INTERPRETATION OF PLURILINGUAL TREATIES: ON LANGUAGE AND LAW

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Author's Declaration

I, the undersigned Anastasiia Tarasova hereby declare that I am the sole author of this thesis. To the best of my knowledge this thesis contains no material previously published by any other person except where due acknowledgement has been made. This thesis contains no material which has been accepted as part of the requirements of any other academic degree or non-degree program, in English or in any other language.

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ABSTRACT

The proposed research addresses the issue of the interpretation of the plurilingual treaties. The major focus is on the study of the Article 33 of the Vienna Convention on the Law of Treaties (VCLT), in its part on the role of language (s) in the interpretation of plurilingual treaties. In particular, the challenges of a difference of meaning between / among the texts of a treaty authenticated in two or more languages are addressed.

The research aims at getting the insight into the interconnectedness of the language and the law domains, mainly whether interpretation rules under the Vienna Convention on the Law of Treaties (VCLT) provide the mechanism / algorithm for the interpretation of the plurilingual treaties and how the language / linguistic theory can facilitate the process of the interpretation by offering the meaning that best reconciles the texts of a treaty in several languages.

The research elaborates on the nature / character of the possible ambiguities / variations and means / ways of overcoming those ambiguities on the illustrative examples of the case studies from the State practice.

On the one hand, ambiguities may be caused by the pure nature or 'genius' of the language, e.g., divergencies in the meaning of a term, lack of equivalent or, so called lacunas between / among various languages. On the other hand, interpretation of plurilingual treaties goes far beyond the linguistic / semantics domain.

Analysis of the case studies has revealed that substantial elements in theory and practice of interpretation according to the international law on treaties appear to be:

1. The real / true will of the states / parties of international treaties.
2. The interest of States / parties laying behind the use of certain linguistic expressions.
3. The awareness of a lacuna arising out of a dissonance of different linguistic expressions.
4. The hidden 'agreement of the parties not to agree'.
5. The express use of this diplomatic formula to overcome different and not solvable views and interests at the given time.
6. It remains not easy to interpret the actual content of the dissent and thereby the extent of how far the treaty is legally binding for a specific party. Is it possible that a multilingual treaty establishes different obligations of the parties or is it the presumption of unity strong enough to unify these differences?

The methodology of the research is of qualitative character, employing componential analysis, textual and descriptive analysis of the texts of treaties in various languages, comparative analysis for finding out commonalities and differences among the texts / terms; case study analysis of the States' practice; qualitative analysis of the approaches, methods, and techniques of interpretation of the texts of the treaties authenticated in two or more authentic languages.

The case study research of the State practice of the interpretation of the plurilingual treaties is used to reveal / demonstrate the use of rules of interpretation of plurilingual treaties in part of Article 33 (4) of VCLT in practice.

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Quoting *M. A. Bulgakov*, I strongly believe that though '*We speak different languages, but as always, the essence of things we are talking about, does not change because of it'*.

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INTRODUCTION

Plurilingual treaties raise unique problems of interpretation. A significant issue in interpreting plurilingual treaties is posed by the fundamental differences between languages, e.g., peculiar nuances of meaning, varies in terminology, or even syntaxes. This research aims at exploring the interaction of language peculiarities and law, the impact of language on the meaning of the treaties and how the interpretation can be done to implement the provisions of the texts in different languages; what are the potential challenges that may arise in the process of interpretation of the plurilingual treaties, and the means by which legal concepts can be transferred or represented in other linguistic frameworks; if the provisions of the Vienna Convention on the Law of Treaties (1969) (VCLT)[1] provide the functional mechanism / algorithm for the interpretation of plurilingual treaties.

The major focus is in particular on the issue of the interpretation of the plurilingual treaties from the perspective of the provision under Article 33 (4) VCLT '… *when a comparison of the authentic texts discloses a difference of meaning which the application of article 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted'* [2]. Mainly, in our research we study the ambiguity caused by a term that may lead to the divergencies in understanding of the provisions of a treaty, e.g, when two or even more meanings of the provisions are possible, or when the equivalent of a term in other language is missing.

The study is twofold. As a starting point, the research suggests an insight into the theoretical issues of the interpretation of the plurilingual treaties from the perspective of international law and language theory / linguistics. The practical part deals with the analysis of case studies of the interpretation of plurilingual treaties revealing how theoretical provisions are applied in practice of reconciling the differences in the meaning of the treaties.

The Introductory part provides a general overview of the content / structure of the thesis and elaborates on the research design, e.g., methodology, research question, hypothesis, and research objective (s). Chapter I sets the scene for the study and outlines major challenges arising in the process of interpretation of the texts of a treaty authenticated in two or more languages. It is followed by Chapter II elucidating on the debates of international lawyers on the approaches to the interpretation of the plurilingual treaties and how these issues are presented in the academic scholarship.

Theoretical part (Chapter III) includes two subtopics. The first one outlines the major theoretical concepts of the treaty regime set by Article 33 (4) VCLT. The second subtopic provides insight into the domain of language theory. Mainly, in the limelight of the research appear to be componential analysis and theory of equivalence. Employing the theoretical framework outlined in Chapter III, Chapter IV presents the practical part with the analysis of the case studies. On the basis of the theoretical and practical parts of the work, Chapter V summarises the findings of the research and offers concluding remarks.

Research Design: Methodology and Research Question. The theoretical background of this research is represented by the works of distinguished scholars and specialists in the treaty of laws and the theory of language and translation studies. The analytical framework includes the provisions of the 1969

[1] Vienna Convention on the Law of Treaties 1969. P. 3 Available online at https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf Accessed on 03.01.2022
[2] Ibid., Article 33 Interpretation of treaties authenticated in two or more languages. p.13

Vienna Convention on the Law of Treaties on the interpretation of the plurilingual treaties, in particular under Article 33 (4); international treaties and the United Nations General Assembly Resolutions, as well as the judgements of the Courts. The research is based on qualitative methods. Textual analysis is employed to compare and contrast the meaning of the terms and provisions enshrined in the texts of the treaties in different languages. Componential and comparative analysis allows to reveal the commonalities / differences in the nuances of the meaning of the terms. Legal terms and definitions are consulted in the Max Planck Encyclopedia of Public International Law, monolingual and bilingual / translation dictionaries.

For the purposes of the research, the choice of case studies was based on a broad definition of the notion 'treaty' provided by the VCLT in Article 2 '*an international agreement concluded between States in written form and governed by international law, whether embodies in a single instrument or in two or more related instruments and whatever its particular designation'* [3]. The definition of treaty in Art. 2 (1) (a) VCLT includes only an international agreement which is 'in written form', thus excluding oral agreements for the reasons of clarity and simplicity. It is obvious that treaties which are not in writing but oral will pose many additional problems. According to general international law, oral treaties are also binding between states, and also the interpretation of the so called non-binding treaties like the Helsinki Rules or Accords (in English) which had a far reaching subsequent practice for the former Soviet Union block countries [4].

Some of the international agreements that do not fall under the narrow understanding category of treaty such as the Budapest Memorandum or The Four Power Agreement on Berlin were chosen for the case study analysis as well. As for the Budapest Memorandum, it is interesting to note, that it appears in the UN treaty system (UNTS). Ukraine registered it in 2014, presumably in the context of the occupation of Crimea.

As the case studies [5] will be covering the dispute between the US and the USSR regarding the Limitation of Strategic Offensive Arms (SALT II), which arose because of differences in phrasing between the English and Russian versions [6]; the Four Power Agreement on Berlin and the dispute between the United States and the former Soviet Union concerning the Status of Berlin and interpretation of the word '*Bindungen*' as '*ties*' – '*Teil*' or '*part*' of Federal Republic of Germany, or just maintaining '*communication*' and economic, cultural ties; Article 22 of the 1982 Law of the Sea Convention on the right of innocent passage, and the case of the odious Budapest memorandum 1994 [7] that was negotiated at political level, but it is not entirely clear whether the instrument is devoid entirely of legal provisions [8]. It refers to '*assurances*', but not to '*guarantees*', and it does not impose a legal obligation of military assistance on its parties [9].

[3] loc. cit. (note 1), p. 3

[4] Michael Wood, Daniel Purisch Helsinki Final Act 1975 in Max Planck Encyclopedia Public International Law V. 4. p. 787-791

[5] International Law in Historical Perspective. By J. H. W. Verzijl. Vol. VI: Juridical Facts as Sources of International Rights and Obligations. Vol. VII: State Succession. (Leiden: A. W. Sijthoff, 1973, 1974. Vol. VI, pp. x, 861. Index. Dfl. 120. Vol. VII, pp. vi, 378. Dfl. 76.)

[6] David A. Wirth Multilingual Treaty Interpretation and the Case of SALT II Available online at https://dashboard`.lira.bc.edu/downloads/2e7f6c26-780c-4d60-9b70-46006152213a Accessed 25.08.2022

[7] Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons. Available online at: https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280401fbb

[8] On assurances without guarantees in a "shelved document" by Volodymyr Vasylenko, 15 December 2009, available online at https://day.kyiv.ua/en/article/close/assurances-without-guarantees-shelved-document

[9] Are the US and the UK bound to intervene in Ukraine? By Thomas Hubert, France 24, 03 March 2014, available online at https://www.france24.com/en/20140303-ukraine-us-uk-diplomacy-russia-budapest-memorandum

According to the experts' opinion, '*It gives signatories justification if they take action, but it does not force anyone to act in Ukraine*' [10].

Research Question. This research intends to reveal, how to tackle discrepancies in plurilingual treaties. It asks whether the intersection of international legal and linguistic scholarship may offer fertile methods of reconciliation, of finding the 'best meaning' corresponding to the intention of the treaty drafters and being in harmony with the object and purpose of the treaty. It addresses options when ambiguities in meaning are the result of conflicting language versions of the treaty text and serve as the agreement not to agree. In the focus of the research are the cases caused by terminological divergence e.g., terms with different meanings in two languages or terms with more than one literal translation.

Hypothesis: For the differences in languages there might occur divergences or semantic loopholes. In some languages one and the same term may have several meanings, accordingly the text of a treaty in certain language may have several meanings, or a disputable meaning. In certain cases, differences in the meaning of the text in different languages, even upon the availability of an equivalent / correspondence, may show a hidden agreement of the parties not to agree, and these differences may be used in the negotiating process as a means of diplomacy to overcome a stale-mate. Accordingly, the reconciliation of the treaty provisions presupposes the dichotomy of language and law. 'Clear' meaning of the texts of a treaty represent the 'real' will of the states. Which is the basis of the agreement and also the amount of the agreement 'not to agree'.

Research objective is to reveal the unique character of individual languages and the relationship between language and law on the illustrative examples of the case studies of interpretation of the plurilingual treaties between countries. In particular, the focus of the analysis is on the cases related to the provisions of the Article 33 paragraph 4 in its part on '… *meaning which best reconciles the text, having regard to the object and purpose of the treaty'*[11]. This gives a chance to reveal the character of the ambiguities that may arise, illustrate the methods or approaches which are employed for the reconciliation.

The analysis is in part also related to the cases showing how discrepancies or ambiguities in language provide the space for the Sates to maneuver and serve as a tool of diplomacy, or so called 'hidden agreement of not to agree'. In some cases, differences between / among texts authentic in two or more languages lead to quite productive negotiations and reconciliation of the treaty, on the other hand, it may lead to the disagreements and breach of treaties even decades after its signing.

[10] Ukraine crisis' impact on nuclear weapons by Stephen Pifer, 4 March 2014, CNN, available online at https://edition.cnn.com/2014/03/04/opinion/pifer-ukraine-budapest-memorandum/

[11] loc.cit. (note 2), Article 33 Interpretation of treaties authenticated in two or more languages. P. 13

CHAPTER I. SETTING THE SCENE – IDENTIFICATION OF THE PROBLEMS

This Chapter in general outlines complex interaction between language and international law. As a starting point, it elaborates on the significance of the plurilingual treaties for intercultural and interstate communication. Further on, it sheds light on the major challenges posed by the plurilingual treaties that are ranging from linguistics to semantics. One of the major issues identified is a difference of meaning between / among the texts of a treaty authenticated in two or more languages. Ambiguities / discrepancies may be caused by the polysemy of the words / terms - their usual or contextual layers of meaning, as well as differences in cultural, legal, and language traditions that may lead to 'unreconcilable' divergences and 'cultural untranslatability'.

A very important bilingual treaty signed at the end of the WWI – the Treaty of Versailles – which for some was interpreted in terms of 'peace' and for the other as a 'dictate' sowing seeds of the WWII, has signified the beginning of the classical tradition / epoch of the plurilingual treaties. The Treaty of Versailles was drawn up both in English [12] and French [13] as two equally authentic languages. Before treaties were done in the *lingua franca* languages – Latin or French as the language of diplomacy [14]. In other cases, a so called *'master'* [15] language was chosen. With the advent of the United Nations (UN) and its multilingual policy of 6 (six) official languages employed in the UN meetings and drafting of all official UN documents, phenomenon of multilingualism / plurilingualism has become '*extremely common'* [16].

The Common European Framework of Reference for Languages (CEFR) distinguishes between plurilingualism and multilingualism [17]. Under multilingualism / multiculturalism languages and cultures coexist as **s**eparate and static entities of society. Meanwhile plurilingualism / pluriculturalism signifies dynamic use of multiple languages and cultural knowledge and /or experience in social situations, aims to capture the holistic nature of individual language users / learners linguistic and cultural repertoires [18].

The Draft Articles on the Law of Treaties with Commentaries 1966 also employ the term '*plurilingual*' [19]. In our research we follow the notion '*plurilingual*' as a more proper one, as while *'plurilingual in expression, the treaty remains a single treaty with a single set of terms'*[20].

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[12] Treaty of Versailles (1919). Jus Mundi. English Available at https://jusmundi.com/en/document/treaty/en-treaty-of-versailles-treaty-of-peace-with-germany-28th-june-1919-treaty-of-versailles-1919-saturday-28th-june-1919 ; Accessed on 12.03.2023

[13] Treaty of Versailles (1919). Jus Mundi. French. Available at https://jusmundi.com/en/document/treaty/fr-traite-de-versailles-traite-de-paix-avec-lallemagne-28-juin-1919-traite-de-versailles-1919-saturday-28th-june-1919?pdf=true; Accessed on 12.03.2023

[14] Dinah Shelton Reconcilable Differences - The Interpretation of Multilingual Treaties, 20 Hastings Int'l & Comp. L. Rev. 611 (1997). Available at: https://repository.uchastings.edu/hastings_international_comparative_law_review/vol20/iss3/8 Accessed on 25.08.2022

[15] Draft Articles on the Law of Treaties with Commentaries 1966. Available online at https://legal.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf Accessed on 25.08.2022

[16] Ibid., p. 224

[17] Plurilingualism and pluriculturalism. Common European Framework of Reference for Languages (CEFR), Council of Europe. Available online at https://www.coe.int/en/web/common-european-framework-reference-languages/plurilingualism-and-pluriculturalism#:~:text=Plurilingualism%2Fpluriculturalism%20stresses%20the%20dynamic,or%20experience%20in%20social%20situations Accessed on 05.03.2023

[18] Ibid.

[19] loc.cit. (note 15)

[20] loc.cit (note 15), p. 225

It is increasingly presupposed that plurilingual treaties enhance trust and equality, same conditions between countries [21]. As noted by the Special Rapporteur on the Law of Treaties, Sir Humphrey Waldock, '*neither State wishes to recognize the supremacy of the other's language'* [22]. This way language is considered as a symbol of State's sovereignty. Accordingly, treaties and various international agreements embody both national as well as language sovereignty. An example is the European Union (EU), where the language of every member-state is equally accepted which amounts to a huge translation service in the publication center, while in the Council of Europe (Strasbourg) only English and French are accepted as working languages.

International law serves as a platform for establishing and maintaining dialogue between / among different legal traditions and languages reflecting the peculiarities of various cultures, societies, and mentalities shaping the diverse, paraphrasing Martin Heidegger [23], '*linguistic* and *legal picture of the world / world view'* [German original: '*Weltbild*' [24]], that more reminds a lacework. There is in fact no single construct of legal notions / concepts even if in different countries the same language is used. In this regard, Professor I. S. Pereterskyi stated that, *'Legal notions of certain legal orders do not coincide even at the seeming equality of a word, for example, 'Divorce' in German: 'Scheidung' - is the term used for 'divorce' in Germany, while in Austrian law the end of marriage union is called 'Trennung'* [25].

Complex interaction between languages and international law has frequently resulted in '*an inability to know how to clearly express the conventions and treaties of princes'* [26] that led to a number of diplomatic incidents and even wars [27]. Following *Michel De Montaigne's* saying '*Most of the instances of the world's troubles are grammatical'* [28]. In linguistic and legal

[21] Multilingualism in International Law and Institutions. By Mala Tabory [Alphen aan den Rijn: Sijthoff and Noordhoff, 1980; Hernandez, Gleider I. 'On multilingualism and the international legal process', in Select proceedings of the European Society of International Law. Oxford: Hart Publishing, 2010, pp. 441-460. Available online at https://dro.dur.ac.uk/8296/1/8296.pdf?DDC71+DDD19 Accessed on 03.01.2023

[22] loc.cit (note 15), p. 224

[23] Martin Heidegger and Marjorie Grene. The Age of the World View. Source: boundary 2 , Winter, 1976, Vol. 4, No. 2, Martin Heidegger and Literature (Winter, 1976), pp. 340-355 Available online at https://www.jstor.org/stable/pdf/302139.pdf Accessed on 15.03.2023. Original: Die Zeit des Weltbildes in Martin Heidegger in Holzwege. Available online at https://heidegger.ru/wp-content/uploads/2019/11/5-Holzwege.pdf pp.75-113 ; **Martin Heidegger suggests that, instead of seeing language as a tool on hand for designating an independently existing world of objects, we think of it as primarily the medium through which the world is 'made manifest' to us'*. In The Interpretative Turn. Philosophy, Science, Culture. Edited by David R. Hiley, James F. Bohman, and Richard Shusterman. Cornell University Press. Ithaca and London. P. 99; '*…each language is a vision of the world that catches another world in its net, that performs a world…'* by Wilhelm von Humboldt in Dictionary of Untranslatables. A philosophical Lexicon. Edited by Barbara Cassin. Princeton University Press. 2004.Intoduction. p. XIX.

[24] '*The Age of the World Picture*' or '*The Age of the World View'* (German: *Die Zeit des Weltbildes*)

[25] Pereterskii I.S. Interpretation of International treaties / Edit. S.B. Krylov, G.I. Tunkin. — M., Gosiurizdat, 1959. Перетерский И.С. Толкование международных договоров / Отв. ред. С.Б. Крылов, Г.И. Тункин. — М.: Госюриздат, 1959 ; Jacques Lacan with regards to the multiplicity in the meanings of a word in a given language says, '*A language is, among other possibilities, nothing but the sum of the ambiguities that its history has allowed to persist'.* in Dictionary of Untranslatables. A philosophical Lexicon. Edited by Barbara Cassin. Princeton University Press. 2004.Intoduction. p. XIX.

[26] loc. cit. (note 14), p. 619.

[27] Kuner CB (1991) "The Interpretation of Multilingual Treaties: Comparison of Texts versus the Presumption of Similar Meaning" 40 ICLQ 950 The International and Comparative Law Quarterly , Oct., 1991, Vol. 40, No. 4 (Oct., 1991), pp. 953-964, p. 953 Available online at https://www.jstor.org/stable/pdf/759965.pdf?refreqid=excelsior%3A95fc198ebd2461e0578e1da06f404ffc&ab_segments=&origin=&acceptTC=1 Accessed on 04.01.2023

[28] loc. cit. (note 14), p. 619

academic scholarship, language in this regard is often considered as 'not being 'innocent', but as an instrument of power [29].

Emer de Vattel illustrates the power of language and its 'master' giving the meaning to words by the following historical illustrative examples: '*Mahomet, emperor of the Turks, at the taking of Negropont having promised a man 'to spare his head', caused him to be cut in two through the middle of the body. Tamerlane, after having engaged the city of Sebastia to capitulate, under his promise of 'shedding no blood' caused all the soldiers of the garrison to be buried alive'* [30].

In cases illustrated by Emer de Vattel, meaning of words was interpreted literally, '*grammatically*' not according to their contextual meaning. The fact that words might have several layers of meaning – usual (dictionary) and occasional (contextual) allows to play '*word games'*. Phenomenon of the coexistence of some / many possible meanings for a word or phrase – polysemy is a result of the nature / genius of a language. Polysemy may lead to ambiguities in the meaning of the treaty, and each party of the treaty may understand the term and provisions in their own manner. Accordingly, this leads to divergencies of various extent in the understanding of the content of a treaty by parties.

'*To spare the head of anyone'*, and '*to shed no blood'*, are expressions which imply '*to spare the lives of the parties'* [31]. In these particular cases, people were killed, lives were taken. The *'master'* this way determined which content the words carry. However, interpretation rule as emphasized by *Emer de Vattel*, forbids us to wrest the sense of the words contrary to the evident intention of the contracting parties [32]. At this very point, interpretation becomes of fundamental importance in order to *'release [degager]'* the exact meaning [33]. Ingo Venzke calls this process *'semantic struggles'* [34].

'The plurality of the authentic texts of a treaty is always a material factor in its interpretation, and few plurilingual treaties containing more than one or two articles are without some discrepancy between the texts' [35]. Plurilingual t*exts drafted to govern different legal traditions and systems in their turn may pose 'unreconcilable' challenges:*

- lack of *precise equivalents / correspondences in other languages':* the term '*droit subjectif*' has no equivalent in English; administrative law does not mean the same thing in civil law countries as it does in common law systems;
- so called '*cultural untranslatability*'; e.g. terms like '*Rechtsstaat*' or '*common law'* rooted in the political and legal history of a particular country;
- terminology may be used that has particular meaning or definition in the legislation of each country;

[29] Edward W. Said The Problem of Textuality: Two Exemplary Positions Critical Inquiry , Summer, 1978, Vol. 4, No. 4 (Summer, 1978), pp. 673-714 https://www.jstor.org/stable/pdf/1342951.pdf?refreqid=excelsior%3A9531630bd957de6c2e09e1b4cbf39bc7&ab_segments=&origin=&acceptTC=1

[30] Emer De Vattel The Law of Nations; or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns. 6th American Edition, 1844. p. 229. Library of Congress. https://www.loc.gov/item/10017158/; Available at https://tile.loc.gov/storage-services/service/ll/llmlp/DeVattel_LawOfNations/DeVattel_LawOfNations.pdf Accessed on 25.08.2022

[31] Ibid., p. 249

[32] Ibid., p. 251

[33] Venzke, Ingo The Practice of Interpretation: A Theoretical Perspective 2012 Available online at https://doi.org/10.1093/acprof:oso/9780199657674.003.0002 Accessed on 25.08.2022

[34] Ibid.

[35] loc.cit, (note 15), p. 225

- another problem flows from the natural tendency to use the same word in several languages, although the meaning of the word differs considerable from one language to the other – the so called *faux amis'* [36].

The range of challenges varies from syntaxes and linguistics to the provisions and application of the treaty in full or limited capacity. At the same time, '… *the existence of authentic texts in two or more languages sometimes complicates and sometimes facilitates the interpretation of a treaty'*.[37] On the one hand, *'the plurality of the texts may be a serious additional source of ambiguity or obscurity in the terms of the treaty. On the other hand, when the meaning of terms is ambiguous or obscure in one language but it is clear and convincing as to the intentions of the parties in another, the plurilingual character of the treaty facilitates interpretation of the text the meaning of which is doubtful'* [38].

One of the well-known cases related to the ambiguities in syntaxes refers to the article 6 of the Nuremberg Charter, 1945 [39]. It lists the crimes falling under the jurisdiction of the International Military Tribunal which included crimes against peace and war crimes and two groups of crimes against humanity:

> *Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war;* or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the tribunal, whether or not in violation of the domestic law of the country where perpetrated* [40].

Originally, the semi colon between the phrase '*the war'* and the phrase '*or persecutions'* (marked with an asterisk) instead of the comma now appearing in that place was in English and French texts, but in the equally authentic Russian text was a comma instead. On the one hand, a semi-colon is justified as separates two groups of crimes – *'persecutions'* and '*inhumane acts'*. However, given that the sentence is complex and there is also a clause about irrelevance of the domestic law, it is necessary to link both parts of the sentence. Otherwise, the Tribunal would have jurisdiction only over the specified inhumane acts, and not those against peace or war crimes. Therefore, a semicolon was changed by comma also in the English text and brought in line with the Russian version. The change has a consequence that the phrase '*in execution of or in connection with any crime within the jurisdiction of the Tribunal*' now refers to the whole preceding text of article 6 (c) [41].

Besides, syntaxes, another classical example which is often referred to and can brightly illustrate the significance of the semantic discrepancies and the power of language for the legal domain is the case of the United Nations Security Council Resolution 242 (S/RES/242)

[36] loc. cit. (note 14), p. 619 - 620
[37] loc. cit. (note 15), p. 225
[38] loc.cit. (note 15), p. 225
[39] Document: - A/CN.4/5 The Charter and Judgment of the Nürnberg Tribunal – History and Analysis: Memorandum submitted by the Secretary-General Topic: Formulation of the Nürnberg Principles pp. 65-66, Available at https://legal.un.org/ilc/documentation/english/a_cn4_5.pdf Accessed on 12.03.2023
[40] United Kingdom of Great Britain and Northern Ireland, United States of America, France, Union of Soviet Socialist Republics. Agreement for the prosecution and punishment of the major war criminals of the European Axis. Signed at London, on 8 August 1945. Official texts: English, French & Russian. P. 288. Available at https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf Accessed on 12.03.2023
[41] loc. cit. (note 39), p. 65-66

(1967)[42]. Security Council Resolution 242 was adopted on November 22, 1967 [43] in the aftermath of the Six Day War Or June War fought between Israel and a coalition of Arab States (Egypt, Syria, Jordan) from the 5th to the 10th of June 1967. The resolution was drafted by British Ambassador Lord Caradon and was one of the five drafts under consideration.
The semantic dispute arose in relation to the following phrase:

> In English *'Withdrawal of Israeli armed forces* ***from territories occupied*** *in the recent conflict.'*

In a nutshell, the semantic argument is about whether Israel's obligations under the resolution include the requirement that the armed forces withdraw from all the territories occupied in the 1967 or whether these obligations could be satisfied by the withdrawal from part of the territories. In English text there is no definite article, while in the authentic French version there is the definite article which may imply the meaning – '*all*' / '*entire*' the territories.

> The French version of the clause reads*:'Retrait des forces armées israéliennes des territoires occupés lors du recent conflit'.* [44]

This case might be illustrative for a possible peace treaty scenario or a separate UN Resolution if such to be produced in the future with regards to the withdrawal of troops from occupied territories by Russian Federation in Ukraine. Which exactly territories will be at stake for withdrawal of Russian troops: occupied upon the full scale aggression as of 24th February 2022 or those areas in 2014 including annexed Crimea and some territories in Donbas and Luhansk oblasts, e.g., the territories of Ukraine according to its borders as of 1991 upon the dissolution of the Soviet Union.

With regard to the abovementioned, plurilinguism presents a unique set of challenges for the interpretation of the treaties: '*The different genius of the languages, the absence of a complete consensus ad idem, or lack of sufficient time to co-ordinate the texts may result in minor or even major discrepancies in the meaning of the texts'* [45]. Therefore, we have a paradox, especially when considering also situations in which parties may use non- /intentionally the discrepancies in language as diplomatic tools, for achieving their goals. While factually international treaties are concluded in order to clarify legal positions and improve relations between states, on many occasions, treaties fail to perform this task or even worse they may in fact, pose dangers to peace and stability of the international order, exacerbate the interaction between States and lead to unconceivable consequences for the parties of the treaty and the whole international community.

The abovementioned examples vividly illustrate the power of language and the way it may impact the scope and provisions of the treaty. Despite the abundance of academic literature dealing with the issue of the interpretation of the treaties, relationship between language and international law has rarely formed the separate sole subject of a thorough study, but predominantly was referred *inter alia* upon the study of the whole set regime of interpretation of treaties set in the 1969 Vienna Convention on the Law of Treaties (VCLT) [46].

[42] Israel, Occupied Territories by Benjamin Rubin. In Max Planck Encyclopedia of public International Law. Volume VI. Online.
[43] Resolution 242 (1967) of 22 November 1967 Available online at https://peacemaker.un.org/sites/peacemaker.un.org/files/SCRes242%281967%29.pdf Accessed on 25.08.2022
[44] Rosenne, Shabtai: On Multilingual Interpretation, Israel Law review 6 (1971), pp. 360-366., p. 360
[45] loc.cit (note 15), p. 225
[46] loc. cit. (note 1) Vienna Convention on the Law of Treaties 1969 Available online at https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf Accessed on 03.01.2022

CHAPTER II. LITERATURE REVIEW: HOW INTERNATIONAL LAWYERS ADDRESS / ED THE THEORETICAL PROBLEMS

As mentioned in the previous Chapter, despite the proliferation of academic literature on treaty interpretation, the volume of material dealing with the specific issues posed by plurilingual treaties is fairly manageable. Issues related to the interpretation of the plurilingual treaties were mainly considered *inter alia* the study of the general rule of interpretation. It is also to a big extent connected to the fact that the first clause of the Article 33 (4) refers to the general rule of interpretation enshrined under Articles 31 and 32 VCLT. This Chapter addresses the academic debates and approaches employed / developed by the international lawyers in tackling the interpretation of the plurilingual treaties.

Some of the general principles or approaches applicable to the interpretation of the plurilingual treaties can already be found / traced in *Hugo Grotius' On the Law of War and Peace* [47]. *Law of Nations* by *Emer de Vattel* [48] was of particular importance for the International Law Commission (ILC) and its law policy in terms of interpretation of treaties. With the adoption of the VCLT, as the major source of guidance in terms of interpretation of the plurilingual treaties, reference is done to the Commentaries on the Draft Articles on the Law of Treaties [49]. There are comments also devoted separately to the article 33 by *Peter Germer* and *Oliver Dörr* [50].

Among the scholars who refer to the issues of the interpretation of the plurilingual treaties to be named, *Meinhard Hilf* [51], *Mala Tabory*, *Gleider I. Hernandez* [52], scarcely or with the focus on certain aspect of this problem are the following: *Alexander Orakhelashvili* [53] elaborates on the issue of interpretation of the plurilingual treaties inter alia in part dealing with ambiguities and general principles / approaches to interpretation as well as referring to various case studies. *Christopher Kuner* [54] raises the question if the texts in various languages should be compared or not in terms of the presumption of the equality of the texts. *Richard K Gardiner* [55] writes a separate chapter devoted to the issue of the reconciliation of the treaties on the illustrative

[47] Hugo Grotius *On the Law of War and Peace* (*De jure belli ac pacis libri tres*). Bood 2. Chapter 16. On Interpretation. pp. 268-281 Available online at https://socialsciences.mcmaster.ca/econ/ugcm/3ll3/grotius/Law2.pdf; https://lonang.com/wp-content/download/Grotius-LawOfWarAndPeace.pdf Accessed on 25.08.2022

[48] loc.cit. (note 30)

[49] loc.cit. (note 15)

[50] Peter Germer Interpretation of Plurilingual Treaties: A Study of Article 33 of the Vienna Convention on the Law of Treaties. 1970. P. 402 Available online at https://heinonline.org/HOL/Page?handle=hein.journals/hilj11&div=18&g_sent=1&casa_token=&collection=journals Accessed on 04.01.2023; Oliver Dörr Article 33 In Vienna Convention on the Law of Treaties (pp.635-651) p. 636. Available online at https://www.researchgate.net/publication/322502429_Article_33 Accessed on 03.01.2023

[51] Meinhard Hilf *Die Auslegung mehrsprachiger Verträge. Eine Untersuchung zum Völkerrecht und zum Staatsrecht der Bundesrepublik Deutschland*. Springer -Verlag Berlin Heidelberg New York. Max Planck Institut für ausländisches öffentliches Recht und Völkerrecht. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht. Begründet von Viktor Bruns. Herausgegeben von Hermann Mosler. Rudolf Bernhardt. Bandt 61, 1973.

[52] loc.cit. (note 21)

[53] Alexander Orakhelashvili The Interpretation of Acts and Rules in Public International Law Oxford University Press. 2008

[54] loc.cit. (note 27)

[55] Richard K Gardiner Treaty Interpretation Oxford University Press 2008.

examples of the case law. *Ingo Venzke* [56] elaborates on the correlation of semantics and norm on the example of the study of the UNCHR statute. There are separate studies of interpretation of plurilingual treaties in specific domains of law: investment [57] and tax [58] plurilingual treaties. But all of them elaborate on the general theoretical principles and also refer to the case law without offering any operation, or working mechanism for facilitating the issue with the ambiguities, or possible divergencies among / between texts authorized in two or more languages.

Some of the useful / helpful / practical articles in terms of the developing of an operational mechanism for the interpretation of the plurilingual treaties in cases of ambiguities are offered by professor William J. *Aceves* A Case Study of Article 22 of the 1982 Law of the Sea Convention [59] and *David A. Wirth* Multilingual Treaty Interpretation and the Case of SALTII[60]. In their articles they study cases of the interpretation of the plurilingual treaties, that would be employed in the analytical Chapter V of the current research.

As has been mentioned, one of the major scholar disputes since the times of *Hugo Grotius* and *Emer de Vattel* is about the approach /-es or the unified system rules of the interpretation rules. However, none of the scholars managed till nowadays '*to prescribe system of rules of interpretation for cases of ambiguity in written language that will really avail to guide the mind in the decision of doubt*' [61].

Applicable for the task of our research and to the interpretation of the plurilingual treaties as a whole may serve the following statements and recommendations by the scholars. *Hugo Grotius* warns against literarily grammatical interpretation and urges to understand the words in their natural meaning in order to avoid injustice or absurdity [62]. Speaking about ambiguities, author refers to the presumption that '*no one could at the same time have had contradictory desires'* and in cases when the words or sentences are interpreted *in different ways, 'that is, admit of several meanings', it is necessary to resort to conjectures'* [63]. As indicated by author, Greek rhetoricians call this topic '*concerning the word and the meaning'*; and the Latins call it '*of the written word and the meaning of the word*. [64]' *Hugo Grotius* illustrates the situation when ambiguities arise in understanding the meaning of the treaty on the example of conquering of *Carthage, which shall be free – to whom it refers to citizens or city?* [65]

[56] Ingo Venzke How Interpretation Makes International Law. On Semantic Change and Normative Twists. Oxford University Press. 2012.
[57] Tarcisio Gazzini Interpretation of International Investment treaties Bloombury. Oxfrod and Portland, Oregon. 2016.
[58] Richard Xenophon Resch The Interpretation of Plurilingual Tax Treaties: theory, practice, policy Doctoral Dissertation submitted to Leiden Law School October 2018. https://www.academia.edu/37978364/The_Interpretation_of_Plurilingual_Tax_Treaties_Theory_Practice_Policy
[59] W. Aceves Ambiguities in plurilingual treaties: A case study of article 22 of the 1982 law of the sea convention. 1996 Available at https://www.semanticscholar.org/paper/Ambiguities-in-plurilingual-treaties%3A-A-case-study-Aceves/38fc7296be07df54cd6d57bc48b560114aada9b9 Accessed on 25.08.2022
[60] loc.cit. (note 6)
[61] Article 19. Interpretation of Treaties Source: The American Journal of International Law , 1935, Vol. 29, Supplement: Research in International Law (1935), pp. 937-977. P. 939. Published by: Cambridge University Press Stable URL: https://www.jstor.org/stable/2213686
[62] loc. cit. (note 47)., p.271
[63] loc. cit. (note 47)., p. 269
[64] loc. cit. (note 47)., p. 269
[65] loc. cit. (note 47)., p. 273

In this regard, in contemporarily Anglo Saxon tradition they normally speak about patent / latent – on the surface, obvious from the language employed in a treaty or intrinsic / extrinsic ambiguity – hidden, language of a treaty seems clear at the first glance, but contains ambiguity in light of the extrinsic evidence that suggests more than one way of interpretation.

One of the classical or so called 'chrestomathy' legal cases relating to the latent ambiguity is the case Raffles v Wichelhaus (1864) [66] from the contract law. This case deals with the selling of the cotton that should have been delivered to Liverpool by a ship 'Peerless' from Bombay, India. At first glance, all the conditions were clear and no interpretation was needed. However, as the execution of the contract started, problem arose. There were two ships that had this name and left the port in different period – one in in October, another in December. The complainant and the defendant were both thinking about a different Peerless ship and accordingly different times / periods of the delivery of the goods. This way, though on the paper the terms of the contract were clear, upon the practice, divergencies in understanding arose.

It is interesting that in German legal tradition there is even a term for how recipients / parties of a treaty / contract understand the provisions especially ambiguous – horizon of a recipient / horizon of understanding / perception *Empfängerhorizont* [67] *– 'as understood by the recipient'*.

Hugo Grotius states that '*in agreements that are not odious the words should be taken with their full meaning according to current usage'*; and, '*if there are several meanings, that which is broadest should be chosen* [68]. Meanwhile previous courts' practice demonstrated though tendency to stick to the restrictive interpretation this way trying to harmonize or reconciliate the terms / texts in different languages. Referring to the issue if any of the texts or languages in the interpretation should prevail – *whether the words of the one who accepts the condition, or the words of the one who offers it, ought to carry greater weight* [69] *– the major concern is that words of promise should be 'complete and perfect'* which is quite challenging to provide, especially with the passing of time. For example, speaking about contemporality, a notable question is, whether under the term *'allies'* only those are included who were allies at the time of a treaty, or also future allies.

In his work 'Law of Nations', *Emer de Vattel* underlining the connection of thought / idea, word, and law, states: '*If the ideas of men were always, distinct and perfectly determinate, if, for the expression of those ideas, they had none but proper words, no terms but such as were clear, precise, and susceptible only of, one sense, there would never be any difficulty in discovering their meaning in the words by which they intended to express it: nothing more would be necessary, than to understand the language*' [70]. However, *'in concessions, conventions, and treaties, in all contracts, as well as in the laws, it is impossible to foresee and point out all the particular cases that may arise'* [71].

[66] A. W. Brian Simpson The Beauty of Obscurity: Raffles v. Wichelhaus and Busch (1864). Oxford Academic. 1996, pp. 135–162 Available online at https://doi.org/10.1093/acprof:oso/9780198262992.003.0006 Accessed on 01.04.2023

[67] Willenserklärung (Auslegung, Empfängerhorizont) http://www.jura-basic.de/recht/?t_585#:~:text=Da%20eine%20empfangsbed%C3%BCrftige%20Willenserkl%C3%A4rung%20erst,Empf%C3%A4ngerhorizont). *Most likely term refers to the philosophical study by Hans-Georg Gadamer who considered language as the universal horizon of hermeneutic experience.

[68] loc. cit. (note 47)., p. 271

[69] loc. cit. (note 47)., p. 281

[70] loc. cit. (note 30), pp. 243-244.

[71] loc. cit. (note 30), p. 244

The scholar admits that '*there is not perhaps any language that does not also contain words which signify two or more different things, and phrases which are, susceptible of more than one sense'* and as a guideline for interpreter should be '*clear up any doubt'* in view of the object and purpose of the treaty [72]. *'The consideration of the reason of a law or promise not only serves to explain the obscure or ambiguous expressions. which. occur in the piece, but also to extend or restrict its several provisions independently of the expressions, and in conformity to the intention and views of the legislature or the contracting parties, rather than to their words'*[73].

Emer de Vattel also pointed to the issue of contemporality and indicated that given the fact that languages incessantly vary, the signification and force of words changes also with time. '*Every deed*, therefore, *and every treaty, must be interpreted by certain fixed rules calculated to determine its meaning, as naturally understood by the parties concerned at the time when the deed was drawn up and acc*epted' [74].

In total, *both, Emer de Vatell* as well as *Hugo Grotius* warns against abusive interpretations and stays on the position of the common use of the language, as *'words are only designed to express the thoughts'* [75].

Rules or principles of a common meaning and the purpose of a treaty have been employed in further 'codification initiatives' [76] that pre-date the drafting of the VCLT that deserve attention. For example, Article 19 (b) of the Harvard Draft Convention on the Law of Treaties[77] in terms of the text of a treaty embodies in different languages, states the following:

> *When the text of a treaty is embodied in versions in different languages, and when it is not stipulated that the version in one of the languages shall prevail, the treaty is to be interpreted with a view to giving to corresponding provisions in the different versions a common meaning which will effect the general purpose which the treaty is intended to serve*[78].

From this paragraph follows that the interpretation of the plurilingual treaties presupposes that the versions in all languages to be considered, in order to find a common meaning that would a. harmonize the provisions in the different languages, and which b. is consistent with the general purpose which the treaty was intended to serve [79].

Meanwhile, *Myres Mc. Dougal* [80] and 'New Haven School' called the adherence to the textuality with its search for the 'ordinary meaning' without giving due regards to the will of

[72] loc. cit. (note 30), p. 251
[73] loc. cit. (note 30), p. 258
[74] loc. cit. (note 30), p. 245
[75] loc. cit. (note 30), p.249
[76] Paul Eden Plurilingual Treaties: Aspects of Interpretation 40 Years of the Vienna Convention on the Law of Treaties, p. 155, Alexander Orakhelashvili and Sarah Williams, eds., BIICL, 2010 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2269003
[77] loc.cit. (note 61)
[78] Ibid. p. 971
[79] Ibid. p. 971
[80] M S Mc Dougal, H D Lasswell, and J C Miller, The Interpreation of agreements and World Public Order: principles of Content and Procedure. New Haven : Yale University Press, 1967 re-issued as the Interpretation of International Agreements… , 1994.

the parties a kind of *Begriffsjurisprudenz* [81] and called for looking at the the force / the will behind the text. In particular, the Permanent Court of International Justice (PCIJ) [82] was guided in its practice of interpretation of the treaties by the intentions of the parties and preparatory work, which in the VCLT have become supplementary means of interpretation [83].

Meanwhile, the major problem with the New Haven approach to treaty interpretation, according to *A. Orakhelashvili*, is that it contradicts the concept of interpretation as the process that aims not at the particular result as such, but at such result as will follow from the application of the rules of interpretation [84].

The International Court of Justice (ICJ) was developing its techniques of treaty interpretation, building on cases of the PCIJ, and from which a fundamental set of principles of interpretation of treaties was proposed by *Sir Gerard Fitzmaurice (*principle of actuality, natural and ordinary meaning, integration, effectiveness, subsequent practice, contemporaneity) [85].

G. Fitzmaurice emphasised the relevance of various schools of interpretation: the textual school which puts overriding emphasis on the treaty text; the teleological school which is guided by the objects of the treaty; and the intentions school which considers the intention of States-parties as paramount [86]. But acknowledged the view that the last resort in the process of interpretation should be *'the exercise of common sense by the judge, applied in good faith and with intelligence'. G. Fitzmaurice* considered it to be inevitable that the interpretation of treaties must be guided by a coherent set of rules and each 'school' of treaty interpretation put an emphasis on certain factor which in their opinion was relevant for locating the meaning of the treaty.[87]

Illustrative in this regard might be the case of the school of thought on generic terms [88]. For this school of thought the key concept is the term that should be 'generic'. It is though not clear what makes a term 'generic'. If such terms have a content that would change through time, or a so called evolutionary potential, remains more a broad description of a term 'generic' rather than a definition.

In his turn, Jan Klabbers, reformulating Von Clausewitz saw interpretation as the continuation of treaty negotiations by other means and instead of concentrating on what words to use in the treaty, referred to the issue *'on how to give meaning to the words that are used. Whoever controls this process, controls the meaning of the treaty, and therewith controls whether or not*

[81] In Ingo Venzke How Interpretation Makes International Law. On Semantic Change and Normative Twists. Oxford University Press. 2012., p. 3
[82] Hudson M O The Permanent Court of International Justice 1920-1942. New York MacMillan 1943.
[83] Julian Davis Mortneson The Travaux of Travaux. Is the Vienna Convention Hostile to Drafting History. Available online at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2286247 Accessed on 03.01.2023
[84] Loc. cit. (note 53), p. 309
[85] Malgolisa Fitzmaurice *Treaties.* In Max Planck Ecyclopedia of Public International Law Volume IX Sanctions to Treaties of Friendship, Commerce, and Navigation Oxford p. 1060-1084, p. 1075.
[86] loc.cit. (note 53), p. 304
[87] loc.cit. (note 53), p. 305
[88] Malgosia Fitzmaurice and Panos Merkouris. Treaties in Motion. The Evolution of Treaties from Formation to termination. Cambridge Studies in International and Comparative Law. Cambridge University Press. 2020., p. 136-137

the obligations resting upon him are bearable or onerous, and controls whether the acts of states are faithful implementations of a text or amount to breaches of that same text' [89] .

In terms of the principle of contemporaneity, it has been much paid attention to by the researchers, and the dispute is about whether '*the terms of the treaty must be interpreted according to the meaning which they possessed, or which would have been attributed to them, and in the light of current linguistic usage, at the time when the treaty was originally concluded*[90]. Both *Emer de Vattel* and *Hugo Grotius* have touched upon the effect of time on treaties. Hence, comes the metaphor of treaties as 'living instruments'.

There are two main tracks along which evolutive interpretation can happen: 'evolution of fact' (overture du texte) and 'evolution of law' (renvoi mobile) [91].The ICJ in the Whaling in the Antarctic had to deal with the concept of contemporaneity within the process of interpretation: whether a treaty should be interpreted in the light of the circumstances and the law at the time of its conclusion ('contemporaneous' or 'static' interpretation), or in the light of the circumstances and the law at the time of its application ('evolutive', 'evolutionary', or 'dynamic interpretations) [92]

Evolutive interpretation is usually connected to human rights treaties [93], as they are intended to inform social life as it evolves [94], e.g. changed social conceptions about corporal punishment, acceptable consensual sexual behaviour, or one the well known developments occurred with regards to the term 'refugee'.

In the Navigational Rights case (2009) [95] the Court had to decide if the term *'commerce'* includes also in its meaning the tourist shipping, which was unknown in 1858. The decision about the content of the notion was done from the contemporary position, and not the definitions of the term as of 1858. The Court pointed out to the intentions of the parties and to the length of the treaty, which presupposes that the terms employed by the parties will evolve with new needs and situations.

Apart from some clearly identifiable interests, as for example in the law of the sea or even in the law of diplomatic and consular relations, predominantly, the interests of the States in the law of treaties are '*general and uncrystallized'* or '*in motion'* [96] . On the problem of "*moving treaties*", the German Federal Constitutional Court (BVs/ GEO) had to decide on the question whether the North Atlantic Treaty (NATO) was still the same to which the German parliament had given its consent, or whether it had moved during the following practice to foreign countries support (peacebuilding) in a way that its application was not anymore based on the meaning of the original text and therefore lacking parliament's approval [97].

[89] Klabbers, J. (2005). On rationalism in politics: interpretation of treaties and the World Trade Organization. *Nordic Journal of International Law*, *74*(3-4), 405-428.
[90] loc. cit. (note 88)., p. 139
[91] loc. cit. (note 88)., p. 132
[92] loc. cit. (note 88)., p. 133
[93] loc. cit. (note 88)., p. 139
[94] loc. cit. (note 88)., p. 158
[95] Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua) https://www.icj-cij.org/case/133
[96] loc. cit. (note 88)., p. 275
[97] Statement by the Press Office of the Federal Constitutional Court. Press Release No 29/1994 of 12 July 1994. Judgement of 12 July 1994 – 2 BvE 3/92, 2 BvE 5/93, 2 BvE 7/93, 2 BvE 8/93 https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/1994/bvg94-029.html ; Oxford Public International Law: the NATO https://mediatum.ub.tum.de/doc/1584505/1584505.pdf; Rick Atkinson Court allows German troops to join missions outside NATO area Washington Post July 13, 1994

However, it will depend on context which one will be of most help in assessing the correct meaning of the treaty terms. Sometimes it is necessary to look in the past – conceptions at the time of adoption of the treaty to understand what the parties could have had in mind through a certain term, in other cases though, it will be necessary to give the treaty a construction that renders it meaningful in the contemporary context. What is unclear, however, is on what basis the interpreter would know which of these two solutions was the appropriate one for the text being interpreted.

Comparing the status of the Ryukyu Kingdom appearing at the same time under the supervision and control, '*shioki' (control)* or '*fuyo' (dependency*) by the Satsuma Clan from Japan to the idea of '*sovereignty'* or *'independence'* in modern European international law, *Masaharu Yanagihara* [98] admits that is seen profoundly puzzling and ambiguous from a contemporary viewpoint.

Furthermore, the author develops that historical precedents, especially in countries or regions that followed different systems of modern European international law, for example in East Asia in early-modern and modern times, had their own unique concepts and ideas, which cannot be and should not be understood by an application of concepts and ideas of modern European international law. In other words, concepts and ideas unique to modern European international law are not directly effective retroactively to the non-European world in premodern and modern times.

That leads to another idea that comparison of concepts and ideas concerning international law and international relations across countries or regions is useful in illuminating the uniqueness of concepts and ideas in each region and each period, and furthermore how these different conceptions affected the interactions between countries and legal systems [99].

Lessons from the International Law Commission (ILC) [100] also provide useful information on the approaches tackling the difficulty of the formulation of treaties in several languages. For example, there are such cases when it is not possible to express certain idea in the same way in various legal systems – for example, terms 'control' or 'interests' might be understood in different manners in certain legal systems. As an option / way our might be to adopt different concepts in different languages to express the same idea, and this way to stay consistent with the particularities of each legal system which is actually very close to the formulations provided by the theory of functional equivalence.

Moreover, the Commission often relies on '*preexisting language / predetermined formulae incorporated in universal treaties'* to reach a consensual formulation [101]. The aim is not to adopt a new rule but not to depart, so far as possible, from well-established phrasings. In 2012, members of the ILC disagreed on the exact nature of the concept of *'human dignity'* and in order to accommodate varying views on the precise content of this notion, the ILC used

https://www.washingtonpost.com/archive/politics/1994/07/13/court-allows-german-troops-to-join-missions-outside-nato-area/e405287e-fc07-4631-b713-6243847e9dd2/

[98] Masaharu Yanagihara "Shioko" (Control), Fuyo (Dependency), and Sovereignty: The status of the Ryukyu Kingdom in Early Modern and Modern Timesю. Pp. 141-157 In Comparative International Law edited by Anthea Roberts, Paul B, Stephan, Pierre-Hugues Verdier, Mila Versteeg. Oxford Unoversity Press, 2018.

[99] Ibid. pp. 141-142

[100] Mathias Forteau Comparative International Law Within, Not Against, International law. Lessons from the International Law Commission. p. 161- 179. In Comparative International Law edited by Anthea Roberts, Paul B, Stephan, Pierre-Hugues Verdier, Mila Versteeg. Oxford Unoversity Press, 2018.

[101] Ibid., p. 174

language from the 1966 International Covenant on Civil and Political Rights as a way of overcoming disagreement [102].

The VCLT [103] formulates rules on interpretation on the extensive work of the ILC. The most valuable source of material on the meaning and effect of the articles of the VCLT is represented by the Commentary of the ILC on its 1966 Draft Articles on the Law of Treaties elaborating on the background to the Vienna rules, the underlying principles, and main arguments which determined the content of the rules.

The Vienna Conference proceeded with adopting the provisions embodying fixed interpretative rules based on textual primacy, and this way the question of which 'school' holds the key to interpretative outcomes was closed.

'The unity of the treaty and of each of its terms is of fundamental importance in the interpretation of plurilingual treaties and it is safeguarded by combining with the principle of the equal authority of authentic texts the presumption that the terms are intended to have the same meaning in each text. This presumption requires that every effort should be made to find a common meaning for the texts before preferring one to another [104].

The VCLT regime is that it no longer allows considering the intention of States as an independent and free-standing factor of interpretation. Intention has instead to be ascertained from specific interpretative factors included in the Convention, such as the text, object and purpose or other factors [105].

This way, VCLT entitles interpreter with an agency and certain freedom in finding a reasonable meaning of the treaty: 'The term 'reconciliation' does not describe, not even roughly, how the meaning is to be found, and that non-determination is further softened by the term 'best'- which was chosen at the Vienna Conference instead of 'as far as possible' that had been contained in the Final Draft, thus adding to the element of appreciation on part of the interpreter' [106].

[102] Ibid., p. 175
[103] Anthony Aust 1969 Vienna Convention on the Law of Treaties (VCLT) Max Planck Encyclopedia of Public International Law. 10 volume 709.
[104] loc.cit. (note 15), p. 225
[105] loc.cit. (note 53), p. 312
[106] Oliver Dörr Article 33 In Vienna Convention on the Law of Treaties (pp.635-651) p. 649. Available online at https://www.researchgate.net/publication/322502429_Article_33 Accessed on 03.01.2023

CHAPTER III. THEORY

Theoretical Chapter consists of two parts. The first one deals with the treaty interpretation regime as outlined under the 1969 VCLT, in particular the provisions regarding the interpretation of the plurilingual treaties under Article 33 of the VCLT. In part on language theory, we consider two major theories – componential analysis and theory of equivalence. Provisions of the two theories are also applied in the practical part upon the analysis of the case studies. Employed together, legal and language theories may offer an algorithm / functional mechanism for lawyers in dealing with ambiguous or 'untranslatable' terminology upon interpreting plurilingual treaties.

i. Article 33 of the 1969 Vienna Convention on the Law of Treaties (VCLT)

The uniform treaty interpretation regime is set by the Articles 31 and 32 VCLT outlining general rule and supplementary means of interpretation accordingly [107]. The provisions regarding interpretation of treaties authenticated in two or more languages constituting the major focus of the proposed research are enshrined in the Article 33 of the VCLT [108]:

> 1. *When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.*
> 2. *A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.*
> 3. *The terms of plurilingual treaties are presumed to have the same meaning in each authentic text.*
> 4. *Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application*

[107] loc.cit. (note 1), Article 31 VCLT General rule of interpretation, pp. 12 - 13
1. 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.
2. The context for the purpose of the interpretation of a treaty that shall comprise, in addition to the text, including its preamble and annexes:
(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
(c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if its is established that the parties so intended.
Article 32 VCLT Supplementary means of interpretation
Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
a) leaves the meaning ambiguous or obscure; or
b) leads to a result which is manifestly absurd or unreasonable.
[108] loc.cit. (note 2) Article. 33 Interpretation of treaties authenticated in two or more languages. p.13

of articles 31 and 32 does not remove, the meaning which best reconciles the text, having regard to the object and purpose of the treaty, shall be adopted.

The first two paragraphs of the Article 33 (1) and (2) accordingly, outline which text to be considered authentic and which version of the treaty should be the object of interpretation. *'The general rule is the equality of the languages and the equal authenticity of the texts in the absence of any provision to the contrary'* [109]. For the purposes of the thesis, essential is the set of rules concerning interpretation of plurilingual treaties contained in paragraph 3 and in particular, paragraph 4 of the Article 33 VCLT.

Paragraph 3 of the Article 33 VCLT contains the presumption of identical / same meaning in each authentic text, or '*general rule'* [110] that '*the texts are of equal force, and each provision of a treaty has only one meaning'* [111]. The presumption that the text is equally authoritative in the different authentic languages entails the legal consequence: the terms of the treaty are presumed to have the same meaning in all the authentic language. The presumption is valid until the issue arises. In case that presumption fails and the difference of meaning between several language versions is not removed, paragraph 4 of the Article 33 applies. Paragraph 4 of the Article 33 VCLT, which is of the prime significance for the current research, is twofold.

First of all, it introduces the element of comparison of texts or versions that still '*...remain a single treaty with a single set of terms accepted by the parties and one common intention with respect to those terms two authentic texts appear to diverge'* and accordingly *'every effort should be made to find a common meaning'* [112] by means of applying the '*standard rules'* / '*normal means of interpretation'* [113] – e.g., general rule of interpretation and the supplementary means of interpretation under Articles 31 and 32 VCLT. In this specific clause there is the link between Article 33 VCLT with the general rules of interpretation. The usual means of interpretation under articles 31 and 32 are first employed to their full extent in order to try to reconcile the text so as to make the potential divergence disappear. The presumption implies that the parties did not intend to produce diverging texts.

Under Article 31, VCLT interpretation of treaties embraces the following components: 1. good faith in giving the ordinary meaning to the terms of the treaty, 2. in their context and 3. in the light of the treaty's object and purpose. The notion of the '*ordinary meaning*' in this regard is considered as the starting point for the interpretation process. However, given that almost any word has usually more than one meaning – '*the word 'meaning' itself, has at least 16 different meanings'* [114], and dictionaries just provide the catalogue of definitions or meanings of words, interpreters very often appear at the *'battleground for semantic struggles'* [115] facing the contested meaning of the text.

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[109] loc cit. (note 15), p. 224.

[110] Robert Kolb The Law of Treaties An Introduction. Chapter on Interpretation. Plurilingual Treaties. Edward Elgar Publishing Cheltenham, UK. Northampton, MA, USA, 2016, p. 159-162

[111] David A. Wirth Multilingual Treaty Interpretation and the Case of SALT II Available online at https://dashboard`.lira.bc.edu/downloads/2e7f6c26-780c-4d60-9b70-46006152213a Accessed 25.08.2022

[112] loc.cit. (note 15), p. 225; Peter Germer Interpretation of Plurilingual Treaties: A Study of Article 33 of the Vienna Convention on the Law of Treaties. 1970. P. 402 Available online at https://heinonline.org/HOL/Page?handle=hein.journals/hilj11&div=18&g_sent=1&casa_token=&collection=journals Accessed on 04.01.2023; Oliver Dörr Article 33 In Vienna Convention on the Law of Treaties (pp.635-651) p. 636. Available online at https://www.researchgate.net/publication/322502429_Article_33 Accessed on 03.01.2023

[113] loc.cit (note 15), p.225

[114] Richard K Gardiner Treaty Interpretation. Oxford University Press, 2008. p. 141

[115] loc. cit. (note 33); Ingo Venzke How Interpretation Makes International Law. On Semantic Change and Normative Twists. Oxford University Press. 2012., p. 2

The task of the interpretation accordingly is to '*carve out'* [116] the real meaning of the text – its true sense. In most instances interpretation involves '*giving*' [117] a meaning to a text. Oxford English Dictionary says, '*interpret, to, v.: - to expound the meaning of (something abstruse or mysterious; to render clear or explicit*; *to make out the meaning of, explain*' [118]. In this case, referring to *Ludwig Wittgenstein* [119], it is necessary to address the practice of the language in order to see the meaning, as '*meaning is a product of practice first of all*' [120].

On the one hand, practice may refer to the way how word is used in speech, in its surrounding, in context, and accordingly, to consider the meaning a word acquires depending on its usage. On the other hand, practice relates to the subsequent practice of the States as the parties of a treaty. Here it is important to note, that though '*the subsequent practice of the treaty parties is a tool of interpreting a treaty (confirming L. Wittgenstein), but of course that practice will always pretend to be based on the 'right interpretation'. This way, before practice may in fact attach a concrete 'meaning' to the term in an a priori act, states decide which meaning THEY want to attribute to it and in that vein they start a given practice'* [121].

The objections to giving too large a place to the intentions of the parties as an independent basis of interpretation and embracing of a textual approach, find expression in the statement, *'le texte signe est, sauf derares exceptions, la seule et la plus recente expression de la volonte commune des partie'* [122]. *'The text must be presumed to be the authentic expression of the intentions of the parties; and that, in consequence, the starting point of interpretation is the elucidation of the meaning of the text, not an investigation ab initio into the intentions of the parties'* [123].

Therefore, returning to the point regarding the usage of a term in speech / practice, it is important to consider that meaning is relational. The '*ordinary meaning'* is not simply about mechanical selection of the right definition from the dictionary catalogue or taking words at their face value. It is not the word itself, but 'its *sense* in *the totality of what surrounds the words, their context*' [124], would clarify and give certainty about a treaty's meaning according to a standard position of hermeneutics. Accordingly, Article 31 provides the link for the ordinary meaning of the terms of the treaty to the context, and the object and purpose of the treaty.

The context can be considered in a narrow sense – surrounding of a word, as it states in a sentence, or in broader terms as enshrined under the VCLT. Under the VCLT, context embraces a range of elements: any agreement or instrument relating to the conclusion of the treaty; subsequent practice or special meaning to a term if intended by the parties. Additionally, the

[116] Ibid., p. 2
[117] Ibid., p. 2
[118] Oxford English Dictionary, *'interpret'* https://www.oed.com/view/Entry/98205?rskey=bnM1mL&result=2&isAdvanced=false#eid
[119] Ludwig Wittgenstein Philosophical Investigations Available online at https://edisciplinas.usp.br/pluginfile.php/4294631/mod_resource/content/0/Ludwig%20Wittgenstein%2C%20P.%20M.%20S.%20Hacker%2C%20Joachim%20Schulte.%20Philosophical%20Investigations.%20Wiley.pdf Accessed on 04.01.2023
[120] loc. cit. (note 33); Ingo Venzke How Interpretation Makes International Law. On Semantic Change and Normative Twists. Oxford University Press. 2012., p. 2
[121] Professor Boldizsar Nagy
[122] loc.cit. (note 15), p. 220
[123] loc.cit. (note 15), p. 220
[124] loc. cit. (note 33); Ingo Venzke How Interpretation Makes International Law. On Semantic Change and Normative Twists. Oxford University Press. 2012., p. 3

recourse may also be had to the preparatory work and the circumstances of conclusion of a treaty as the supplementary means of interpretation [125].

An example which shows that interpretation goes far beyond the search of the ordinary meaning is illustrated by the Kasikili / Sedudu Island Case (Botswana / Namibia) [126] addressed to International Court of Justice (ICJ) to determine the boundary around Kasikili / Sedudu Island and the legal status of the island. In particular, the Court had to find the ordinary meaning for the terms '*center of the main channel*' / '*Thalweg des Hauptlaufers'*.

Judges had to choose between two channels as well as various meanings of the term '*main channel*' in the dictionaries. The major concern was if the ordinary meaning of the words '*main channel*' in a treaty from 1890 may be determined by having recourse to modern day hydrological knowledge. In particular, one of the judges indicated that the approach embraced by the Court was not appropriate. Mainly the core essence was not in discovering the ordinary meaning, but instead, the judge referred to the greater significance of the object and purpose (to choose a channel which would make clearly the limits of the parties' interests), and also more appropriate for taking into account supplementary means (their circumstances of conclusion indicating the parties' interests) [127].

At this point we approach the 'second' component / clause under the provisions in paragraph 4 of Article 33 VCLT: if recourse to the standard rules fails to resolve the difference in meaning, the process of interpretation goes beyond the search for the ordinary meaning by directing the interpreter towards reconciling different meanings in the light of the treaty's object and purpose.

Object and purpose as an element of interpretation refers to the subject matter / content and aim of the treaty (*ratio legis of a norm*). The 'object' refers to the content / subject of the treaty, for example, the environment, air services or financial matters. The 'purpose' refers to the overall aim to be achieved by means of the treaty, for example the sustainable protection of some natural resource, the extension of air services, the curbing of inflation, and so on. The object and purpose is thus at the same time the result of interpretation as well as means of interpretation [128]. Employing a metaphorical language, it can be presented as a peak in mountains which is the aim of march, as well as it indicates a direction in which to go; also relates to means[129].

Tribunals tend to rely on object and purpose when justifying their interpretations. In the *LaGrand Case* (Federal Republic of Germany v United States of America) [130] the International Court of Justice (ICJ) dealt with the issue on the correct interpretation of article 41 of the ICJ

[125] loc.cit. (note 15), p. 221
[126] Christian Maierhöfer Kasikili / Sedudu Island Case (Botswana / Namibia) in Encyclopedia Public International Law. Volume 6. Online; Kasikili / Sedudu Island (Botswana / Namibia). International Court of Justice https://www.icj-cij.org/case/98/judgments; Malcolm N Shaw and Malcolm D. Evans Case concerning Kasikili / Sedudu Island (Botswana / Namibia) https://www.jstor.org/stable/761773
[127] Declaration of Judge Higgins Available online at https://jusmundi.com/en/document/opinion/en-kasikili-sedudu-island-botswana-namibia-declaration-of-judge-higgins-monday-13th-december-1999 Accessed on 01.04.2023
[128] loc. cit., (note 110), p. 145
[129] loc. cit., (note 110), p. 146
[130] *LaGrand* (Germany v. United States of America) Available online at https://jusmundi.com/en/document/pdf/decision/en-lagrand-germany-v-united-states-of-america-judgment-wednesday-27th-june-2001 Accessed on 1.04.2023

Statute. In particular, the ICJ should have decided / found if the provisional measures should be of binding character or not [131].

In English [132] the text of the article 41 of the *Statute of the ICJ* provides the following:

> *1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which* ***ought to be taken*** *to preserve the respective rights of either party.*
>
> *2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.*

In French [133]:

> *1. La Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun* ***doivent être prises*** *à titre provisoire.*
>
> *2. En attendant l'arrêt définitif, l'indication de ces mesures est immédiatement notifiée aux parties et au Conseil de sécurité.*

The terms of Article 41 in English do not appear to have a mandatory character. However, the French version of the article, which is equally authoritative, uses the words '*doivent être prises*' instead of the less imperative *'ought to be taken'* in the English version. Accordingly, two texts offer quite different interpretations. The ICJ referred in this case to the VCLT provision stating that in such situations the interpretation to be preferred which '*best reconciles the texts, having regard to the object and purpose of the treaty'* [134]. Considering this statement, it was concluded that the basic purpose of the Statute of the ICJ was to facilitate judicial settlement by binding decisions and that article 41 is designed to *'prevent the Court from being hampered in the exercise of its functions because the respective rights of the parties to a dispute before the Court are not preserved* [135]'.

Still, considerable uncertainty surrounds the determination of a treaty's object and purpose. Under VCLT rules, object and purpose – which itself is a kind of an *'enigma'* [136], function as a means of shedding light on the ordinary meaning rather than merely as an indicator of a general approach to be taken to treaty interpretation. The question arises as to whether the 'object and purpose' method should be seen as complementary, or as a separate one, as in some cases even leading to opposite / controversial outcomes. Environmental treaties (e. g., Whaling in Antarctica [137], Shrimp Turtle Case [138] or Tuna Dolphin GATT Case [139] (process versus product cases [140]) might illustrate this even if they are beyond the scope of the current research. At first

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[131] Ibid.

[132] Statute of the International Court of Justice in English https://www.icj-cij.org/statute#:~:text=Article%2041,2.

[133] Statut de la Cour Internationale de Justice in French https://www.icj-cij.org/fr/statut

[134] loc.cit. (note 2), Article 33 Interpretation of treaties authenticated in two or more languages. p.13

[135] loc. cit. (note 130), pp. 40-41.

[136] I. Buffard and K. Zemanek, 'The Object and Purpose' of a Treaty: An Enigma?'. Austrian Review of International & European Law 3: 311–343, 1998. Available online at http://fulltext.calis.edu.cn/kluwer/pdf/13851306/3/233264.pdf Accessed on 03.01.2023

[137] Whaling in the Antarctic (Australia v. Japan: New Zealand intervening) International Court of Justice. Available online at https://www.icj-cij.org/case/148 Accessed on 01.04.2023

[138] India etc versus US: 'shrimp-turtle' World Trade Organisation. Environment disputes. https://www.wto.org/english/tratop_e/envir_e/edis08_e.htm; Jayati Srivastava and Rajeev Ahuja Shrimp-Turtle Decision in WTO: Economic and Systemic Implication for Developing Countries https://www.jstor.org/stable/pdf/4412492.pdf

[139] United States – Restrictions on Imports of Tuna. Report of the Panel1 (DS21/R - 39S/155) 3 September 1991 https://www.worldtradelaw.net/document.php?id=reports/gattpanels/tunadolphinI.pdf&mode=download

[140] The Product / Process Distinction World Trade Organisation. Robert Howse and Donald Regan University of Michigan Law School The product/process distinction - an illusory basis for disciplining unilateralism in trade

sight, protection of environment in terms of the object and purpose presupposes that all the provisions of a treaty should be interpreted in a way to maximise the effectiveness of protection. However, States even if adopting such treaty, might do so with reservations [141].

Accordingly, the aim must be to find out the '*best meaning'* expressing the will / true intention of the parties in the light of the object and purpose. This way, the major task for the interpreter is to find the meaning which will reconcile the texts to a feasible extent. And this is how the equality of the texts and the parties accordingly may be achieved as prescribed in the Draft Articles on the Law of Treaties [142].

In this part, provision under Article 33 (4) is against the use of the text comparison, but suggests solving the issue if arises by a kind of consensus or compromise choosing the best of all possible meanings, interpretations acceptable for all parties and harmonizing the content of the treaty. It mainly directs the interpreter to adopt the meaning which best reconciles the texts in light of the purpose of the treaty, although *'much might depend on the circumstances of each case and the evidence of the intention of the parties'* [143]. At the same time, the precise method / technique / algorithm by which this meaning is to be found is left unspecified by article33.

Illustrative may be the judgement of the European Court of Human Rights (ECtHR) in Wemhoff v Germany [144] . The applicant appealed against his detention on remand which violates his right to '*trial within a reasonable time or to release pending trial'* (article 5 (3) of the European Convention on Human Rights) [145]. Particularly at stake was the interpretation of the term *'reasonable time'* – if it implies the time until the start of trial or until judgement: '…*a purely grammatical interpretation would leave the judicial authorities with a choice between two obligations, that of conducting the proceedings until judgment within a reasonable time or that of releasing the accused pending trial, if necessary against certain guarantees'* [146].

The Court was confronted with two versions of a treaty, both equally authoritative but not exactly the same. English text of the Convention admitted two interpretations: time of appearance before the trial as well as '*trial*' embracing the whole proceedings before the court, not only their beginning. Meanwhile French text (of equal authority) has only one meaning and a reasonable time continued until the person has been judged. The Court embraced the approach to reconcile the meaning of the treaty beyond grammar but from the perspective of the aim and the object of the treaty: '*Given that it is a law-making treaty, it is also necessary to seek the interpretation that is most appropriate in order to realise the aim and achieve the object of the*

policy 2000; John H. Jackson Comments on Shrimp / Turtle and the Product / Process Distinction *European Journal of International Law*, Volume 11, Issue 2, 2000, Pages 303–307, https://doi.org/10.1093/ejil/11.2.30

[141] loc. cit. (note 110), p. 146, * Speaking about 'reservations' in relation to adopting environment treaties, which is also in fact an ambivalent term / word, it is important to note the following. Formal reservations are usually prohibited in environment-related or climate change treaties (e.g., Paris Agreement), however, general hesitation and inner limitations may often persist. This actually may undermine the will of States joining the treaty, following its object and purpose or implementing the provisions of the treaty in full capacity. Another dilemma with the reservations is that some experts consider a possibility of the reservations as a kind of flexibility, a chance to attract more States, parties to a treaty (from the classes on International Law).

[142] loc.cit. (note 15)

[143] loc.cit. (note 15), p.226

[144] European Court of Human Rights (2122/64) - Commission (Plenary) - Decision – Wemhoff v. The Federal Republic of Germany Available online at https://www.stradalex.com/en/sl_src_publ_jur_int/document/echr_2122-64_001-2976 Accessed on 03.01.2023

[145] Article 5. right to Liberty and Security https://www.equalityhumanrights.com/en/human-rights-act/article-5-right-liberty-and-security#:~:text=3.,or%20to%20release%20pending%20trial.

[146] Case of Wemhoff v. Germany (Application no 2122/64) Judgement Strasbourg 27 June 1968, p. 18

treaty, not that which would restrict to the greatest possible degree the obligations undertaken by the Parties' [147]. And decided that '*it is impossible to see why the protection against unduly long detention on remand which Article 5 (art. 5) seeks to ensure for persons suspected of offences should not continue up to delivery of judgment rather than cease at the moment the trial opens*' [148].

It cannot be excluded that the object (like commercial, human rights, peace, weapons, waterways, etc.) and the purpose (business enlargement, strengthening of individual status, withdrawal of troops, protection of property, ship-traffic etc.) does not give an answer in sense of a 'best' meaning. Furthermore, it cannot be excluded that Parties use ambiguities willingly as a diplomatic means, as a hidden agreement not to agree. The hidden agreement not to agree expressed in different interpretations of one term of a treaty, leaves it open to the parties of a plurilingual treaty to act according to their interests.

It is of course possible to bring these questions of interpretation to a court, most prominently to the International Court of Justice (ICJ) if its competence is established and there are quite a number of Court decisions on these questions, e.g., the case on the Treaty regulations on the river Danube between Slovakia and Hungary [149]; or in cases of land or territorial disputes [150], etc. The problem of these court procedures is obvious, because the judgement may reduce the difficulties of interpretation to one unique result and thus destroy the hidden agreement not to agree. Then the problem moves to the execution of this judgement, another problem of international law.

ii. Language Theory: componential analysis and theory of equivalence

As has been outlined, a major and typical difficulty in terms of interpretation of plurilingual treaties is a potential ambiguities / divergencies in meaning between / among the texts of the treaty authenticated in two or more languages. In principle, article 33 (4) VCLT guides the interpreter towards application of articles 31 and 32 of the Vienna Convention. That would suggest that the ordinary meaning is the starting point, with practice, preparatory work, and other elements being considered as appropriate.

However, allocation of meaning from the dictionary or '*grammatical*' [151] interpretation does not offer a solution for all cases. For example, interpretation of the term / word '*day'*. It is understood of the '*natural day'*, the time during which the sun affords us his light, and of the '*civil day'*, or the space of twenty four hours. *'When it is used in a convention to point out a space of time, the subject itself manifestly shows that the parties mean the civil day, or the term of twenty-four hours'*[152]. However, when the Spartans concluded a ceasefire extending to 30 days, they attacked the enemy during the night arguing that agreement applied only to day time and not to night time [153].

[147] Ibid., p. 19
[148] Ibid., p. 19
[149] Gabčíkovo-Nagymaros Project Case (Hungary/Slovakia) https://www.icj-cij.org/en/case/92
[150] Territorial Dispute Case Encyclopedia Public International Law. Volume IX. pp. 856-859
[151] loc.cit. (note 30)
[152] Ibid., p. 251
[153] Ibid.; also in Anthony Aust, Anthony Aust Modern Treaty Law and Practice Foreword by Sir Arthur Watts QC. Second Edition. Cambridge. P. 149

In the judgement of the Case of the Swiss Confederation v. the German Federal Republic (No. I), award of 3 July 1958 [154], it was necessary to decide on the meaning of the term *'place of payment', 'Zahlungsort', 'que le paiement serait fait à l'étranger'.* The words *'place of payment'* are ambiguous as they may mean both *'the place where payment ought to be made'* and / or the place where *'the payment is in fact made'.* The Court decided that the expression should be given the former meaning [155], though such an approach was highly contested.

The clear algorithm or methodology how to proceed in terms of finding an interpretative solution which respects the different languages is not outlined in the VCTL provisions. *'Not only the means to be applied in the operation leaves to the interpreter a large margin of discretion, also the operation itself is scarcely determined'* [156]. In some cases, as for instance in *France v. Commission* [157], the European Court of Justice interpreted Article 228 of the Treaty of Rome by considering authentic English, Danish, French and German texts (Case C -327 / 91, (1994). Meanwhile, the International Court of Justice consults only English and French[158] texts of treaties being official languages of the Court. Which in fact poses '*danger*' [159], as in case *Qatar v. Bahrain* [160], where the question on the court's jurisdiction depended on a passage in an Arabic text and most likely also on the proficiency of an interpreter in this language.

In its turn, following the presumption of identical / same meaning of every authentic language, which does not demand any comparison, the language theory may suggest as one of the methods of analysis and selection of the terms the componential analysis. The latter is based on differences / contrasts in meaning. Componential analysis (also known as '*lexical decomposition'*, feature analysis or contrast analysis) departs from the principle of compositionality offered by a Danish linguist, a representative of early European Structuralism *Louis Hjelmslev* [161]. Its essence is the study of '*components*', which are the basic building blocks of meaning in a semantic domain. The componential analysis enables the reader to analyse words into different components and establishes then their interrelations in the search and analysis of relatable attributes.

In Witold Litwa v Poland, for the European Court of Human Rights of the essential point was what meaning was to be given to the term *'alcoholics'* ('*d'un alcoolique*' in the French text of

[154] Case of the Swiss Confederation v. the German Federal Republic (No. I), award of 3 July 1958 p. 435 Available online at https://legal.un.org/riaa/cases/vol_XXIX/405-442.pdf Accessed on 29.01.2023
[155] Ibid.
[156] Oliver Dörr Article 33 In Vienna Convention on the Law of Treaties (pp.635-651) p. 649. Available online at https://www.researchgate.net/publication/322502429_Article_33 Accessed on 03.01.2023
[157] Judgement of 9. 8. 1994 — CASE C-327/91 Judgement of the Court 9 August 1994 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61991CJ0327&rid=1; Keith Highet, George Kahale III and Gunnar Schuster French Republic v. Commission of the European Communities Source: The American Journal of International Law, Vol. 89, No. 1 (Jan., 1995), pp. 136-144 Published by: Cambridge University Press Stable URL: https://www.jstor.org/stable/2203903
[158] Mathilde Cohen. The Continuing Impact of French Legal Culture on the International Court of Justice. In Comparative International Law edited by Anthea Roberts, Paul B. Stephan, Pierre-Hugues Verdier, Mila Versteeg. Oxford University Press, 2018.
[159] Anthony Aust Modern Treaty Law and Practice Foreword by Sir Arthur Watts QC. Second Edition. Cambridge. P. 255
[160] Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain). International Court of Justice https://www.icj-cij.org/case/87 ; Jan Klabbers Qatar v. Bahrain: the concept of „treaty" in international law Available online at: https://www.jstor.org/stable/pdf/40799196.pdf Accessed on 01.04.2023
[161] Louis Hjelmslev Prolegomena to a theory of language. Translated from Dutch by Francis J. Whitfield. University of Wisconsin Press, Madison, 1961.

the Convention) [162] in article 5 (1) (e) of the European Convention on Human Rights which permits '*the lawful detention ... of persons of unsound mind, alcoholics or drug addicts or vagrants*' [163]. In particular, it was necessary to identify the components of the content of the term – if notion *'alcoholics'* embraces anybody smelt of alcohol, temporarily intoxicated or if the term in the convention bears a notion of addiction. The detained person was taken to a sobering up center by the police who picked him up at the post office for behaving drunkenly and offensively.

The Court proceeded that in its common usage the word '*alcoholics*' denotes persons who are addicted to alcohol. In the Article 5 (1) (e) of the Convention the term is used in a context together with some other categories of individuals that may be deprived of their liberty '*either in order to be given medical treatment or in view of considerations dictated by social policy, or on both medical and social grounds. It is therefore legitimate to conclude from this context that a predominant reason why the Convention allows the persons mentioned in paragraph 1 (e) of Article 5 to be deprived of their liberty is not only that they are dangerous for public safety but also that their own interests may necessitate their detention'* [164].

Though, componential analysis may also be used to shed light on correlations between language and culture [165], the limitations of the theory of componential analysis relate to the fact that it cannot be applied to all the vocabulary, especially when we speak about some abstract notions or in case with some words that are culturally bound. There is a range of terms or realia – words and expressions for culture-specific material things, that exist only in their national legal tradition, for example:

- ***'pettifogging-attorney'*** – pettifogging people give too much attention to small unimportant details in a way that shows a limited mind [166]. In Merriam-Webster dictionary, '*pettifogger*' has two main meanings: 1. a lawyer whose methods are petty, underhanded, or disreputable. 2. one given to quibbling (arguing) over trifles (something that is unimportant or of little value) [167].
- ***'coroner'*** – an official who examines the reasons for a person's death, especially if it was violent or unexpected [168]. The term '*coroner'* derives from the same source / root as the word *crown*. In Eastern European tradition term might be known among those who like / read detective stories by Agatha Christie.

[162] Case of Witold Litwa v Poland *(Application no. 26629/95). Judgement. Strasbourg. 4 April 2000.* P. 15 https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-58537&filename=CASE%20OF%20WITOLD%20LITWA%20v.%20POLAND.docx&logEvent=False

[163] European Convention of Human Rights Article 5. p. 8. Available at https://www.echr.coe.int/documents/convention_eng.pdf Accessed on 29.03.2023

[164] loc cit. (note 162), p. 16

[165] Ward H. Goodenough Componential Analysis and the Study of Meaning Source: Language , Jan. - Mar., 1956, Vol. 32, No. 1 (Jan. - Mar., 1956), pp. 195-216 Published by: Linguistic Society of America Stable URL: https://www.jstor.org/stable/410665

[166] '*pettifogging*' in Cambridge dictionary https://dictionary.cambridge.org/us/dictionary/english/pettifogging ; Also see Elizabeth Blair A History Of 'Pettifogging' For The Pettifoggers Among You NPR. January 22, 2020 https://www.npr.org/2020/01/22/798486578/a-history-of-pettifogging-for-the-pettifoggers-among-you#:~:text=According%20to%20Michael%20Quinion%20of,came%20to%20be%20called%20pettifoggers.

[167] '*pettifogger*' in Merriam Webster dictionary https://www.merriam-webster.com/dictionary/pettifogger

[168] '*coroner'* Cambridge dictionary https://dictionary.cambridge.org/de/worterbuch/englisch/coroner

- ***'del credere agent'*** – a person or company that receives commission (= payment) for selling goods or services for another person or company, and that agrees to pay for the goods even if no money is received from the buyer [169].
- ***'вертикаль власти' / 'vertical vlasti'*** [170] – literally '*the vertical of power'*, in English – '*hierarchy of power'*. '*Vertical of power'* is conceived as a subordination / hierarchy as one direction impact of administrative structures of a higher level over lower level structures. Key words / notions in this regard are – 'administration', subordination', 'control'. '*Power vertical'* is a term used by political scientists to refer to the current President of Russian Federation Vladimir Putin's brand of post-Soviet authoritarian governance.
- ***'приватизационный чек' (voucher)*** – literally – *'privatization check'* – state shares aimed for paying privatized objects of state and municipal property. In Russia has been in use since January 1992 as a tool of denationalization and transferring of state and municipal property to private property / ownership. '*Voucher*' in a broader meaning – *check, liability* – a document confirming the reception of goods and services, credit, money, etc. has been used only in professional environment, most of the population of Russia were not aware of this phenomenon / realia. Term / concept became commonly known mainly in the times of privatization in 1992-1993.

Such culturally coloured linguistic loopholes may pose a real challenge in the process of 'translating' / 'rendering' terms from one language / culture to another. This way, componential analysis demonstrates that there is no universal set of semantic components from which the meanings of lexemes are composed [171]. Accordingly, the meanings that are relevant to one culture may not fit or be arranged in a different manner in another culture. *Mary Snell-Hornby*[172] in this regard speaks about an '*illusion of symmetry between languages'*. The whole pleiad of scholars – *Wilhelm von Humboldt, Edward Sapir* and *Benjamin Whorf* argue that different languages express different views of the world and it is hardly possible to speak about 'translating' from one language / culture to another. At this point we approach second theory relevant for our research – theory of equivalence.

With the advent of the theory of equivalence, the notion of 'equal value' presuppose that different languages still can express the same values. The perspective to express anything in various languages might not be always practically feasible in a particular language, especially if the languages belong to different families and cultures, or distant. This way it may pose significant challenges for an interpreter to find a solution. In this regard, some ideas might be suggested by the theory of equivalence that developed within the frame of structuralist linguistics. Its major idea is the equality of meaning. Especially popular and well developed this theory has become in Eastern European school of linguistic thought (e.g., *V.N. Komissarov, L.S. Barhudarov, V.S. Vinogradov, A.D. Schweitser,* etc).

Predominantly, scholars speak about relatively possible achieved level of equivalence. The complete equivalence between texts drawn up in different languages is hardly achievable for

[169] '*del crede agent'* in Cambridge dictionary https://dictionary.cambridge.org/dictionary/english/del-credere-agent

[170] Lara Ryazanova-Clarke How Upright is the Vertical? Ideological Norm Negotiation in Russian Media Discourse https://boap.uib.no/books/sb/catalog/download/8/7/144-1?inline=1

[171] Eugene A. Nida Componential Analysis of Meaning. Introduction to Semantic Structures. Belgium: Mouton., 1975.

[172] Mary Snell-Hornby What's in a name? On metalinguistic confusion in translation studies. 2008. https://benjamins.com/online/target/articles/target.19.2.09sne

the structural, semantic or pragmatic differences in the languages. Therefore, the notion of equivalence is defined / interpreted differently.

The theory of equivalence by *V.N. Komissarov* [173] presupposes that it is possible to achieve equality / commonality of meaning / content, semantic proximity on various levels – semantic, structural, functional, communicative, or pragmatic. *L.S. Barhudarov*[174] and *V.S. Vinogradov*[175] also consider equivalence as a 'semantical' category', a commonality of the content of the texts in different languages. Accordingly, the major task upon the interpretation of texts in various languages is to preserve the meaningful information, as all other types of information are based on meaning and cannot be transferred without its perseverance.

With the development of the functional theory [176] closely linked to the Skopos theory and its target oriented approach [177], the focus shifted from achieving linguistic equivalence to the aim of reaching functional correspondence. Thus, the major idea in communicative equivalence, according *A.D. Schweitser* [178], is that texts in various languages should impact the recipient of the message in an equal manner, to evoke same reactions in their varied environments / socium.

This way, considering the abovementioned definitions we can say that equivalency is the reaching of the Rus: *'ravnoznachnost' / 'равнозначность'* / Engl. *'equality'* / Ger.: *'Gleichwertigkeit'*. It is hard to obtain such similarity for the differences in cultural connotative aspects of texts in different languages, as well as for the differences in structural semantic characteristics. In this regard, many scholars consider that full equivalence is challenging for the structural and semantic differences between texts in various languages and say about relatively achievable level of equivalence.

Meanwhile, in case with the interpretation of the international treaties it is still possible to speak about reaching high level of equivalence due to the fact that this type of texts is characterized by a very strict register of words and style, that makes discrepancies minimal.

Employing the theory of equivalence or correspondences, we can define three major categories of terms: 1) terms that have equivalents in another language – full or partial; 2) contextual correspondences, words that have usual (dictionary) and occasional (in context) meaning.; 3) various types of transformations in cases where there are no equivalents or correspondences [179].

In case of incomplete correspondence, one unit of the text corresponds to several units in another text: term '*convention'* in English can be rendered into Russian as a *'treaty'* / '*договор*'

[173] Komissarov. V. N. Linguistics of translation / International relations. – M., 1980.; Komissarov, V. N. Theory of translation (linguistic aspects). – M., 1990. / Комиссаров В.Н. Лингвистика перевода / Международные отношения. - М., 1980.; Комиссаров, В.Н. Теория перевода (лингвистические аспекты). - М., 1990.
[174] Barhudarov L.S. Language and Translation. / International Relations. – M. 1975. – 190 p. / Бархударов Л.С. Язык и перевод. / Международные отношения. – М., 1975. – 190с.
[175] Vinogradov V.S. Introduction in translation studies. General and lexical issues. – M., 2001. – 279 p. / Виноградов, В.С. Введение в переводоведение: Общие и лексические вопросы. – М., 2001. – 279с.
[176] Eugene. A. Nida Towards a Science of Translating. Brill. Leiden. 1964.
[177] Anthony Pym. Exploring Translation Theories. – Routledge, 2009. – 232 p.; Hans J. Vermeer A Skopos theory of Translation: (Some arguments for and against) 1998. https://benjamins.com/online/target/articles/target.10.1.09che; Gideon Toury Descriptive Translation Studies and Beyond. John Benjamins. Amsterdam. 1995
[178] Schweitser A. D. Theory of translation: Status, issues, aspects. – M., 2009. – 317 p. / Швейцер, А.Д. Теория перевода: Статус, проблемы, аспекты. – М., 2009.– 317 с
[179] Retsket Ya.I. Theory of translation and translation practice. Essays on linguistic theory of translation. – M., 1974. 371 p. / Рецкер, Я.И. Теория перевода и переводческая практика. Очерки лингвистической теории перевода. – М., 1974. – 371с

and as a '*convention*' / '*конвенция*'. This fact is explained not only by the ambiguity, but also because a word in one language expresses a broader (non- differentiated) concept, and has a wider class of referents.

Referring to the 'theory of 'untranslability' by *Wilhelm von Humboldt*, there are also words that are culturally untranslatable. This category of non-equivalent vocabulary is mainly represented by realia words – denoting objects and phenomena that are absent in the practical experience of another people; or just some random gaps – words that, for unknown reasons, do not have matches in another language.

One of the classical examples of so called Russian 'non translatability' / 'untranslatables' is the term '*privacy*'. In her article, *Tatiana Klepikova* [180] elaborates on a strong incompatibility of Western and Soviet concepts of privacy. The author describes European and American cultures as those with maximum or high / very high privacy. Meanwhile, early Soviet society, from a Western perspective, belongs to those with minimal or low / very low privacy in the aftermath of the October Revolution and the beginning of the '*collectivisation*'. Non translatability of 'privacy' into Russian indicates the absence of the signifier, and, consequently, that of the signified [181].

Meanwhile there do exist terms that are 'untranslatable' from Russian into other languages [182]. As an example, may serve term '*sobornost*' [183]. This term traces its origin in the traditions of medieval Eastern Christianity. In its present meaning the term was presented by Russian philosophers of the 19th century. In the sphere of political life, '*sobornost*' is a demand to make decisions and act all in common, as an intrinsically integral entity.

According to *L. S. Barkhudarov*, there is a wide scope of methods to 'translate' / reproduce / render non-equivalent vocabulary in another language:
• transcription and transliteration;
• borrowing – replacing the constituent parts of words and phrases with their direct lexical correspondences;
• describing or explaining by a detailed phrase that reveals the essential features of the phenomena denoted by this lexeme;

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[180] Tatiana Klepikova Privacy As They Saw It: Private Spaces in the Soviet Union of the 1920-1930s in Foreign Travelogues Source: Zeitschrift für Slavische Philologie , 2015, Vol. 71, No. 2 (2015), pp. 353-389 Published by: Universitätsverlag WINTER Gmbh Stable URL: https://www.jstor.org/stable/43974656

[181] Ibid., p. 358

[182] Being out of scope of the current research, just for the general information. In the comments to the translation of Eugene Onegin by Alexander Pushkin, Vladimit Nabokov described the word **'toska'** - Russian word roughly translated as sadness, melancholia, lugubriousness. '*No single word in English renders all the shades of toska. At its deepest and most painful, it is a sensation of great spiritual anguish, often without any specific cause. At less morbid levels it is a dull ache of the soul, a longing with nothing to long for, a sick pining, a vague restlessness, mental throes, yearning. In particular cases it may be the desire for somebody of something specific, nostalgia, love-sickness. At the lowest level it grades into ennui, boredom*.' Also several words should be said about the personality of Nabokov who was considered to know English language like no other even native speaker – still in memories from the lectures on Translation theory and practice https://advokatdyavola.wordpress.com/2012/05/07/an-elegy-for-passion/ ; Dictionary of Untranslatables also has article on Russian term '*Bogochelovechestvo*' / *«богочеловечество»* - (divino-humanity), a Russian term that refers to Greek patristic concept to *theandrikos*. It designates two movements directed toward each other: that of divine moving toward man and that of humanity rising toward the divine. In Dictionary of Untranslatables. A philosophical Lexicon. Edited by Barbara Cassin. Princeton University Press. 2004. Pp. 121 - 124

[183] Nikolai Biryukov, Jeffrey Gleisner and Victor Sergeyev The crisis of sobornost': parliamentary discourse in present-day Russia Discourse & Society , 1995, Vol. 6, No. 2 (1995), pp. 149-175 Published by: Sage Publications, Ltd. Stable URL: https://www.jstor.org/stable/42887973 pp. 150-151

• analogue, approximate unit with the nearest value match, if there is no exact match;
• various kind of transformations (addition, omission, etc). – restructuring of the syntactic structure or replacement by a word with a different lexical meaning, or both at the same time[184]. All correspondences obtained in this way are occasional. Over time, they can move into the class of usual (dictionary).

For instance, illustrative in this regard, is one of the classical examples of the practice of interpretation of a treaty authenticated in two or more languages illustrated in the Draft Articles on the Law of Treaties [185]. regarding the judgements in the case of Mavrommatis Palestine Concessions [Greece v Great Britain] [186].
The Court had to deal with the meaning of the expression '*public control'* [187].

> English text: the Administration of Palestine *'shall have full power to provide for* ***public ownership or control*** *of any of the natural resources of the country or of the public works, services and utilities established or to be established therein';*
>
> In French: '*aura pleins pouvoirs pour décider quant à la propriété ou au* ***contrôle public*** *de toutes les ressources naturelles du pays, ou des travaux et services d'utilité publique déjà établis ou à y établir'.*

According to the Permanent Court of International Justice (PCIJ), the English notion of public control had a more restrictive meaning than the word '*controle*' in the equally authentic French version:

'*According to the French version, the powers thus attributed to the Palestine Administration may cover every kind of decision regarding public ownership and every form of 'controle' which the Administration may exercise either as regards the development of the natural resources of the country or over public works, services and utilities…*

The English version, however, seems to have a more restricted meaning. It contemplates the acquisition of 'public ownership' or 'public control' over any of the natural resources of the country or over the public works, services and utilities established or to be established therein'[188].

Therefore, the Court has ascertained that *the word 'control' may have a very wide sense but that, used in conjunction with the expression 'public ownership', it would appear rather to mean the various methods whereby the public administration may take over, or dictate the policy of, undertakings not publicly owned* [189].

The opinion of the Court was the following: '*…where two versions possessing equal authority exist one of which appears to have a wider bearing than the other, it is bound to adopt the more limited interpretation which can be made to harmonise with both versions and which, as far as it goes, is doubtless in accordance with the common intention of the Parties*.' [190]

[184] loc. cit. (note 174)
[185] loc. cit. (note 15), p. 225
[186] Permanent Court of International Justice Fifth (Ordinary) Session. The Mavrommatis Palestine Concessions Greece v Great Britain Judgement http://www.worldcourts.com/pcij/eng/decisions/1924.08.30_mavrommatis.htm
[187] Ibid. [§40]
[188] Ibid. [§39]
[189] Ibid. [§40]
[190] Ibid. [§41]

The restrictive approach has been widely contested and the following questions arise in this lieu: if there is no equivalent then what should the drafter in that language do: use a 'similar term' that may be broader or narrower, or invent a term, to indicate that here a concept appears in the foreign language text that is not part of this language / law and therefore a new term has to be created?

According to the theory of regular correspondences proposed by Ya.I. Retsker [191], the rendering is carried out on the basis of isolating the unit of the text and searching for the unit in another language corresponding to it. This search can be implemented in three ways: 1) by substituting a single correspondence; 2) a choice of several units corresponding to the unit; 3) the use of transformations, that is, the transformation of the form and semantics of the text.

What is important to note with regards to the use of transformations, is that they are not considered as a means of analysing the relationship between language units and their dictionary counterparts. Instead they are a means of finding occasional matches that help in cases where it is impossible to find a dictionary match, or in a situation where dictionary / usual meaning does not fit in a particular context. This way, transformations are not as static es equivalents or correspondences, but are more of a dynamic nature.

There is a number of different classifications of transformations. One of the well known and the one that the best would meet the needs of the interpretation of the plurilingual treaties belongs to Ya. I. Retzker [192]. Its major focus is on the lexical transformations. Scholar distinguishes 7 (seven) varieties of those: • differentiation of meaning; • specification of meaning; • generalization of meaning; • semantic development; • antonymic translation; • holistic transformation; • compensation. It is also important / necessary to emphasizes that such a division is very approximate and conditional. In some cases, the transformations are combined with each other and thus form complex transformations.

It still remains an open question if the linguistic theory may be a key to discovering a clear operation / algorithm for the reconciliation of the ambiguities in the treaties authenticated in two or more languages.

Important to note, that when we speak about the term '*meaning*' in linguistical terms, it is more about descriptive [193] function, of presenting the world picture / view, meanwhile, legislating is a purposeful activity aiming at responding to practical problems. In some cases, courts avoid linguistic exercises. For example, in case with the *Whaling in Antarctica*, the ICJ did not undertake the interpretation or giving the definition of *'scientific research'*, a term, the meaning and scope of which were crucial to the dispute [194]. The Court motivated this by the fact the issue at stake was on the edge between science and law.

[191] loc.cit. (note 179)
[192] loc. cit. (note 179)
[193] loc.cit. (note 177)
[194] Makane Mbengue The role of experts before the international court of justice: the Whaling in the Antarctic case. Questions of international Law. Between law and science: A commentary on the Whaling in the Antarctic case April 19, 2015. http://www.qil-qdi.org/between-law-and-science-a-commentary-on-the-whaling-in-the-antarctic-case-2/

Illustrative might be also the case of the Convention on the Elimination of Discrimination against Women (CEDAW) [195]. Mainly in its part related to the term *'gender'* that is known and common in western European, but is contested for example in Russia or some countries with rigid social patriarchal construct. In Russia the term is mainly discussed in light of imposing by 'West' of non traditional orientation and elimination of the family values. Reconciliation of the term reaches far beyond linguistic domain and opens up Pandora box of cultural biases and stereotypes.

At the same time, combination of legal and language theories provide interpreter with tools for an operation / for performing interpretation. On the illustrative examples of the case studies selected for the practical part (Chapter V), we can trace if / how the theoretical provisions operate in practice.

[195] Alec Knight. An Assymetric Comparative International Law approach to Treaty Interpretation "The CEDAW Committee's Tolerance of the Scandinavian State's Progreesive Deviation. P. 419. in Comparative International Law edited by Anthea Roberts, Paul B. Stephan, Pierre Hugues Verdier, Mila Versteeg. Oxford University Press, 2018.

'*When I use a word,' Humpty Dumpty said in rather a scornful tone, 'it means just what I choose it to mean–neither more nor less.' - 'The question is,' said Alice, 'whether you can make words mean different things–that's all.' - 'The question is,' said Humpty Dumpty, 'which is to be master–that's all'.*
Lewis Carroll [196]

CHAPTER IV. ANALYSIS AND CASE STUDIES

Chapter IV aims at illustrating practical application of the theoretical provisions under the VCLT and theory of linguistics. The objective of the analysis of the case studies is to reveal if / how a dichotomy / intersection of legal and language theory works in practice. For the analysis we selected the following case studies:

- The issue with the interpretation of **Article 22 of the 1982 Law of the Sea Convention (LOS)** between the United States and the former Soviet Union – displays the divergence in language and in the understanding of the provisions enshrined in the text, but also the way how it was possible for parties / States to negotiate and solve the issue in a pragmatic way;
- **Case study with the Treaty on the Limitation of Strategic Offensive Arms (SALT II)** – illustrates the situation where one or more terms / texts are clear but another is ambiguous which may be also considered as an element of diplomacy not to agree to the conditions of the treaty;
- **The Four Power Agreement on Berlin** demonstrates that despite the equivalence in the language, there are words that have numerous meanings and depending on their shade of meaning, the interpretation can be different. However, the will of the parties decides a lot.
- **Budapest Memorandum Case** elaborates on the terms that have several equivalents / correspondences in other language. But each equivalent / correspondence has different meaning or 'strength of power'. In this specific case, a 'weak' term was used intentionally as a diplomacy tool of agreement not to agree.

Moreover, the Budapest Memorandum case is selected in view of the recent developments and war being back to Europe. Accordingly, Russia's 'semi-peripheral status in the international system' should be given due regard especially in terms of possible future peace negotiations as well as its pragmatically oriented approach [197] in the use of international law and treaties.

[196] Lewis Carroll (Charles Dodgson) Through the Looking-Glass Available online at https://www.gutenberg.org/files/12/12-h/12-h.htm Accessed on 25.08.2022

[197] James L. Hildebrand, Soviet International Law: An Exemplar for Optimal Decision Theory Analysis, 20 Case W. Rsrv. L. Rev. 141 (1968) Available at: https://scholarlycommons.law.case.edu/caselrev/vol20/iss1/6
*Also interesting appears the study by Albert J. Esgain on the '*Position of the United States and the Soviet Union on Treaty Law and Treaty Negotiations*'. Considering Russia's Soviet legacy, some of the positions seem to be quite relevant even nowadays especially in terms of Russia's position to the international treaties. Mainly Albert J. Esgain says the following: '*The basis of international law is the common consent of the states which comprise the international community. A treaty is an agreement of a contractual nature between states or organizations of states and their agencies which is legally binding upon them as signatories* [p. 39]. … *The Soviets though define a treaty somewhat differently. Their definition is a composite of traditional and ideological concepts. A treaty is defined and explained by them as (a) an international agreement between states creating rights and obligations of a public character in international law, usually embodied in a written instrument, and (b) a typical and most widespread* ***legal form of struggle or cooperation*** *in the realm of political, economic, and other relations among states which "rests on legal principles of equality of the contracting parties, bilateral acceptability, and mutual benefit*'[pp. 39-40]. The second part as also underlined by the author of the study might question ***'peaceful competition'*** in application to Soviet and currently Russian treaty practice. In Albert J. Esgain, The Position of the

Additionally, Russian language structure differs from Roman or Germanic languages. This way, we can also trace the application of theoretical provisions on the examples of distant languages and cultures.

Case 1. Article 22 of the 1982 Law of the Sea Convention (LOS). In case with the interpretation of the **Article 22 of the 1982 Law of the Sea Convention (LOS)** [198] of paramount importance were clear intentions and will of the parties that enabled to settle the grammar issue [199]. The essence of the conflict was based on fundamentally different interpretations of the right of innocent passage [200] between the United States and the former Soviet Union. In that time the Soviet Union considered the right of innocent passage for the war ships as a limited right, meanwhile the US had another opinion. These differences were manifested in the English and Russian language texts of Article 22. But they were discovered only after a range of bumping accidents in the open sea between Soviet and American sides when Professor W. Aceves suggested to look into the texts of the Convention – Russian and English and see how the provisions are enshrined in different authentic texts.

The text of the Convention was drafted in six authentic language texts: English, French, Spanish, Russian, Chinese, and Arabic. In particular, the discrepancies were identified between the English and Russian language versions of Article 22, paragraph 1.

> Text in English: *The coastal State **may, where necessary** having regard to the safety of navigation, require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships.*
>
> Text in Russian: *1. Прибрежное государство **в случае необходимости** и с учетом безопасности судоходства может потребовать от иностранных судов, осуществляющих право мирного прохода через его территориальное море, пользоваться такими морскими коридорами и схемами разделения движения, которые оно может установить или предписать для регулирования прохода судов*[201].
>
> Text as translated into Russian reads the following: *The coastal state, **in the event of necessity**[202] and with regard to the safety of navigation, may require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships* [203].

The principal issue at stake is the balance between the security interests of the coastal state and the right of innocent passage for warships in the territorial sea. The issue with the text in Russian is that it does not restrict the innocent passage in special places or routes, but allows to regulate

United States and the Soviet Union on Treaty Law and Treaty Negotiations, 46 MIL. L. REV. 31 (1969). https://heinonline.org/HOL/Page?handle=hein.journals/milrv46&div=5&id=&page=&collection=journals

[198] United Nations Convention on the Law of the Sea Available online at https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf Accessed on 25.08.2022

[199] loc. cit. (note 59)

[200] Innocent passage by Kari Hakapää In Encyclopedia Public International Law. Volume 5. pp. 209 - 219

[201] Конвенция Организации Объединенных Наций по морскому праву https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_r.pdf

[202] Article 22 In Russian. p. 187 Available online at https://www.un.org/ru/documents/decl_conv/conventions/pdf/lawsea1-45.pdf accessed 25.08.2022

[203] loc. cit. note 59, p. 203

the right of innocent passage at any time. The discrepancies in wording in Russian and English texts revealed different interpretations of the LOS Convention and both of them implied to be valid.

Interesting to note that English grammatic / syntactic construction '***may, where necessary***' can be literally translated into Russian as ***«там, где необходимо»*** which fully corresponds to the idea / meaning of the English text. However, in Russian text it is also possible to transfer / 'translate' English construction employing transformation. Complex grammatical construction is replaced by a word combination of nouns which is actually a common operation in translation practice. However, Russian '*in case of necessity*' or in the '*event of necessity*' has a much broader scope of application and does not limit the restrictions on the innocent passage only to space / place but also implies that restrictions can be done any time or on any occasion – whenever and wherever it is necessary.

For this case it is essential to get insight into the context and developments of the Law of the Sea. The provisions on the entitlement of the innocent passage apply to 'all ships' (Art. 17-26 UN Convention on the Law of the Sea). Passage of warships has been contested though, as a number of States urged a prior authorization or at least prior notification of the entry of foreign warships to their territorial seas. For instance, the position of Finland and Sweden was that a mere request of information neither denies not impairs passage [204]. Maritime States meanwhile found the requests for prior notification as an unacceptable limitation on the right of innocent passage.

The solution for the US and the USSR was taken pragmatically. Both parties recognized that innocent passage may be restricted **only where needed** to protect the safety of navigation, and in 1989 the US and the USSR agreed on a 'Uniform Interpretation of Rules of International Law Governing Innocent Passage" allowing all ships, including warships, to enjoy the right of innocent passage [205].

With the adoption of the 1982 LOS Convention, state practice was consistently employed to interpret ambiguous treaty provisions and reference to state practice is also enshrined under the rules of the VCLT, but it does not eliminate potential risks of tensions between nations. Recently, one of the concerns in terms of the views on innocent passage was raised regarding the carriage of hazardous cargoes. While the UN Convention on the Law of the Sea does not differentiate on the nature of the cargo as a criterion for the innocence of passage, some states consider establishing national legislation prohibiting such carriage in the territorial sea or establishing regimes of prior notification and / or authorization which would fail to comply with the provisions of the UN Convention on the Law of the Sea. Meanwhile, regimes of prior notification still leave more room for interpretation [206].

Case Study 2. The Treaty on the Limitation of Strategic Offensive Arms (SALT II). Another example illustrating the case where one or more texts is clear, but another is ambiguous may be also considered as an element of diplomacy not to agree to the conditions of the treaty. As an instance, the case with **the Treaty on the Limitation of Strategic Offensive Arms (SALT II)** [207] between the United States and the Soviet Union regulating the manufacture of strategic nuclear weapons. This treaty never formally went into effect, and proved to be one of

[204] Innocent Passage by Kari Hakapää, in Max Planck Encyclopedia of Public International Law. Volume 5. P. 209 – 219, p. 215
[205] Ibid.
[206] Ibid.
[207] loc. cit. (note 6)

the most controversial U.S-Soviet agreements of the Cold War. English and Russian texts were of equal authenticity. The major discrepancy between the treaty texts refers to the Common Understanding to Paragraph 8 Article IV, which reads in English as following:

> *During the term of the Treaty, the Union of Soviet Socialist Republics will not produce, test, or deploy ICBMs [intercontinental ballistic missiles] of the type designated by the Union of Soviet Socialist Republics as the RS-14 and known to the United States of America as the SS-16, a light ICBM first flight-tested after 1970 and flight-tested only with a single reentry vehicle; this Common Understanding also means that the Union of Soviet Socialist Republics will not produce the third stage of that missile, the reentry vehicle of that missile,* ***or*** *the appropriate device for targeting the reentry vehicle of that missile* [208]

The Russian may be translated in the following manner:

> *During the term of the Treaty, the Union of Soviet Socialist Republics will not produce, test and deploy ICBMs of the type designated by the Union of Soviet Socialist Republics as the RS-14 and known to the United States of America as the SS-16, a light ICBM first flight~tested after 1970 and flight-tested only with a single reentry vehicle; this Common Understanding also means that the Union of Soviet Socialist Republics will not produce the third stage of that missile, the reentry vehicle of that missile* ***and*** *the appropriate device for targeting the reentry vehicle of that missile* [209].

Russian and English texts are almost identical / same except a conjunction 'or' and in Russian 'and'. Because of this minor nuance, Soviet Union could interpret for a less extensive interpretation of the obligations in the Common Understanding. Meanwhile conjunction 'or' in English text presupposes broader spectrum of obligations. The grammar analysis as a starting point reveals the meaning of the words 'or' / 'and' which is mainly about inclusive versus exclusive disjunction. 'And' if placed in certain context may carry a disjunctive meaning.

English text clearly elaborates on the ban of engaging in any of the enumerated activities, while Russian text is less clear and formulated in a way that does not allow the Soviet Union undertaking all three activities simultaneously, and at the same time does not prevent from engaging in one or two. Accordingly, Russian text may be interpreted in two ways: one that is identical to the English version – forbidding all the three activities, or undertaking one or two but not all three at one time. Accordingly, the second potential meaning provides more freedom of action to the Soviet Union.

Applying restricted meaning approach in interpretation favouring lesser obligation for a State would be beneficial for the Soviet Union, but fails to give effect to the true intention of the parties. Interpreting the Common Understanding according to the principle of the clearest text would favor the United States' position. The proper approach for harmonizing or reconciling the texts should embrace interpretation according to the object and the purpose of the treaty. This way it will be possible to avoid favoring of one or another party and this way also reveal the true intentions of the States. The rules under the VCLT provide a flexible framework for dealing with plurilingual treaties. In this specific case it is also likely that the vague wording

[208] Treaty between the United States of America and the Union of Soviet Socialist Republics on the limitation of strategic offensive arms, together with agreed statements and common understandings regarding the treaty Available online at https://nuke.fas.org/control/salt2/text/salt2-2.htm Accessed on 25.08.2022

[209] Russian text of SALT II Available online at http://www.armscontrol.ru/start/rus/docs/osv-2.txt Accessed on 25.08.2022

and choice of terminology was done not with the aim of linguistic precision, though in Russian text it would be possible to achieve, but is more dictated by the scope and extent that the State is ready to undertake.

At the end, the agreement limiting strategic launchers was agreed and signed by the parties but was never ratified either by the US or the Soviet Union. However, parties adhered to and honoured the provisions of the Treaty till 1986 and afterwards SALT II was superseded by another treaty on Strategic Arms Reduction Treaty.

Case Study 3. The Four Power Agreement on Berlin. **Reconciliation of the meaning of the treaty in which terms that have more than one meaning. The Four Power Agreement on Berlin** [210], also known as the Berlin Agreement [211], or the Quadripartite Agreement on Berlin[212], between the U.S., Britain, France, and the Soviet Union was agreed on the 3rd of September 1971.

The Agreement was drafted in English, French and Russian[213] languages – all equally authentic. There is no authentic text in the German language[214], however, the texts of the GDR and West Berlin differ, in part – '*Viermächte'* (BR Dtld.) / *vierseitiges* (DDR); *Verbindungen* (DDR) (zwischen Berlin (West) und der Bundesrepublik). The major challenge in interpretation was in part related to the West versus East position regarding the term '**ties**' of West Berlin – '*Bindungen*' – '*connection*', or '*communication*' with Western Germany [215]. If it should have been interpreted as mere '*communication*' according to the Soviet Union position, or Western Berlin as a separate unit or a constituent part of Federal Republic of Germany. At that time, all those interpretations were possible.

- *Quadripartite* (*en*) / *quadripartite* (fr) / *Четырехстороннее* (ru) → *Viermächte-* (BR Dtld.) / *vierseitiges* (DDR)
- *ties* (en) / *liens* (fr) / *связи* (ru) → *Bindungen* (BR Dtld.) / *Verbindungen* (DDR) (zwischen Berlin (West) und der Bundesrepublik) [216]

English Text [217]

> ***Part II Provisions Relating to the Western Sectors of Berlin***
> *B. The Governments of the French Republic, the United Kingdom and the United States of America declare that* ***the ties*** *between the Western Sectors of Berlin and the Federal Republic of Germany will be maintained and developed, taking into account that these Sectors continue not to be a constituent part of the Federal Republic of Germany and not to be governed by it.*

[210] Dieter Blumenwitz Die Errichtung Ständiger Vertretungen im Lichte des Staats- und Völkerrechts. Völkerrecht und Aussenpolitik. Nomos Verlagsgesellschaft. Baden-Baden. 1975.
[211] Quadripartite Agreement on Berlin (Berlin, 3 September 1971) https://www.cvce.eu/content/publication/2003/3/12/9bfcb5f5-8e0d-46ee-9f7f-8e9a7c945fa7/publishable_en.pdf
[212] Berlin (1945-91) by Jochen Frowein In Max Planck Encyclopedia of Public International Law. Volume 1. pp. 894-899
[213] Quadripartite Agreement on Berlin in Russian https://docs.cntd.ru/document/901867184
[214] Viermächte-Abkommen vom 3. September 1971 (mit den Anlagen I, II, III und IV) in German https://www.chronik-der-mauer.de/
[215] Swjasi, liens, ties. Der Spiegel. 14.10. 1973 Available online at: https://www.spiegel.de/politik/swjasi-liens-ties-a-acb3fc11-0002-0001-0000-000041926283?context=issue Accessed on 01.04.2023
[216] Ibid.
[217] Loc. cit. (note 211), p. 4, 6

Annex II Communication From the Governments of the French Republic, the United Kingdom and the United States of America to the Government of the Union of Soviet Socialist Republics

They declare, in the exercise of their rights and responsibilities, that ***the ties*** *between the Western Sectors of Berlin and the Federal Republic of Germany will be maintained and developed, taking into account that these Sectors continue not to be a constituent part of the Federal Republic of Germany and not to be governed by it. The provisions of the Basic Law of the Federal Republic of Germany and of the Constitution operative in the Western Sectors of Berlin which contradict the above have been suspended and continue not to be in effect.*

Russian text [218]

Часть II Постановления, относящиеся к западным секторам Берлина

В. Правительства Французской Республики, Соединенного Королевства и Соединенных Штатов Америки заявляют, что ***связи*** *между Западными секторами Берлина и Федеративной Республикой Германии будут поддерживаться и развиваться с учетом того, что эти сектора по-прежнему не являются составной частью Федеративной Республики Германии и не будут управляться ею и впредь.*

Приложение II Сообщение Правительств Французской Республики, Соединенного Королевства и Соединенных ШтатовАмерики Правительству Союза Советских Социалистических Республик

1. В осуществление своих прав и ответственности они заявляют, что ***связи*** *между Западными секторами Берлина и Федеративной Республикой Германии будут поддерживаться и развиваться с учетом того, что эти сектора по-прежнему не являются составной частью Федеративной Республики Германии и не будут управляться ею и впредь. Положения Основного закона Федеративной Республики Германии и конституции, действующей в Западных секторах Берлина, которые не согласуются с вышеизложенным, приостановлены в своем действии и по-прежнему не будут иметь силы.*

German text – non-authentic

Teil II [219]

II. *Bestimmungen, die die Westsektoren Berlins betreffen*

Die Regierungen der Französischen Republik, des Vereinigten Königreichs und der Vereinigten Staaten von Amerika erklären, daß ***die Bindungen*** *zwischen den Westsektoren Berlins und der Bundesrepublik Deutschland aufrechterhalten und entwickelt werden, wobei sie berücksichtigen, daß diese Sektoren so wie bisher kein Bestandteil (konstitutiver Teil) der Bundesrepublik Deutschland sind und auch weiterhin nicht von ihr regiert werden. Konkrete Regelungen, die das Verhältnis zwischen den Westsektoren Berlins und der Bundesrepublik Deutschland betreffen, sind in Anlage II niedergelegt.*

Anlage II

[218] Loc.cit (note 213)
[219] Loc.cit. (note 214)

Mitteilung der Regierung der Französischen Republik, des Vereinigten Königreichs und der Vereinigten Staaten von Amerika an die Regierung der Union der Sozialistischen Sowjetrepubliken

*In Ausübung ihrer Rechte und Verantwortlichkeiten erklären sie, daß **die Bindungen** zwischen den Westsektoren Berlins und der Bundesrepublik Deutschland aufrechterhalten und entwickelt werden, wobei sie berücksichtigen, daß diese Sektoren wie bisher kein Bestandteil (konstitutiver Teil) der Bundesrepublik Deutschland sind und auch weiterhin nicht von ihr regiert werden. Die Bestimmungen des Grundgesetzes der Bundesrepublik Deutschland und der in den Westsektoren Berlins in Kraft befindlichen Verfassung, die zu dem Vorstehenden in Widerspruch stehen, sind suspendiert worden und auch weiterhin nicht in Kraft.*

While the Soviet Union argued for a restrictive interpretation of the '*ties*', three Western Powers claimed that 'ties' referred also to the possibility of extending the presence of the Federal Republic of Germany in Berlin. The Soviet Union tried to prevent West Berlin from becoming a constituent part of the Federal Republic and eliminate any link / connection. The Soviet Union tried to employ such a wording that would narrow the understanding of the ties or connections between West Berlin and the Federal Republic of Germany and agreed upon the 'ties' of an economic, legal, financial, and cultural nature. It is clear that the notion of 'tie' offers many different interpretations and covers the interests of all sides, and allows various interpretations.

In German magazine Der Spiegel was a special article dedicated to the wording and interpretation of the provisions. In particular, the divergence in the interpretation of the term 'ties' arose between the interpretation by the Federal Government and in its 'translation' of the four-power text and the GDR. The latter speaks of 'connections' in a way making it less a political issue but rather of a mere technical character (e.g. transport and telecommunications). Meanwhile, legally binding English, French and Russian versions display that the terms used there rather speak in favour of the 'translation' by Bonn (the Federal Government).

The Russian 'связи' / 'svjasi' is also used in the colloquial language in the sense of connection – for example in the transmission of messages, but on the other hand the term also stands for bond in the sense of connectedness, bonds of friendship. Relationships. The word '*les liens'* used in the French text also has this double meaning: It designates both a technical connection (rope, chain, rope) and ties of a religious and friendly nature. The same applies to the English term 'the ties' which can have technical meaning (staples, knots), but at the same time also describes ties in the sense of blood ties, friendship and obligations between people. A Soviet interpretation that wanted to downgrade this crucial passage of the Berlin Agreement to a purely technical fact would therefore be unacceptably restrictive [220].

At the end, the Four Powers agreed that the western Sectors of Berlin did not form part of the Federal Republic of Germany. However, by the reference to the continuing practice they implied that the 'ties' between the Western Sectors of Berlin and the Federal Republic of Germany could be maintained and further developed.

The Soviet Union and the German Democratic Republic claimed that the Western Sectors of Berlin represent an international entity on their own, but this was never recognized by the Western Powers or the Federal Republic of Germany. The Federal Constitutional Court held that according to German Law, Berlin is part of the constitutional system of the Federal

[220] loc.cit. (note 215)

Republic, but this was not fully applicable because of the allied reservations (2 BvR 6/56 Bundesverfassungsgericht [German Federal Constituional Court 2nd senate] [21 May 1957] 7 BVerfGE 1)[221]. Still, the legal system of the Federal Republic was, practically without exception, also applicable in the Western Sectors of Berlin and all the agreements or treaties which were adopted were organized in such a way that would also apply to Land Berlin.

In the long-term perspective, The Four Power Agreement on Berlin laid the foundation for the further international agreement or as it is called, the German Peace Treaty, Treaty on the Final Settlement with Respect to Germany [222] or the Two Plus Four Agreement, that allowed the reunification of Germany in 1990s.

Case Study 4. The 'Budapest' Memorandum. Terms having various strength of power as a diplomacy tool of agreement not to agree. The Memorandum on Security Assurances[223], known as **Budapest Memorandum**, a set of agreements signed at the OSCE conference in Budapest, Hungary on the 5th of December 1994. What makes this agreement stand out is its political nature that is very often underlined, given the fact that decisions in frame of the OSCE are made according to the political consensus and are not legally binding, but their importance may even go far beyond legally binding treaties, as the so called "Helsinki-Rules" have demonstrated.

Three nuclear powers: the Russian Federation, The United Kingdom, and the United States as the guarantors of the agreement signed the Memorandum providing security assurances to Belarus, Kazakhstan and Ukraine in exchange of giving up their nuclear weapons. The Budapest Memorandum contains provisions only on security 'assurances' not 'guarantees'. Some of the experts refer to the fact that wording was chosen very precisely and intentionally as the '*guarantee'* would imply the military interference from the US.

As various publications from the open sources indicate, initially Ukrainian representatives sought robust and legally binding 'guarantees' for their security. However, the diplomatic solution was to provide Ukraine with politically binding security '*assurances*'. The Budapest Memorandum which is authentic in three languages – English, Russian and Ukrainian[224] provides in English text – term '*assurances*', while in Russian and Ukrainian it is stated '*guarantees*' / *«гарантии»*, *'guarantees'* / *«гарантії»* accordingly. The precise equivalent for English *'assurances'* in Russian and Ukrainian would be «*заверения»* / *«запевнення»* respectively. *'Assurances'* carry a 'weaker' meaning in comparison with the legally binding '*guarantees*'. '*Guarantee*' is a lawful term, lawfully tying / binding and accordingly has a stronger meaning and imposes legal obligations on the guarantors as well as presupposes military commitments. '*Assurance*' is the act of assuring something. Its meaning is weaker in

[221] loc.cit. (note 212)

[222] No. 29226. Federal Republic of Germany, German Democratic Republic, France, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and the United States of America: Treaty on the final settlement with respect to Germany (with agreed minute). Signed at Moscow on 12 September 1990 in Treaty Series Treaties and international agreements registered or filed and recorded with the Secretariat of the United Nations Volume 1696, United Nations, 1999. Available online at https://treaties.un.org/doc/Publication/UNTS/Volume%201696/v1696.pdf

[223] Memorandum on Security Assurances https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280401fbb

[224] Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons. Budapest, 5 December 1994 Available online at https://treaties.un.org/doc/Publication/UNTS/Volume%203007/Part/volume-3007-I-52241.pdf Accessed on 25.08.2022

comparison with '*guaranty*'. It is done to inspire full confidence and does not come with a legal binding, while both terms mean '*promise*'.

As a result, of such vague wording, Ukraine's sky remains open for Russian rockets. The narrative or interpretation originating from the term '*assurances'* not '*guarantees*' under the treaty is that if NATO countries would interfere and provide military support by closing Ukraine's sky they would directly encounter with Russia that may lead to war in scales of NATO-Russia. Accordingly, countries support Ukraine by providing humanitarian and financial support, but not by means of military intervention of the NATO forces. In Ukraine the position is that they were betrayed and the security assurances under the memorandum are futile.

The case of the Budapest Memorandum has revealed not only the consequences of the vague wording – *nomen est omen* (the name is a sign) and how they may work in practice, but also how such ambiguity may lead to a grave post practice or even the breach of an agreement in this case by Russia. Moreover, Russian aggression and rocket attacks against Ukraine have undermined geopolitical stability and brought war to the European continent in the 21st Century. It is also the precedent posing potential threat to other countries giving up on their nuclear weapons, undermining the policies and practice of the international law and spreading mistrust in the relations between countries. Notorious in this regard is the statement by Emer De Vattel, that '*On the observance and execution of treaties depends all the security which princes and states have with respect to each other… and no dependence could henceforward be placed in future conventions if the existing ones were not to be observed'* [225].

Summing up, the analysis has illustrated that the interpretation of the plurilingual treaties is a multifaceted / multidimensional, multi-step process / procedure. It embraces a wide range / scope of issues related / determined by both language and law, as well as the culture, legal tradition of the interpretation of treaties, as well as time / temporality.

Language and legal theory provides a flexible skeleton for the practice of the interpretation of the plurilingual treaties. However, the case study law does not provide the ready made recipes or fit it all solutions. In some cases, ambiguous / vague wording, even if there is a literal equivalent available in another language, is a diplomatic tool not to agree or leave space for maneuvre. And it will depend on the will of the parties and the way of interpretation if they would like / manage to achieve consensus.

[225] loc.cit. (note 30), p. 229

CHAPTER V. CONCLUSIONS

This thesis is a modest attempt to provide insight into the domain of the legal interpretation of the plurilingual treaties – both its theory and practice. Qualitative analysis and case studies have vividly illustrated the interconnectedness of the theory of treaty interpretation with the practical application of the VCLT provisions. The case study analysis of the State practice has revealed the character / nature of the possible ambiguities in the interpretation of the plurilingual treaties, and the solutions offered by international law and the practice of the States for overcoming those challenges.

The research has displayed that one of the major issues posed by the plurilingual treaties relates to the ambiguities which arise in the process of the interpretation of the texts in different languages. The character of these ambiguities is very often related to the peculiarities of the specific language and the way they are interpreted, which may lead either to the restricted meaning of the treaty provision (s) or too broad, e.g., if the weapons are taken away from certain territory or the whole area in total [Israeli case], if certain kind of weapons to be produced further or not [SALT II], if there will be a freedom of innocent passage or just a restricted right, if there will be tensions or dangerous confrontations, and they outline if it will be peace or war. At the same time successful implementation and finding of consensus may foster communication as in case with the Berlin Treaty, and lay foundation for further mutual cooperation and peace between countries.

Ambiguities between / among the languages help to clarify the provisions of a treaty or give space for further cooperation. As such linguistics, semantics, and language may provide certain loopholes for states and it depends on the States's intentions if they use it for bad or good, but of course in own interests. This statement correspondents to the hypothesis of the research, that language formulation is just the representation / reproduction of the objective and the subsequent practice of the countries. This way, the VCLT provides for the States to interpret the treaties but at the same time empowers States with institutionalizing the provisions.

Certainly, some of the inconsistencies may indeed arise in the process of plurilingual drafting or translation of treaties in different languages. Attempt to harmonise and bring the text in all the languages under common equation or authenticity ('best' solution) may substantially impact the provisions of the treaty. Moreover, even as the uniformity in language is achieved and the authoritative text / texts are acknowledged, there is no guarantee regarding the uniform application of the provisions enshrined in the text of treaty as depending on the situation each and every country may interpret certain components of the text – words or phrases in a different manner. And at this same moment interpretation comes into work.

While VCLT provides a flexible and adaptable, dynamic frame / regime to treaties interpretation, it does not exclude that in some cases treaty interpretation may exacerbate international tensions and give rise to dangerous confrontations. Considering that VCLT as well as the legal theory of the interpretation of plurilingual treaties does not provide an algorithm, clear operation according to which the interpretation of the plurilingual treaties should be performed, the interpretation of the plurilingual treaties is mainly done *ad hoc* in every separate case. This way, the agency of the interpreter is also emphasized.

As vividly demonstrated by the analysis of the case studies, availability of the direct correspondences / equivalents between / among texts does not solve the issue in case of ambiguity if the States are reluctant to accept the provisions of a treaty. On the contrary, duality or plurality of language constructions / formulas and possibility of expressing certain phrases

or terms in different ways grants more opportunities to States / parties of the treaty to avoid certain terms or conditions and accordingly have more space for maneuver in negotiating the treaty.

As demonstrated by the analysis of case studies, interpretation is not merely about the mechanical / manual substitution of a term in language by its equivalent or correspondence in another. Various kinds of transformations offered by the theory of equivalence may be very helpful for an interpreter. In general language provides lots of options for saying one and the same thing in different ways, but at this point should come into work legal element to follow if / how language impacts the meaning / content of a treaty. Only dichotomy of law and language are capable of providing an operational mechanism for interpretation of the plurilingual treaties.

Expected results of the research may provide a comprehensive overview of the issues on the interpretation of the plurilingual treaties and reveal the major discrepancies braising in the process of interpretation. The topic is invigorating and challenging, whilst also posing a wide spectrum of perspectives for further analysis and creation of the catalogue of the case studies for translators, lawyers, and diplomats who are going to connect their life with the domain of the international law and interpretation of plurilingual treaties.

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