interest.

Power expansion is marked by (1) legal idioms with a meaning "in agreement with": *according to modalities provided for in their legal system* (Council of Europe 1995, article 11(1)); *in accordance with national laws*; in any other emergency covered by national legislation; The competent authority shall, in accordance with national legislation, supervise whether or not the above-mentioned conditions are complied with (Council of Europe 1987, article 8(5));

(2) idiomatic phrase **only if** to express a strong condition: *Exceptions to the principles laid down in this Convention (...) may be made only if unavoidable in the framework of national disease control programmes* (Council of Europe 1987, article 13);

(3) 'non-affection' and "without prejudice" clauses: *Nothing in this Convention shall affect the liberty of the Parties to adopt stricter measures for the protection of pet animals or to apply the provisions contained herein to categories of animals which have not been mentioned expressly in this instrument* (Council of Europe 1987, article 2 (3)); *This Convention shall not prevent a court of a State bound by this Convention and by a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another State bound by this Convention which is not a party to that convention* (Official Journal of the European Union 2009, article 67 (2)).

(4) by lexical-semantic means: *within an appropriate period to be determined by each Party, declare this to the competent authority* (metonymic personification of the law enforcement system of sovereign power) (Council of Europe 1987, article 8 (1)).

(5) metonymic nominations of the concept of "sovereign power": *legal system, national jurisdiction, legislation of the State, public order, "ordre public", national security, democratic society, competent authority, under national legislation*, including the words, denoting or connotating the meaning "national": *national activities, nationals, ownership, non-governmental entities, etc.*;

(6) parenthetical expressions-hedges that weaken the document imperative modality in favor of its dispositiveness and the expansion of sovereign rights during law enforcement: *as far as possible, if there is sufficient demand, where appropriate, where necessary, where relevant, as appropriate, States Parties shall take all measures they deem appropriate, etc.*;

(7) idiomatic references to such values as "public safety", "health", "morals", "rights and freedoms", "cultural identity": *Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others* (United Nations Human Rights 1990, Article 13); *Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from (...) the obligation to respect the cultural identity of the inhabitants of such States* (op. cit., article 34).

From viewpoint of institutional discourse strategies, the reference to semiospheres of national legislations manifests a combined strategy for (a) forecasting the possibility of flouting the document provisions in favor of the national interests of the parties, with (b) indicating the source of alternative

interpretations and (c) their unification in a general rule. From viewpoint of politeness principle, this institutional strategy correlate with first, fifth, ninth and forth positive politeness strategies: Notice and attend to the addressee's interests, wants, needs, goods; Seek agreement; Asset concern for Addressee's wants; assume reciprocity. At the same time, a use of numerous clauses-hedges and parenthetical constructions argue for the second and fourth negative politeness strategies: Hedge and Minimize the imposition.

Means of the document dialogization with international legal texts are aimed at preventing variable interpretation of the document, that may result in a conflict between the present document and the states-parties existing international obligations. In most cases, the possibilities of the document interpretation by its parties-addressees are restricted to preserve the integrity of the branch legal discourse or international law in general. In particular cases, the priority of the current act over other previous or subsequent international documents is established.

Semiosphere of possible variably interpretable branch texts is primarily marked by

(a) 'non-affection' and "without prejudice" clauses to explicitly state

(1) that the current document does not prejudice particular obligations, responsibilities or rights provided for by other international legal acts:

Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention (United Nations Human Rights 1966, article 8(3))

The Parties agree that nothing in this Agreement requires them to act in a manner inconsistent with their WTO obligations (European Communities 2010, article 106 (3)).

or, vice versa, (2) the supremacy of the document over previous international legal acts.

In the case of any inconsistency between the provisions of this Agreement and the provisions of Title II of Part III of the Cotonou Agreement, with the exception of the development cooperation provisions contained therein, the provisions of this agreement shall prevail (Investmentpolicy Unctad 2012, article 65 (2)).

(b) the explicit stipulating of the supremacy of one treaty over another by a constative speech act:

This article does not affect international agreements expressly permitted or preserved by other articles of this Convention (UN.org 1982, article 311 (5)).

From a linguistic point of view, 'non-affection' and "without prejudice" explicit and implicit meanings as well as an explicit constatement of a certain document supremacy contains an implicit condition or concession, i.e. by using the transformational method they can be transformed into a subordinate sentence: if the content of a particular article or articles of the document can be interpreted as conflicting with another agreement, the preceding (or current) document(s) shall be applied.

For example, *"This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958"* (UN.org 1982, article 311 (1)) can be transformed

into: "If certain provisions of this Convention and the Geneva Conventions are interpreted as such, which may constitute a normative conflict, this Convention shall apply".

Heterogeneous component of the ILD discursive identity also relies on semantic triggers of the parties opposite interests and strategies, reflecting the most problematic areas or aspects of reaching consensus. Such means of internal dialogicity highlight the opposition of basic discourse-creating values: on the one hand, the value opposition between "sovereignty" and "common good", and on the other hand, – between "international legal justice" (equal rights in relation to equals) and "compensatory justice" (unequal rights in relation to the unequal).

Both types of conceptual oppositions and their manifesting means are of the utmost interest for pre-translation ILD analysis.

As the research material has shown, compensatory justice is largely associated with the concepts of "sovereignty", "difference", "heterogeneity" and "preferences" while "legal justice" is mostly related to the concept of "common good". At the same time, one document usually coincides the markers of both legal and compensatory justice, as is illustrated by the examples below:

"the exploration and use of outer space shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and stipulates the principle of freedom of exploration and use of outer space on the basis of equality. These activities shall be conducted on the basis of respect for the principle of full and permanent sovereignty of all States and peoples over their own wealth and natural resources, with due regard to the rights and interests, in accordance with international law, of other States and entities under their jurisdiction. Such activities shall not be conducted in a manner detrimental to the legitimate rights and interests of the sensed State" (UN Office for Outer Space Affairs 2021, Principle IV).

The fragment reveals the opposition of "prohibition" (associated with the concept of "sovereignty") vs. "access" associated with "freedom of research and use" and "equality". At the same time, the second part of the opposition concerns the rights and interests of space powers, which is not explicitly indicated in the analyzed fragment.

Conditional (implicit) division into two groups of states – capable and incapable of realizing their "space rights", can be pragmatically justified as follows. The expression "with due regard to the rights and interests, (...) of other States and entities under their jurisdiction" is preceded by repetition in the same context the collocations "all countries" (for the benefit of all countries) and "all states" (with respect for the sovereignty of all States) and is followed by another more specified nomination "the sensed State".

According to the maxim of quantity of information, "other States" in a subsequent clarifying construction "other States and entities under their jurisdiction" should have been used in a different meaning so as not to flout the said maxim by redundant information. Based on this, under "other states" is meant the space powers, who have the rights to carry out remote sensing that is manifested by semantic descriptor "access", based on explicitly expressed "principle of freedom of exploration and use of outer space on the basis of equality".

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The meanings "freedom" and "equality" in the above passage correspond to the concept of "international legal justice", while the implicit and explicit reference to "sovereignty" here implies the concept of "compensatory justice" (as an unequal approach to unequal subjects requiring special attitude towards the weaker).

The implicit opposition associated with the "overcome" divergence of interests, values and ways of interpreting the document is indicated by semantic descriptors, denoting or connotating the meanings of differentiation, compensation, preference, generosity, etc, associated with the concept of "compensatory justice", on the one hand, and the meanings of equality, balance, proportionality, reflecting the "legal justice", on the other hand (an attempt to identify the semantic components of these concepts was undertaken in: (Kravchenko and Pasternak 2020), as is shown in Table 2 on the example of the Convention on the Law of the Non-navigational Uses of International Watercourses Convention (articles 4 – 9).

Table 2: Module of conceptual space of the international legal text: harmonization of opposite values.

"Legal justice"	"Compensatory justice"
semantic descriptors	
Equality	Generosity (responsivity to the interests of others at the expense of restricting one's own rights)
Watercourse States shall <u>cooperate</u> on the basis of sovereign <u>equality</u> , territorial integrity, <u>mutual</u> benefit and good faith (article 8 (1)).	Watercourse States shall employ their best efforts to collect and, where appropriate, to process data and information <u>in a manner which facilitates its utilization by the other watercourse States to which it is communicated</u> (article 9, para 3)
Balance	Differentiation as the material compensation
in order to attain <u>optimal utilization</u> (implicit seme of proportional, that is balanced use) (article 8 (1)). Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States (mutual, that is balanced refraining from damage-making (article 7 (1)); Watercourse States shall in their respective territories utilize an international watercourse <u>in an equitable and reasonable manner</u> . In particular, an international watercourse shall be used and developed by watercourse States with a view <u>to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned</u> (article 5 (1)).	If a watercourse State is requested by another watercourse State to provide data or information (...), it (...) <u>may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information</u> (article 9 (2)). Where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall (...) <u>take all appropriate measures, (...) to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation</u> (article 7 (2)).
"Non-discrimination" (legal justice) vs. Preferences – implicit compensation for differences (compensatory justice)	
Utilization of an international watercourse in an equitable and reasonable (<u>non-discrimination</u>) manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including: (b) The social and economic needs of the watercourse States concerned (<u>preferences</u>); (c) The population dependent on the watercourse in each watercourse State (<u>preferences</u>); (d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States (<u>preferences</u>); (e) Existing and potential uses of the watercourse (<u>non-discrimination</u>); (f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect (<u>non-discrimination</u>) (article 6 (1)).	
Proportionality (legal justice) vs. Differentiation (compensatory justice)	
A watercourse State <u>whose use of an international watercourse may be affected to a significant extent</u> by the implementation of a proposed watercourse agreement (...) <u>is entitled to participate</u> (differentiation) in consultations on such an agreement and, where appropriate, in the negotiation thereof in good faith with a view to becoming a party thereto, <u>to the extent that its use is thereby affected</u> (proportionality) (article 4 (2)).	

The correlation between ILD heterogenic modules, discursive-pragmatic strategies and their manifesting verbal markers is explicated in Table 3.

Table 3: ILD “separating” modules: verbal and strategic manifestations.

ILD modules	Discursive-pragmatic strategies	Verbal markers
Semiospheres of national legislations of the document parties	combined strategy for forecasting the possibility of flouting the document provisions in favor of the national interests of the parties, with indicating the source of alternative interpretations and their standardization as a general rule. Balance of positive politeness strategies of attending to the addressee’s interests, wants, needs, seeking agreement, assuming reciprocity, etc. and negative politeness strategies of hedging and minimizing the imposition.	'non-affection' and "without prejudice" clauses; metonymic nominations of the concept of "sovereign power": parenthetical expressions-hedges that weaken the document imperative modality; idiomatic references to "public safety", "health", "morals", "rights and freedoms", idiom "only if", etc.
semiospheres of recursive and procursive branch texts that could be interpreted as somehow conflicting with the current document.	forecasting and eliminating the possibility of variable interpretation and application of an international document	Intertextuality devices: (a) 'non-affection' and "without prejudice" clauses; (b) speech acts of constatives, stipulating supremacy of one treaty over another
conceptual space of the document, reflecting variable interests and values of its states-parties	highlight and balance the opposition of basic discourse-creating values	semantic descriptors, denoting or connotating the meanings of differentiation, preference, compensation, generosity, associated with the concept of "compensatory justice", and the meanings of equality, balance, proportionality, reflecting the "legal justice".

5. Conclusions

The communicative-discursive model of pre-translation analysis of international legal discourse includes a set of interrelated modules based on values that either unite or separate the parties of a document and are balanced by its normative content.

The identified "unifying" modules include (a) semiospheres of international universal and basic branch documents, marked by intertextual references either to such documents or value principles, embodied by them, (b) semiosphere of universal human values, which are explicitly or implicitly designated in a legal text, (c) a clearly defined internalized socio-economic reality of an international scale, requiring joint international efforts.

Interaction of the legal text and its communicators with the "unifying" modules provides the basic discursive strategies of consensus, demonstrating solidarity, cooperation-prescriptions or cooperation-recommendations, which correlate with strategies of positive politeness of reciprocity and upholding common ground. Additional "unifying" strategies – of minimizing imposition, hiding differences and mitigating are implemented through tactics of generalization and declarativity by means of nomination,

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passivation, intertextuality devices, etc. associating with negative politeness aimed at minimizing coercion.

Separating modules include (a) conceptual space of the document, reflecting the diverging interests and values of its member states, based on value opposition between "legal justice" and "compensatory justice", "common good" and "sovereignty" harmonized by the normative content of the document;

(b) semiospheres of recursive and procursive international branch texts that could be interpreted as conflicting with the current document. Such semiospheres, are referred to by "without prejudice" clauses and constative speech acts providing for the supremacy of one document over another. Interaction with this semiosphere provides a strategy of forecasting and excluding the possibility of variable interpretation and application of an international document;

(c) semiospheres of national legislations of the document parties, marked by 'non-affection' and "without prejudice" clauses; metonymic designations of "sovereign power"; hedges increasing the discretionary power of the parties and scaling down the imperative modality; idiomatic references to "public safety", "health", "morals", "rights and freedoms". Markers of this semiosphere realize a three-component strategy of (1) forecasting the possibility of derogation from the document in favor of national interests of the parties, (2) indicating the source (reason) of alternative interpretation and (3) unifying the possibility of derogation in the general rules of normative behavior.

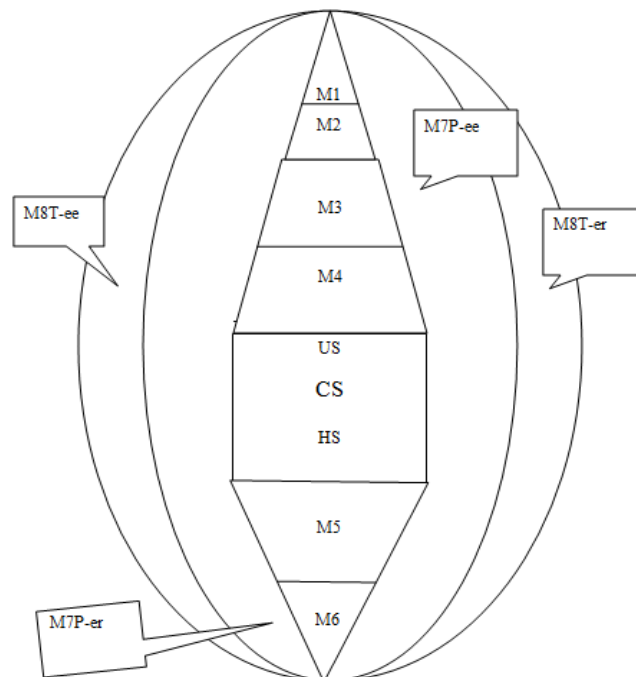


Figure 1: Communicative-discursive model of pre-translation analysis of international legal discourse.

The interrelated models of international legal discourse can be represented in a Figure 1, where M1 (Module 1) – semiosphere of universal human values; M2 (Module 2) – internalized socio-economic reality, M3 (Module 3) – semiosphere of international universal documents, M4 (Module 4) –

semiosphere of basic branch documents; US – unifying strategies, associated with Unifying Modules at the top of the Figure 1; CS – conceptual space of the document; M5 (Module 5) – semiospheres of national legislations, M6 (Module 6) – semiosphere of international texts with potentially conflict rules; HS – harmonized strategies, associated with Separating Modules at the bottom of the Figure 1; M7 P-er (Parties-addresser), M7 P-ee (Parties-addressee): parties of the document, which are both its addressers at the stage of the text approval and construction and addressees at the stage of interpretation and implementation; M8 T-ee (Translator - addressee), T-er (Translator - addresser): translator(s) of the document who is/are first its addressee, and then addresser.

تحليل ما قبل الترجمة للخطاب القانوني الدولي: من السيميائية الاجتماعية إلى مفاهيم لوتمان وباختين

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الملخص

يستند تحليل ما قبل الترجمة للخطاب القانوني الدولي على النموذج الحوارى للخطاب، بما في ذلك وحدات "الموحدة" و"المنفصلة". التي تشمل الوحدات "الموحدة" المحيطات السيميائية من الوثائق الدولية العالمية والفرعية، وعالم سيميائي من القيم الإنسانية وواقع مستوعب مشترك، وترتبط باستراتيجيات التوافق والتعاون وعدم الفرض وإخفاء الخلافات التي تُنفَّذُ باستخدام تكتيكات التعميم والتخفيف والتكتيكات التصريحية على أساس وسائل التخميل، والتناص، والتحويل الاسمي و"موضوع مميز". تشمل الوحدات المنفصلة المحيطات السيميائية للتشريعات الوطنية للأطراف، وتتميز ببنود "عدم الإخلال"؛ وهي ترشيحات مجازية لـ "السلطة السيادية"؛ وتحوطات تقليص التوجيه؛ والمحيطات السيميائية للنصوص الفرعية التي يمكن تفسيرها على أنها تتعارض مع الوثيقة، ويشار إليها ببنود "عدم الإضرار" وأحداث الكلام التكويني لتثبيت سيادة وثيقة واحدة على أخرى؛ كالفضاء المفاهيمي للنص الذي يعكس تباين مصالح الأطراف، مفهوساً بواسطة الواصفات الدلالية للإشارة إلى معارضة القيمة المتناغمة بين "العدالة القانونية" و"العدالة التعويضية".

الكلمات المفتاحية: الخطاب القانوني الدولي، تحليل ما قبل الترجمة، المحيطات السيميائية "الموحدة" و"المنفصلة"، معارضة القيمة.

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