



TOWARDS A COMMUNICATIVE MODEL OF LANGUAGE OF INTERNATIONAL LAW: FROM LINGUISTIC SIGN TO COGNITIVE COMPLEMENTS

Ali Mashhadi

Associate professor, PhD in international law, Qom University, Qom, Iran

Mohammad Ali Kafaei Far

PhD in international law, Islamic Azad University, Qom, Iran (corresponding author)

Seyed Mohammad Hossein Mirzadeh

Phd candidate in international law, Islamic Azad university, Qom, Iran

ABSTRACT

From past up to here one of the most important questions in international law has been focused on how interpretation of IL texts and instruments should be elaborated. Answering this question definitely, we could see the positive results. Despite all of the efforts of ICJ, UN special committees for conclusion of VCLT in 1969 and the other international law organs, we observe basic problems and inconveniences while trying to understand IL instruments and texts. Some scholars have tried to create links between hermeneutic, the knowledge of comprehending and interpreting texts, while the others, have tried to analyze in detail the unseen intentions of VCLT creators and writers specially when speaking about terms like "context" and "ordinary meaning". We believe that deciphering some specific VCLT terms and also, understanding the true sense of language of international law is not possible but through interdisciplinary innovator studies which could show the necessity of understanding the "communicative language" designed for IL.

KEYWORDS: Linguistics, Pragmatics, Cognitive Complements, International Law Language

INTRODUCTION

In this interdisciplinary article, scholars from both linguistics and international law disciplines aim to evaluate the links between linguistics and the language of international law. It is completely comprehensible that the language of international law which is considered a case of ordinary language, should be analyzed considering linguistic and pragmatic standards. One of the most important issues in this regard is that we have to pass from linguistic sign (linguistic codes) to pragmatic norms (cognitive frames and rules). That is why international lawyers

expect linguists to define and determine the relations between international law language, linguistics and pragmatics in order to receive the true sense of the messages in this context.¹ Therefore, both scholars should try to give works on interpretation of IL texts from a linguistic and pragmatic viewpoints.

Is probable that the IL scholars know the term "pragmatic" especially because of the works of Jun Austin and the Speech Acts Theory in this respect. However, they are not familiar with the other linguistic and pragmatic theories or denying them, are not

1 Galdia, p. 35, 2009.

ready to accept the mentioned ideas in international law. Maybe they do not recognize the impact of linguistics and pragmatics in international law texts because of their lack of information about the semantic and pragmatic boundaries or just for thinking and analyzing IL texts from a simple legal viewpoint. It is worth noting that semantic, undergoing aspect from a structural – applied study of languages, became important since it studies the relations between signify – signifier and the object, for instance, the relation between “treaty”, its reality, acoustic image and meaning while pragmatic study the relation between language user and its context while uttering a utterance; for example, some questions like who, when, where and what are answered by this branch of study.

If IL lawyers and scholars know the main notions of linguistics, pragmatics and cognitive linguistics, surely they look for more outgoing developments in these aspects for answering their basic and advanced questions in an interpretive context of IL instruments and texts; questions like: how is it possible to have a clear idea of what an IL speaker – writer is saying? How could be possible to interpret the main – true sense of a sentence – utterance in international law oral or written texts? What is the definition of “ordinary meaning” or “context” which have been mentioned in VCLT in 1969 while evoking today? And so forth.²

2 We believe that norms of interpretation like “ordinary meaning” and “context based interpretation” which have been included in 1969 VCLT have to be up to dated. The latest studies in cognitive and linguistic achievements show that the context of international law and international relations have changed meaningfully and it is necessary to define new terms and scopes for interpretation and treaty, convention or instrument from IL viewpoint. If the IL scholars are no able to understand the cognitive frames in international law in addition to the language of international law, surely they are not able to interpret the real senses and signs in the mentioned discipline. Interpretation, from our viewpoint, is a triangular process which consists on: perceiving – analyzing and expressing the idea, norm or rule that we have understood. In order to do such a process, we should pass in a step by step formula. From a linguistic phase to the pragmatic – cognitive one and after that, perceiving the notions and ideas with a legal based approach. That is to say, the process of interpretation in international law is not just a matter of legal norms and rules, but rather is has lots to do with linguistic, pragmatic and cognitive ideas. For instance, we cannot interpret an international legal text from English into Farsi without counting on translating process: treaty: *هددھاعم* and doing so, we have entered in a new space separated from legal and normative roles but linguistic type of analysis because 1 – first, we should relate the signify to signifier and vice

We believe, of course, that accepting two notions, the IL scholars could find the most complex answers to the above questions: 1 – the communicative channel of international law also is the ordinary one but have its own terms. That is to say, international law also has its own language which has to be decoding by interdisciplinary studied especially, from linguistic, cognitive and pragmatic viewpoint and 2 – international lawyers, legal advisors and entities speak with different languages which, in fact, is generated from different thoughts, cultures, cognitive steps and so on. That is to say, a conventional meaning or idea is difficult to grant in such a sphere.

Semantic theories in linguistics describing semasiology, onomasiology, signify – signifier relations, etymological – conventional meanings of the words and expressions and so forth could help us to understand the immediate meanings of the terms and expressions in international law texts and instruments:

1. This treaty is concluded in good faith
2. I have been working on this instrument
3. All of the parties agree in this respect
4. Etc.

From a semantic type of analysis especially from source language (English) into target one (Farsi, for example), we are obliged to pass cross etymological (dictionary) meaning to conventional (international law) one. This is the evidence of linguistic phase of analysis while a Farsi speaker, for instance, wants to go through interpretation of an IL text or instrument. That is to say, finding the word by word meaning of a term, is per se demonstrating that we are going by linguistic phase of analysis to the cognitive – pragmatic one which could not be obtained without doing so:³

3 versa and 2 – find the correct equivalent of the word or term. After this automatic process is that we can enter in the other dimensions of analysis and interpretation to correlate the etymological meaning to the conventional one and therefore, extract a justified and true interpretation of a judgment, advisory opinion or convention. As a result, we have to accept that this process is not just a legal subjective – objective process but it is a multidimensional process.

The non-English – French speakers are expected to go through linguistic – semantic phase of analysis to the pragmatic – cognitive one to understand the main idea or notion of IL texts and instruments. It is no possible to interpret a discourse while unknowing the words or terms which integrate it like it is no possible to clarify a sentence meaning while denying etymological meaning of the terms. In this step-by – step type of analysis, the speakers of the other languages are expected to go from linguistic – semantic phase to the pragmatic one: from word to sentence

1. This
2. Treaty
3. All
4. Parties
5. Instrument
6. Concluded
7. Etc.

Explaining the relation of different linguistic – pragmatic phases in process of interpretation of IL texts, we are going to define their impacts in this process.

1. RECOGNIZING THE IMPORTANCE OF “LINGUISTICS” IN AN INTERPRETIVE PROCESS OF IL TEXTS AND INSTRUMENTS: THE EMERGENCE OF IL COMMUNICATIVE MODEL

Linguistics, in fact, is a discipline or science that analyzes the structural, functional and philosophical matters of languages from the day of existence to the end of its usage and consists on textual, contextual, functional, structural and Etc. while is not being studied separated from the other disciplines like sociology, psychology, communications and so forth.⁴

From the above statement could infer that this discipline, which is a combination of some more disciplines, could help us to analyze the “human language” in every type and manner. That is to say, if we are speaking about IL texts or utterance, probably we can use the linguistics and pragmatics criteria in order to have more awareness about the true senses and signs which human beings enjoy in everyday usage of languages one of which is the language of international law texts and instruments.

Because the language of IL also is under impact of social changes and evolutions, interpreters and international lawyers should be aware of what is happening with the notions and concepts in international law language. According to Ulf Linder Falk, for instance, international law interpreters and lawyers have to decide whether they are going to interpret the language of conclusion of a treaty or convention (historical signs and language) or they are to interpret the language of adhesion and enforcement of that one (contemporary language).⁵

Unfortunately, during years we have seen that the decision makers and interpreters in international

law have no any clear idea about the above segments. That is to say, there is no any argumentation if is the historical language important for or the other one, the contemporary language? Answering clearly this question requires the awareness from what we call “linguistic competence” or “communicative competence”. International lawyers and interpreters of instruments have to know the changeable philosophy of languages which is a result of social changes – evolutions. That is why, as Solan also states, “the argumentations which international lawyers and interpreters always give, have a lack of linguistic – pragmatic awareness”.⁶

On the other hand, as we argued above, if the international lawyers and legal philosophers are not aware of the innate changing essence of semantic-pragmatic signs of a specialized language like international law one, surely they cannot prevent the ongoing problems of interpretation between two states or parties of a convention. There are too many examples which show that language users of international law not being aware of inherit changing essence of contextual meaning of the words and expressions, have brought actions to the ICJ looking for a defined and determined solution.⁷

The International Court of Justice in its judgment about the case between Costa Rica – Nicaragua followed the same argument in the Navigational Rights regarding the term “commerce” and held that ... there are situations in which the parties intent upon conclusion of the treaty was, or may be presumed to have been, to give the terms used-or some of them – a meaning or content capable of evolving, not one fixed once and for all, so as to make allowance for, among other things, developments in international law. In such instances it is indeed in order to respect the parties’ common intention at the time

⁶ Solan, pp. 95-96, 2012.

⁷ This is to prove the changing essence of wording and word meaning. From a socio-linguistic point of view, words and their meanings could change during the history. The creative use of language in the mind of its users leads them to change not just the way of saying an intention, but the meanings to define the idea or notion. Additionally, social changes and advances also help this process to be done in a very fast time limitation. One of the examples is the word “cool” in American English which has been used like “cold” for years but recently, is used with a connotative meaning like “interesting”. Therefore, if the IL lawyer of judge is not aware of these changes, it could result problematic situations between countries or parties of a treaty of convention. There are some cases in ICJ which show this problematic situation which had happened because of lack of accurate information between parties about all of semantic – pragmatic presumptions of a term.

and from sentence to text, discourse and utterance.

⁴ Arenas Salas, Luisa, 2011.

⁵ Linder Falk, P. 73, 2007.

the treaty was concluded, not to depart from it, that account should be taken of the meaning acquired by the terms in question upon each occasion on which the treaty is to be applied.⁸

This judgment of the ICJ by itself shows the importance of linguistic – pragmatic knowledge regarding the evolutionary dimensions of etymological meaning of the words. In ICJ statement there is a relation between evolutionary wording and development of international law. From a linguistic point of view, a generic word or term could be changeable during the history because there is no any specify meaning in the mind while mentioning it. That is why, when the ICJ is speaking about the generic nature of some terms in international law, we could consider it like a relation between language of international law and linguistic signs in ordinary language. The mentioned term, “commerce”, is not generated by international law but rather it has its own roots from social usage of language and that’s why when the parties try to use it, they should be aware of different grades of its meanings and usages. This is the space that should be called the link between semantics and pragmatics. From semantic viewpoint: the signify and signifier of commerce and its etymological meanings to the pragmatic one, that is to say, the usage and intentions of speakers while using it.

Ulf Linder Falk, in his discussion of linguistic reference, distinguishes singular referring expressions, which refer to one phenomenon (e.g. a celestial body), from general referring expressions, which refer to a group of phenomena (e.g. a special group of celestial bodies), and generic referring expressions, which refer to a class of phenomena (e.g. objects that qualify as celestial bodies).⁹ In the case of singular and general referring expressions, the referent can be either defined or undefined. If the referent is extensionally defined, the communicator has a specific phenomenon or group of phenomena in mind. If the referent is intentionally defined, the communicator does not have a specific phenomenon or group of phenomena in mind. In the case of generic referring expressions, the number of possible referents of a generic referring expression could be listed, if the list of referents that have these specific properties (e.g. to qualify a celestial body) is finite.¹⁰ For generic referring expressions,

8 Dispute regarding Navigational and Related Rights (Navigational Rights) (Costa Rica v. Nicaragua) Judgment [2009] ICJ Rep. at 64.

9 Linder Falk, pp. 76-77, 2007.

10 Ibid.

the question is whether or not the original communicator assumed that the class of the referent would stay the same or evolve. In the first case, the generic referring expression is defined, so the “referring possibilities” are constrained by the linguistic conventions applicable at the moment the treaty was concluded.¹¹ If all parties are aware about linguistic and pragmatic changes of some expressions which are the result of sociolinguistic impacts, surely they can have a better conclusion of their conventions. In this regard, what linguistics really do is not to present a new way of interpretation which could not be alterable but rather, it is expanding the parties or international law subjects knowledge about study of referents, signifies, signifiers, the possibility of implied meanings generated by any society, context and so forth, which is more indispensable for Farsi or any other language speakers apart from official languages of international law recognized by ICJ and UN organs. That is why it can be declared that linguistic studies and viewpoints could be important to justify the boundaries of knowledge and languages which are to be influenced by social changes of any society.

2. THE ROLE OF PRAGMATICS IN DECODING INTERNATIONAL LAW LANGUAGE; BASIC NOTIONS

In order to clarify the relation between pragmatics and interpretation of IL texts in international law, we should know first what is pragmatics? Recent studies show that pragmatics could be taken into account like the cognitive aspect of linguistics. As Clark states,¹² some modern approaches such as Relevance Theory are based on elements drawn from the cognitive sciences, while others eschew cognitive elements. These modern studies could prove that the boundaries between linguistics and pragmatics are to be defined far from previous studies. That is to say, the cognitive approach to the pragmatics and linguistic studies show a new horizon which is more complex that it has been during year by structuralism of Saussure.¹³

11 Ibid.

12 Clark, 2013.

13 When we are speaking about semantics, as it was shown before, we are speaking about the relation between referent, meaning, signify, signifier and everything that have to do with semasiology and onomasiology, that is to say, the word by word or literal meaning of the words and its relations with the reality. For instance, when we say “it is 4

Here, we are to present some basic notions of pragmatics in order to prove the links between this field of study and the process of production-conclusion texts in international law.¹⁴

Apparently, pragmatics was created by linguistics and today, is a part of cognitive sciences too. Traditionally, this field is considered like a subdiscipline of linguistics and it is classified in the next hierarchy: syntax is the study of grammar and its relation with linguistic signs. Semantics is concerned with meaning and the relationships between what we refer to and linguistic sign and finally, pragmatics, was concerned with linguistic signs and their users or communicators. Initially, pragmatics was concerned only with expressions of certain extra linguistic situational meaning, such as place and time, and was not an active field of research.¹⁵

Metaphorically speaking, pragmatics was once the waste-basket of linguistics.¹⁶

According to Zuffery & Moeschler¹⁷, in a communicative process between addressee and speaker, the addressee discern the intention of speaker and, by drawing on certain principles, makes inferences (the inferential model). In fact, this perspective is the one that invited cognitive theory into pragmatics. That is to say, the cognitive abilities and situations of the speaker and listener (addressee) are to be important in this point of view. The aspect which in terms of cognitive theories of Noam Chomsky and the other pragmatic theorists, depends on the “communicative competence” or “linguistic competence” of the receiver of the message.

o'clock” we are catching the referent “watch” calculating the real hour to the present in order to give information to the addressee and that is why we say in a semantically analyzed sentence, we can only recognize the links between the reality and “what we say”. But rather, in pragmatics, the approach is very longer and broader. In pragmatics, when we say “it is 4 o'clock”, the addressee should analyze lots of aspects in order to get the main intention of the speaker. “it is late”, “we should go faster”, “I have no time to arrive the university”, “If only we could go with each other”, “we have lost an appointment” and so forth. That is to say, the most important question in pragmatics to be answered is “what is the intention or what do you mean by this utterance?” while in semantics we speak about “what does it mean”. So these specific boundaries are going to be influenced by the new horizons of cognitive studies of utterance and pragmatics which have been started to change by Paul Grice and Sperber and Wilson Theories.

14 As Clennon (2010) says, pragmatics should not in any way be confused with legal pragmatism.

15 Reboul & Moeschler, 1998a: 26-27, quoting Morris, 1938.

16 Mey, 1993: 247, quoting Bar – Hillel.

17 Zuffery & Moeschler, 2012: 19.

Paul Grice is the person how apparently starts the new cognitive horizon of pragmatics. With the 1975 publication of *Logic and Conversation*¹⁸, this new dimension of pragmatics states to appear. The main idea of Grice in this aspect is concentrated in cooperation between speaker and addressee in addition to the recognition of speaker intentions by addressee. Grice introduced the distinction between a sentence and an utterance¹⁹. In linguistics and pragmatics, sentences and their meaning are context-independent and “sentence” refers to “information associated with that sentence according to the underlying linguistic system.”²⁰ Utterances and their meaning²¹ are context-dependent and refer to “the information associated with that utterance according to the intentions of the utterer.”²² According to Grice, a speaker or writer who utters intends the addressee or listener to recognize the intention behind utterance, and this recognition and comprehension of the message or intention is that produces the effect. With the presumption of writer or speaker to be logical or rational, the addressee get the information emitted by him and recognized the intention. This, per se, is what Grice call principles of cooperation which is under supervision of both speaker and addressee which involves 4 maximums: quality, quantity, manner and relation. Uttering – understanding a message according to this process have as a result conversational implicatures which is drawn by cooperation between communicators. We can evaluate the next example in this regard. If we ask our friends: “are you going to mathematic class?” and our friends answer: “We have an appointment just now!” we, supposing to be rational, believe that their answer have to do with my question. When we compare the time of the class with that appointment, we conclude that their answer is no.²³ The difference between linguistic information analysis and cognitive pragmatic analysis is included in the above example. Conversational implicatures of Grice are built on context – based hypothesis (situational, verbal and no verbal informations) and of course, linguistic encoding model would too many help in this case because as a matter of fact, intention of the speaker or writer is to be decoded and not the linguistic sign only. The Gricean Model of communication aligned pragmatics more closely with the

18 Grice, 1975.

19 Reboul & Moeschler, 1998a:50.

20 Linder Falk, 2007:30, quoting Blakemore, 1992:3-10.

21 Also called speaker meaning – Sperber & Wilson, 1995:21.

22 Linder Falk, 2007:30, quoting Blakemore, 1992:3-10.

23 Zuffery & Moeschler, 2012:106.

cognitive sciences²⁴ which intend to explain the way the human mind works²⁵ and the one that later was continued by the Relevance Theory of Sperber and Wilson; a new cognitive – linguistic theory that despite its closely relations with the Grice one, has its own characteristics in this regard.

In fact, the theory of Sperber and Wilson recognizes the existence of implicature and accepts that there is an inference process from addressees mind to understand what have been the real intention of the speaker to be said. The concentration of this theory in cognitive-pragmatic is in the content on one Grice maximum which is recognized like relevance or relation.²⁶

*“Utterances raise expectations of relevance, but [Relevance theorists] question several other aspects of his account, including the need for a Cooperative Principle and maxims, the focus on pragmatic contributions to implicit (as opposed to explicit) content, the role of maxim violation in utterance interpretation [...] The central claim of relevance theory is that the expectations of relevance raised by an utterance are precise and predictable enough to guide the hearer toward the speaker’s meaning. The aim is to explain in cognitively realistic terms what these expectations amount to, and how they might contribute to an empirically plausible account of comprehension.”*²⁷

Sperber and Wilson point out that there are more or less implicit – as well as nonverbal – forms of communication.²⁸ They argue that implicit communication is much more vague than explicit statements, and this vagueness is often intentional.²⁹ In their opinion, Relevance Theory can accommodate these cases because the speaker’s informative intention is to modify directly “not the thoughts but the cognitive environment of the audience”.³⁰ The theory of Sperber and Wilson is the one that create this believe that “thoughts cannot travel from one brain to the another” but they have to be understood and attributed under cognitive circumstances and situations, the terms which could refer indirectly to the context. In this regard, we should familiar first with a cognitive environment and its definition. Of course, it is somehow influenced by the “context” ideas of texts in international law but in a very stricto sensu

and from a cognitive viewpoint, the cognitive environment has its own characteristics which some of them are stated by Moeschler³¹: “manifest to an individual; that is, assumptions that are entertained as true or inferable” in the inferential process of verbal communication.³²

As he continuous, the interpretive or contextualizing process of formulating, confirming or infirming hypothesis generates new assumptions of strengthens, weakens or suppresses old assumptions.³³ The process as a whole, as Sperber and Wilson emphasize, is geared by the search for relevance, the more similar assumptions two people share, the greater the overlap between their cognitive environments and more likely the search for relevance will

31 Moeschler, 2009: 13-14.

32 We believe that language of international law could be influence by these aspects of cognitive – pragmatic views. As a matter of fact, the problem of interpretation of international law instruments and texts is not just a legal problem, but rather, it should be analyzed from different approaches some of which is linguistics and of course, pragmatic approaches. If we accept that the language of international law also is “a case of ordinary language”, so we are going to be able for start analyzing it by linguistic – pragmatic and cognitive means, especially because not all languages in the world are like English but languages like Farsi or Arabic are brutally different from English (phonetically, phonologically, syntactically, semantically and so forth) in this leads to a presumed preliminary difference between English speakers of international law and for example, Arabic speakers of international law. Of course, there are some conventions on arbitrary meanings which could reduce such important differences but it is not enough. While we have stable and object referent like sun=sol=شمس there is no any serious problem to understand the semantic meaning but when this word is used by some users in some specific cognitive environments, the thing is different for probably the speaker has a specific connotation in mind or a metaphoric usage of that word. It is just a very small example of linguistic – pragmatic differences between international law users and it leads, of course, to greater differences in getting ideas and meanings like words regarding special scientific branch, specialized languages, subjective notions and Etc. it is in this case that when the word “commerce” is used, in case of any dispute, the subjects of international law could have misunderstood the main denotation – connotation of such a word because they have not been aware of the real referents and meanings of it. Therefore, we should accept that such cases are more eminent to occur for the other non-English speakers and interlocutors of IL texts and instruments.

33 Moeschler, 2009: 13-14.

24 Ibid.

25 Reboul & Moeschler, 1998a:59.

26 Wilson & Sperber,2004: 607, emphasized added.

27 Horn, 2004: 22.

28 Sperber & Wilson, 1995: 59-60.

29 Ibid.

30 Ibid.

lead to successful communication.³⁴³⁵

It is shown that some international law scholars have confused or have not understand the true model of communication in international law or either, do not believe that also this discipline (international law) needs its own language and communicative model which has to be a bypass production (conclusion) – interpretation.³⁶ That is to say, without counting on ex-

34 When we take the IL language like an “ordinary language analyzed by linguistic – pragmatic and cognitive” processes and knowledge, we have taken this assumption in consideration that this language also is working like a communicative language which needs its own channels and ways to have a successful communication with the other lawyers, judges, organs and international law subjects. In this regard, the better cognitive awareness we have from the real world and subjects, the better conclusion of instruments and texts we have and therefore, the better interpretation we could have. An interpretive process which consists on linguistic – pragmatic and cognitive awareness and therefore, we accept that we have committed to interpret with rationality and justice. So, as a matter of fact, there is where we should state that “conclusion of a treaty, final act, convention, instrument and Etc. in international law, have lots to do with interpretation of it. When “any ordinary language” is influenced and changed by social and individual circumstances, the semantic evolution of contents is expected. That is to say, if we conclude a contract or a treaty today in English, which is going to be important in the hour of interpretation of that instrument, is the social circumstances of that language. However, in order to reduce the risks of misinterpretation (problems of historical language or contemporary language) both or multilateral parties could agree when concluding an instrument. That is to say, they agree in good faith if social circumstances of historical language is evoked when interpreted or the contemporary one. This method could reduce misunderstandings and disputes between parties, although some differences, like explained before, are arose because there is no any common – social language of international law created by own subjects but it is apparently agreed “English” to be the official language of international law. The matter that arises the next question: are all of the subjects of IL thinking, speaking, creating cognitive frames like the English native speakers do? If not, how can create a possible common sense – language and cognitive inference between subjects that have been grown with different ideas, ideologies, thoughts and so forth?

35 Sperber & Wilson, 1995:44.

36 As we discuss about it before, this process should be taken into account both from cognitive side of interpretation and pragmatic one. That is to say, if we expect true and good interpretation of instruments and texts in international law, we should have “constructive ostension” and if not, the process of communication is failed or there is going to show different interpretation from what we have expected. Therefore, in order to have a really true and understandable result, it should be taken into account that this process have to do with each other. There is no a good

pressly o explicitly true manifestation, there is no any true and realistic inference. In this aspect, Sperber and Wilson argue that all forms of communication involve two-fold intentional (ostensive-inferential) process.³⁷

The speaker must explicitly show a communicative intention (ostension) to communicate a particular piece of information to addressee, which the addressee then could or has to infer.³⁸ As Moeschler adds³⁹, if we use Relevance Theory to explain verbal communication, “the correct interpretation is a by – product of linguistic information, contextual premises and deductive processes.⁴⁰ In the words of Moeschler and Reboul,⁴¹ Relevance Theory does not consider semantic meaning to be peripheral to a cognitive pragmatic theory of meaning and interpretation in verbal communication, but “marries [...] decoding and inferential processes”. Sperber and Wilson believe that in process of communication between human being it is cognitive system which could first recognize the situation and after that, show the relevance between utterances. Therefore, the process of cognitive recognition exists in every communicative situation. It is worth noting that in this process, both addressee and speaker need information. In other words, the more cognitive effects or pieces of information available to the addressee, the greater the relevance of the utterance and vice versa.⁴²

Information is relevant if it has at least one positive cognitive effect in a given context – if it adds, modifies or deletes information.⁴³ From Relevance Theory is inferred that cognitive effects and cognitive processing can be naturally balanced internally: “a. follow the path of least effort in computing cognitive effects (...) b. stop when your expectations of relevance are satisfied (or abandoned).⁴⁴ In fact, this theory is looking for expansion of what we call cognitive model of interpretation of communication. Although we start with linguistic coding but the process of communication continuous

result without the starting point and vice versa. Especially when we are speaking about the communicative language of international law; a language which is supposed to be “normative” and “legal” and should settle the relations between international law organs, subjects and authorities.

37 Reboul & Moeschler, 1998a: 72.

38 Zuffery & Moeschler, 2012:108.

39 It is the case of verbal and non-verbal communication: “verbal communication proper begins when an utterance... Is manifestly chosen by the speaker for its semantic properties” (Sperber & Wilson, 1995:178).

40 Moeschler, 2009: 8.

41 Reboul & Moeschler, 1998a:63.

42 Zuffery & Moeschler, 2012:108.

43 Moeschler, 2009: 11.

44 Moeschler, 2009: 12-13 quoting Sperber & Wilson, 2004: 613.

with cognitive effects. It happens in IL communicative model and language too. When a provision in a treaty establishes a meaning or represent something according to our expectation, then we have experienced what we have cumulated in our minds before, something that is acceded from past experiences and it is realized when communicating in this language (language of international law).

Actually, the most important efforts of language pragmatic which has been started by Grice and then, Sperber and Wilson, could demonstrate that in a communicative model of language in international law we can count with some linguistic – cognitive factors to do a two sided process: 1 – production or conclusion an international law text and 2 – interpretation, perceiving or decoding the IL message. In other words, taking Relevance Theory and Gricean Model of Communication in consideration, we could see that messages and normative processes in international law should be emitted and understood having a cognitive environment which help us to understand the real intention of the parties. It is worth noting that according to the articles 31 and 32 of VCLT (Vienna Convention on the Law of Treaties) every treaty or instrument in international law has a “subject-matter”; that is to say, all of the parties have an aim to conclude a treaty or instrument which could prove the cognitive viewpoints to the interpretation of IL texts. In fact, the adhesion of RT (Relevance Theory) and cognitive achievements are to be useful in this specific aspect showing that every communicative (written or oral) situation is created in a cognitive environment and of course, to understand the real dimensions of that message, the readers and interpreters should take into account those coefficients.⁴⁵

45 As mentioned in previous sections, the study of implicature – explicature, intentional meaning, connotative – denotative meanings, cognitive relevance and so forth are aspects that have to do with every situational communicative model, whether IL oral or written text or ordinary usage of language. In most cases, people from all across the globe, differentiated by language and culture, try to understand each other in different situations. Taking in consideration a “Common Communicative Model of language” both orally and written especially for the language of IL could help them to better understanding – interpreting messages. In this regard, we can more familiarize with the linguistic – pragmatic – cognitive models of understanding – communicating in order to communicate with awareness and be understood and inferred more successfully, fulfilling with the language norms and rules. One of the most common examples of this successful “communicative model” could be avoiding to use vague or ambiguous words – terms in language of international law when concluding a treaty – convention. According to Gricean Model of

3. COGNITIVE ELEMENTS IN THE LANGUAGE OF INTERNATIONAL LAW; TRYING TO EXTRACT THE EXACT MEANING OF A/AN WORD-UTTERANCE

One of the most important issues regarding language of international law is if it is possible to translate-interpret judgments, treaties, conventions and awards in a word-by-word manner. All we know that there are many Non-English speaking countries and subjects of international law which should interpret the above texts by a firsthand translation. The empirical answer, as Marianne Lederer says, is clear: years of practice and observation of practice show that languages, however closely related, do not match in actual speech. This means that translating languages as heard, faultless though the translating might be, does not make sense.⁴⁶ In this sense, any translator or interpreter of language of international law could also count on cognitive complements as is acts of speech. As it was mentioned before, the linguistic – cognitive elements in a speech – communicative situations could help the reader or interlocutor of international law texts to better understanding. These types of cognitive elements are to be determined correctly in order to be able for transmitting the messages from one language to another one. As Lederer⁴⁷ argues in his article “Interpreting, Yesterday, Today and Tomorrow” there are some specific cognitive elements which have to be taken into account in this regard:

- A. The order of words
- B. Prepositions
- C. Number of words
- D. Verbal context
- E. Situational context
- F. Cognitive context
- G. Knowledge of the world or encyclopedic knowledge

A. The Order of Words

Probably some language users think that for translating a word from language A to language B there is no any need rather lexical correspondences from those languages to another one. That is to say, just

Communication, every utterance should be emitted under 4 maxims of cooperation between speaker – interlocutor and writer-addressee. If we take these principles and the other rules of language communication model in consideration, the risk of misunderstanding or misinterpretation reduces meaningfully because we have tried to transfer our ideas and thoughts in the best way; either explicitly or implicitly.

46 Lederer, 1990: 54.

47 Ibid.

semantic analysis and not else. Yet such phrases, although apparently constructed in a similar way, do not translate the same order of the words: ex aequo et bonno=ex=preposicion, aequo=sustantivo, et=preposicion, bonno=adjetivo while translating this formulaic expression into Farsi, for example, requires more connotative – cognitive information: ex: هب، زا، aequo: حالص و ریخ هب، بيوخ، et: و، bonno: ربارب، ناسکی

From word by word equivalence above is inferred that there is no any certain denotative meaning extracted from Latin expression used in international law language. It is, however, the world knowledge combined with knowledge of both languages which could help the reader – interpreter of international law texts and instruments that above Latin expression in Farsi is: دی دباوٹ و حالص لصا.

Although there is no any relation between lexical correspondences of both languages.⁴⁸

As Lederer states: “it is well known that syntax varies from language to language. It is less well known that interpreters (and translators alike) rely on their knowledge of the world to find the correct word order in their native tongue”.⁴⁹

B. Prepositions

The prepositional usage in language is an important aspect that sometimes we forget taking it in consideration. For instance, the usage of prepositions in French, Spanish or Farsi is not the same as it happens in the common language of IL which is English. *Compañía bajo control de extranjeros* in Spanish, for instance, is Foreign controlled companies in English or *یتکرش یم لرتنک ناگن اگیب مک* in Farsi. If the cognitive complement is undisguisable from understanding of the words, it could be noted that this type of translation or interpretation is successful. As a result, the links between words, lexical order and cognitive elements are indispensable for starting an interpretive process in any ordinary or specialized language one of which is international law.

C. Number of Words

Normally, all language users from different cultures and languages use not the same order or number of

48 Although there is convention about linguistic signs – lexical correspondences between subjects of international law in IL language, but it is not deniable that not all of international law users are English or French speakers. A really important issue which creates cognitive impacts between them. In this regard, interpreting an IL text without taking in consideration the cognitive-pragmatic aspects could really result in nonsense meaning, gap, vague and ambiguous expressions.

49 Lederer, 1990:55.

words to express themselves or it is rare. Just observe the next examples in different languages used by IL users – subjects:

Eng> this country is the second largest exporter of oil in the world

Spn> este país es el segundo exportador mundial de petróleo

Far> تیفن تارداص رد ار یناهج مود هاگیاج روشک نی ا دراد

As Lederer emphasizes⁵⁰, the word “largest” is explicit in English but implicit in Spanish and either, Farsi. The important thing is that sometimes the reverse case also happens; some concepts are implicit in Farsi but explicit in Spanish or English. Therefore, as it is observed, counting on literal – word by word meanings is not enough for knowing and interpreting the IL propositions – utterances but there is a very indispensable need for cognitive-pragmatic elements. Cognitive elements which according to Lederer, appear in next classification.

D. Verbal Context

Basically, the notion of “context” is one of the most important concepts in interpretation – conclusion of IL texts and instruments. If we accept that language of IL has its characteristics, we will accept that this language has its own peculiarities to be transmitted – interpreted by writers-addressees. The notion of context, which has been emphasized by international courts and it is also included in art. 31 of VCLT 1960 has a very complicated connotation to be understood because it has been argued in linguistics, pragmatics and cognitive science too. It is “Verbal Context” which could help us to choose the appropriate meaning of a word or phrase in its surrounded phrases. “Speeches are uttered in a continuous stream of words, each word contributing to the meaning of the words around it and being made more specific by these surrounding words”.⁵¹ That is why when we use words like “justice”, “convention”, “security”, “protection” and so forth in IL texts and instruments, in order to translate them into the target languages (Farsi, Spanish, Arabic and Etc.) we should recognize and consider the verbal context in which these words appear. If not, the systematic – social differences of languages could result in misinterpretation-misusage of those words.

E. Situational Context

International Law interpreters and lawyers are part of the IL language and have role to develop its bor-

50 Lederer, 1990: 56.

51 Ibid.

ders. If they are only readers and they do not know how to use this language, surely there is no any successful transmitting process. Awareness of situational context can help international lawyers and language users to decode the real linguistic signs – cognitive approaches of speeches and texts in this aspect. It is worth noting, as was mentioned before, art. 31 of VCLT would refer to all types of the contexts one of which is “situational” one. The supporting idea of this alleged statement is that there is no any specification of types of context included in that convention. It simply states: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”. Therefore, interpretation of a treaty or instrument in international law apart from object and purpose, needs “context”. But, what type of context is referred to? We believe that this type of context would be deciphered by interdisciplinary views: cognitive elements, linguistics and pragmatics.

F. Cognitive Context

It is also a very important step to recognize cognitive elements of speech, production and interpretation a text, utterance or instrument. Is there any possibility to interpret ICJ judgments without remembering the old practices, jurisprudence, judges or statements? The “cognitive context” is that one which connects all previously stated speeches, rhetoric and statements to the present information. As Lederer continues: “it is cognitive, since no longer bears a verbal shape, and contextual, since it stems from things said. It is the cumulative knowledge brought by the speech chain up to the point where the interpreter is translating”.⁵² In other words, after understanding the statement, utterance or text, the linguistic signs – semantic processes are substituted by cognitive frames or elements. That is why a reader, interpreter or lawyer of an international law treaty, instrument or text should not just have linguistic – legal knowledge, but he/she has to be aware of the real cognitive sense and relevance between what has been said before and what is to be said later and if not, there is no any evolutionary understanding – interpreting process for the Non – English (Non IL principal producers) because or they are just satisfied with linguistic – semantic meaning (word by word translation) or they are not aware of using different contexts (like cognitive one) to be able for decoding the right and correct connotation – intention of IL producers, judges and organizations which are the important ones in

this process.⁵³ This definition of context is really important for the subjects of IL and interlocutors of IL texts and instruments. As Lederer continuously stating this opinion about “Oral Interpretation Conferences”, comparing his words with the IL language when she says: “professional interpreters never interpret sentence by sentence; they prefer waiting for the speech to proceed and provide maximum information. They know that the proper meaning of words arises not only out of their language tenor but also out of cognitive context”.⁵⁴ We could evaluate more and more all sided contexts which have to do with IL treaties and instruments.

G. Knowledge of the World or Encyclopedic Knowledge

“Knowledge of the world exists independently of acts of speech. It is the entirety of what we know, whether through experience or through learning. Relevant parts of it are mobilized by the speech chain and contribute to understanding”.⁵⁵ The knowledge of the world is that one could help IL language users, organizations and subjects to interpret the real sense and what have been said in an instrument or convention. Interpreting – understanding some international events like Cold War, World War the II, War, Crime, Etc. the specialized user of language of IL understand that we are not speaking about “a war that have been occurred during a cold temperature!!” or by saying World War inferring “a war that all of the nations were in armed conflict with each other!!” but this is the encyclopedic knowledge that can help readers – interlocutors of IL to understand the specific meaning – intention of what has been said or what is going to be said or communicated both orally and written. “Native speakers are not aware of cognitive complements. Verbal, situational and cognitive contexts and knowledge of the world come into play quite naturally, while language alone seems to be present.”⁵⁶ For this reason is that we consist the issue that international lawyers and subjects have to know more things about “context” mentioned in art. 31 of the VCLT. Interpreting

53 If all IL language users were speaking in English or French, have the same cognitive knowledge from the entire world, have the same culture or viewpoints, surely there would not exist misinterpretations like what we see nowadays. That is because at the first step, we, IL language users, are from different backgrounds and cognitive experiences and this is a challenge especially for those who are not thinking – speaking like the IL principal users of language (English – French) in ICJ and some others in UNSC.

54 Lederer, 1990: 58.

55 Ibid.

56 Ibid.

52 Lederer, 1990: 57.

a IL text or instrument, like concluding them, requires an awareness of cognitive frames – complements of course, it is because we cannot translate languages on the basis of “Language or Language System” alone.⁵⁷ Insisting only in linguistic characteristic or signs in languages when speaking about IL language is not correct (the simple work could be done by machines of translation), beside this, concerning only in legal norms or absolute legal interpretation of that language is also incorrect. We believe that there should be a combination of “legal – linguistic – pragmatic and cognitive” combinations for writing well – understanding well – elaborating well and doing the best for achieving IL goals which according to the UN Charter, are summarized in justice, peace and security.

“Since languages differ in all respect, not only in sound structures, semantics or syntax, but also in the way speakers refer to ideas, facts and events, interpreters cannot proceed directly from one language to the other”.⁵⁸ This can be said in another words to. To conclude – speak – understand and interpret in IL language, an international lawyer, judge, organ or interpreter should take a look at both linguistic and extra linguistic (non – linguistic) knowledge. As Lederer states: “Only cognitive complements can explain fully the nature of interpreting and vindicate the interpreters’ assertion that understanding speech [intentions] goes further than understanding language”.⁵⁹ It is just like the relationship between semantics and pragmatics in linguistics. In order to get/ understand an idea, we start with linguistic signs and we conclude with pragmatics and cognitive features.

4. CONCLUDING REMARKS

This paper aimed to demonstrate that international lawyers, interpreters, judges and scholars could take linguistic – pragmatic studies in consideration both for: 1 – production or conclusion of a text in any nature and 2 – in order to decode, understand and interpret the right sense behind words and terms in language of international law. If we see the IL language like a “communicative model of language”, surely we will accept that this communicative – specialized model of language also has its own characteristics according to the aims – objectives of its users. The contents of articles 31 and 32 of the VCLT are acceptable, but there can realize the necessity of more criteria to

be able to interpret and conclude a treaty or instrument in international law because: 1 – not all languages of international law are spoken and written like English or French and 2 – present era has its own characteristics and requires to be understood according to and up to dated – evolutionary viewpoint: the study of cognitive aspects of language – human beings have developed since 1970 up to here and that’s why international law – international relations scholars have to take all scientific aspects of science in order to understand aims and intentions of each other.

In our opinion, as told before, understanding – interpreting the language of international law requires indispensably all linguistic – pragmatic knowledge to decode the right intention of international law subjects. For instance, when they are speaking about “combat with terrorism” or “human rights” an international lawyer or international law interlocutor have to take in consideration: 1 – all of the cognitive – pragmatic elements of the utterance to understand and interpret the correct meaning to be decoded, 2 – all of the linguistic steps of source languages of international law while not being an English or French speaker which have been used like most spoken languages of international law (ICJ, SC and some specialized organizations of IL) and 3 – all of the interpretive steps of understanding the denotative and then, connotative meanings of a utterance. For example, when speaking about necessity of protecting or keeping “peace and security” in the world, 1 – be familiarized with the literal or etymological meanings of the words “security and peace” in case of non-English speakers (linguistic – semantic phase) 2 – be familiarized with the conventional meanings of these words in international law (if there is any convention about their scope of meaning and denotation) (linguistic – semantic phase) and 3 – analyze whether it has been intended to utter the metaphoric meaning, alternative meaning or the strictu sensu meaning of the term (which is a pragmatic phase concerning about context – contextual meaning – the state of users and how – when – by who and to whom questions which could help the reader – interlocutor of IL language to be informed of what was intended to address when, for instance, one invader president utters: “we should keep international security”, activating our encyclopedic knowledge of the world, knowing situational, verbal and non-verbal contexts and passing from linguistic phase of translation – informed by linguistic signs to pragmatic – cognitive phases.

57 Ibid.

58 Lederer, 1990: 59.

59 Ibid.

BIBLIOGRAPHY:

English

1. A. Aust, *Modern Treaty Law and Practice*, p. 208, Cambridge University Press, Cambridge, 2013.
2. A. D. McNair, *the Law of Treaties*, p. 365 (Clarendon Press, Oxford, 1961).
3. B. Bix, *Legal Interpretation and the Philosophy of Language*, in P. Tiersma and L. Solan, *the Oxford Handbook of Language and Law*, p. 152, Oxford University Press.
4. Cf. B. Clarck, *Relevance Theory*, pp. 306-308 (Cambridge University Press, Cambridge, 2013).
5. D. Blackmore, *Understanding Utterances: Introduction to Pragmatics*, pp. 3 – 10 (Blackwell, Oxford, 1992).
6. D. Sperber and G. Origgi, *a Pragmatic Perspective on the Evolution of Language*, in D. Wilson and D. Sperber, 2012.
7. D. Wilson and D. Sperber, *Relevance Theory*, in Horn and Ward, *the Handbook of Pragmatics*, p. 611 (Blackwell, Malden, 2006).
8. D. Wilson, *Relevance Theory and Lexical Pragmatics*, p. 282, *Italian Journal of Linguistics*, 2003.
9. *Dispute Regarding Navigational and Related Rights (Costa Rica V Nicaragua)*, 13 July 2009, ICJ, Judgment, ICJ Reports 2009, p. 213, para. 48.
10. Dorr, p. 534, para. 25 and p. 535, para. 27, with special reference to the European Convention on Human Rights.
11. G. Nolte, *Treaties and Subsequent Practice*, Oxford University Press, Oxford, 2013.
12. H. Mattila, *Comparative Legal Linguistics*, pp. 72, 119-127 (Ashgate, Farnham, 2013).
13. J Smolka and B. Priker, *International Law and Pragmatics, an Account of Interpretation in International Law*, *International Journal of Language and Law*, 2016.
14. J. Mey, *How to Do Good Things with Words: a Social Pragmatics for Survival*, 1993.
15. J. Moeschler, *Is Pragmatics of Discourse Possible?* in A. Capone *Perspectives on Language, Use and Pragmatics. A Volume Memory of Sorin Stati*, p. 223 (Lincom Europa, Munich, 2010).
16. J. Moeschler, *Pragmatics, Propositional and Non Propositional Effects. Can a Theory of Utterance Interpretation Account for Emotions in Verbal Communication?* p. 452, 2009.
17. K. Mc Auliffe, *Language and Law in the European Union: The Multilingual Jurisprudence of the ECJ*, in Tiersma and L. Solan, *the Oxford Handbook of Language and Law*, 2012.
18. Lederer, Marianne, *The Role of Cognitive Complements in Interpreting*, American Translators Association, Volume IV, 1990.
19. L. Horn, *the Border Wars: a neo-Gricean perspective*, in K. von Heusinger and K. Turner, p. 21, Amsterdam, 2006.
20. M. freeman and F. Smith, *Law and Language: an Introduction*, in M. Freeman and F. Smith, 2013.
21. O Dorr, *Article 31*, in O. Dorr and K. Schmalenbach, p. 536 para. 29, *Vienna Convention on the Law of Treaties – A Commentary* (Springer, Berlin, 2012).
22. Priker, Benedikt and Smolka, Jennifer, *Making Interpretation More Explicit: International Law and Pragmatics*, *Nordic Journal of International Law*, pp. 1-43, 2017.
23. R. Bennett, *Constitutional Interpretation*, In L. Solan and P. Tiersma, p. 117, *Oxford Handbook of Language and Law*, Oxford University Press, 2012.
24. R. Carston, *Legal Texts and Canons of Construction: a View from Current Pragmatic Theory*, in M. Freeman and F. Smith, *Law and Language*, P. 8, Oxford University Press.
25. R. Carstron, *Relevance Theory and the Saying/ Implicating Distinction*, in L. Horn and G. Ward, *the Handbook of Pragmatics*, p. 636 (Blackwell, Malden, 2006).
26. R. Gardiner, *the Viennad Convention Rules on Treaty Interpretation*, in D. B. Hollis, p. 478, *the Oxford Guides to Treaties*, Oxford University Press, 2012.
27. R. Gardiner, *Treaty Interpretation*, p. 21, Oxford University Press, Oxford, 2010.
28. U. Linderfalk, *Is Treaty Interpretation and Art or Science?* *International Law and Rational Decision Making*, pp. 173 – 174, *European Journal of International Law*, 2015.
29. U. Linderfalk, *On the Interpretation of Treaties, the Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties*, p. 96 (Springer, Dordrecht, 2007).
30. U. Linderfalk, *The Functionality of Conceptual Terms in International Law and International Legal Discourse*, p. 33, *European Journal of Legal Studies*, 2013-2014.
31. Delisle, Jean, *Translation: and interpretive approach*. University of Ottawa Press, 1988 (in French, 1980).
32. Lederer, Marianne, "Simultaneous Interpretation Units of Meaning and other Features, Language Interpreta-

- tion and Communication. David Gerver and H. Wallace Sinaico, eds. New York: Plenum Press, 1978.
33. Seleskovitch, Danica, *Interpreting for International Conferences*, Washington D.C: Pen and Booth, 1978.

French

1. A. Reboul and J. Moeschler, *la Pragmatique aujourd'hui: Une Nouvelle Science de la Communication*, p. 59, Paris, 1998.
2. A. Reboul and J. Moeschler, *Pragmatique du Discours. De l'Interpretation de l'enonce a l'interpretation du Discours*, p. 17, 1998, Paris.
3. J. Moeschler and A. Auchlin, *Introduction a la Linguistique Contemporaine*, p. 178 (Armand Colin, Paris, 2009).
4. J. Moeschler and A. Reboul, *Dictionnaire Encyclopedique de Pragmatique*, pp. 124-125 (Seuil, Paris, 1994).
5. S. Zufferey and J. Moeschler, *Initiation a l'etude du sens*, P.108 (Sciences Humaines Editions, Auxerre, 2012).
6. Lederer, Marianne, *La traduction simultanee – experience et theorie*. Paris: Minard, 1981.
7. Seleskovitch, Danica and Lederer Marianne, *Interpreter pour Traduire*, Paris: Didier Erudition, 1984.
8. Seleskovitch, Danica and Marianne Lederer, *Pedagogie raisonnee de l'interpretation*, Luxembourg and Paris: Office des publications officielles des Communautes Europeennes et Didier Erudition, 1989.