

Speech Acts in UN Treaties: A Pragmatic Perspective

Nouhoum Kone

Central China Normal University, Wuhan, China

Email: noohoom300@gmail.com

How to cite this paper: Kone, N. (2020). Speech Acts in UN Treaties: A Pragmatic Perspective. *Open Journal of Modern Linguistics*, 10, 813-827.
<https://doi.org/10.4236/ojml.2020.106051>

Received: October 27, 2020

Accepted: December 4, 2020

Published: December 7, 2020

Copyright © 2020 by author(s) and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).
<http://creativecommons.org/licenses/by/4.0/>



Open Access

Abstract

This paper investigates the linguistic behavior, especially the illocutionary forces used in international conventions formulation discourses. It cuts across pragmatics and law—the illocutionary act and a particular register of legal text. Illocution is a dimension of speech act theory which stands for the intention inherent in spoken or written utterances. For extended analysis, a couple of other discursive variables are added. One is mood, a concept borrowed from Halliday's systemic functional linguistics which maintains that there are basically three types of mood in English language: declarative for statement, imperative for command and interrogative for question. The other is speech act type. Based on Searle's classification, there are assertive, commissive, representative, directive and expressive. The questions discussed are: 1) What types of illocutionary acts are found in the discourse of U.N. treaties? 2) To what extent are they used? 3) How do those types of illocutionary acts reflect the nature of discourse pattern of a treaty? The data reveal that there is not an exclusive use of a single speech act type. However, there is a higher frequency of constitutive and commissive categories whereas the directive is only used to a lesser extent. This high frequency of commissive and constitutive is understood as a reflection of the nature of a treaty that is not so much about a command as it is about commitment and clear definitions of the relative terms.

Keywords

Illocutionary Act, Legal Discourse, Mood, Pragmatics, Speech Act, Systemic Functional Linguistics, Treaty

1. Introduction

This paper explores an important dimension of speech act theory, namely the illocutionary act, the type of function that a speaker intends to accomplish in the

course of producing an utterance defined within a system of social conventions (Searle, 1969; Nordquist, 2020). Speech act theory is pragmatics, the study of language use where the effect of spoken or written words or expressions in verbal and non-verbal context becomes object of care and analysis. Speaking is not simply a statement (locutionary act) but also a performing (illocutionary act) and by this principle uttering is “doing things with words” (Austin, 1955). However, distinct types of utterances such as assertion, command, question, etc. produce distinct illocutionary acts: declarative illocutionary act, imperative illocutionary act, interrogative illocutionary act, which constitute the three main categories of mood in English. Each act can be expressed at different degrees of force, thus the expression “illocutionary force” (Andor, 2011) or the effect of a speech act is intended to have on an audience.

Determining the illocutionary act of an utterance often goes beyond referring to its propositional contents. It entails referring to what is known as Illocutionary Force Indicating Devices (IFIDs). Following Searle, Elizabeth and Gaspar (2014) posited that utterances of different syntactic structures, thus different illocutionary forces like “open the door” and “could you open the door please” have the same propositional content (open the door) though the former is an order and the latter a request. This shows how people choose to address one another in one way instead of another way as the type of relation determines the nature of communication people engage in everyday life. This study addresses that issue of choice making at a higher level of interpersonal relation, especially how interlocutors adapt their expressions to the illocutionary force of international treaties.

2. Related Works

2.1. Speech Act

Predating Austin, J.L., the concept of descriptiveness was central to the philosophy of language with a common perception that utterances generally serve to describe. That theory was open to arguments when, in 1955, Austin delivered his pioneering speech “How to Do Things with Words”. In fact, Austin observes that once we utter words, we are not only describing a situation but also performing a sort of action and, as to the kinds of acts performed when language is used, an initial distinction was made between constative and performative. The former stands for sentences characterized as descriptive, that is, they describe or constate things and therefore are truth-evaluable (either true or false), the latter stands for the types of utterances which, instead of describing, perform actions and are therefore not truth-evaluable but rather evaluated in terms of felicity (happy or unhappy). Ever since that introductory speech, a new way was paved and a growing interest aroused to see beyond the reductionist framework of descriptiveness with a henceforth common thought that in attempting to communicate, people do not only produce utterances containing grammatical structures and words, they actually perform actions via those utterances (Austin, 1955;

Searle, 1979; Yule, 2000), leading to the thriving of modern study of speech acts at the demise of “descriptive illusion”.

Beginning with Austin’s engaging monograph for example what was initially meant by speech act were actions accomplished via performative utterances e.g. “I christen this ship the Joseph Stalin”; “I now pronounce you man and wife”, and the like. Those seem to be designed to do things rather than merely saying or describing something. Such sentences Austin referred to as performatives with ascribed features such as first-person subject, indicative mood, simple present tense, active voice, and performative verb, in contrast to what he called constatives, the descriptive sentences of the type: “I go to school every day”, a mere statement of fact. That definition is now expanded to cover actions performed by utterances that are not strictly performative, and applied to different disciplines.

Distinction between performatives and constatives, as Sadock (1974) observes, is often invoked in work on the law, in literary criticism, in political analysis, and in other areas, but it is a distinction that Austin argued was not ultimately defensible. The true point is, in fact, that every normal utterance has both a descriptive and an effective aspect: that saying something is also doing something. However, this constative-performative dichotomy did not last long before showing its limit, and the tri-partite approach: the locutionary, illocutionary, and perlocutionary acts was given rise. These are kinds of acts that are performed when language is put to use, encompassing characteristics of most utterances whether performative or constative.

Austin illustrates the distinction between these kinds of acts with the example of saying “Shoot her!” which he trisects as follows:

- Act (A) or Locution: He said to me “Shoot her!” meaning by shoot “shoot” and referring by her to “her.”
- Act (B) or Illocution: He urged (or advised, ordered, etc.) me to shoot her.
- Act (C) or Perlocution: He persuaded me to shoot her.

This illustration serves a premise to a clear detail where locution is the act of uttering, illocution the intention and the perlocution the effect. In a broader sense, locution is the literal meaning conveyed via syntax lexicon, phonology; the construction of speech by uttering certain sounds or making certain marks, using particular words and etc. To go beyond the simplistic view, Illocution is a hint of speaker’s intention; it translates what is performed by speaking and has more to do with the audience than with the utterer since it draws its significance from inference. The third category, the perlocution, is the consequence, the by-product or the corollary of speaking or simply put, the effects upon the thoughts, feelings, or actions of the addressee.

2.1.1. Searle’s Classification of Illocutionary Acts

Searle classifies speech act into five (5) types relative to distinct functions or illocutionary forces. It is the direction fit hypothesis or the words-fit-world/world-fits-words taxonomy which occurs under four values: words-to-world, world-to-words, neither, and both. We then have declarations in which the

propositional content matches the reality, thus the equivalent of Austin's performative sentence. Another type is commissive; what is intended to be done in the future. Promise for instance falls into this category of speech act. The next type is expressive or those speech acts that translate the speaker's affective state. And finally there are directive (the speaker making the hearer do something) and representative (the assertion of speaker's beliefs). This classification is even clearly shown in **Table 1** (Yule, 2000: p. 55).

Declaratives are types of illocutions that bring into existence by statement as "I now pronounce you husband and wife" uttered by a mayor in the appropriate circumstance. Representatives describe state of affairs as perceived by the speaker in terms of truthfulness. By commissive the speaker expresses his commitment to certain course of action in the future (e.g. promise, oath). It generally translates the voluntary engagement of the speaker. Directive expresses indirect and outright orders of a speaker to an audience but it may be inclusive enough as to engage the speaker in performing the order. Expressive is about the speaker's psychological state, especially his feeling.

In their *Linguistic Communication and Speech Acts* (Bach & Harnish, 1979) object to Searle's approach in that it focuses on constitutive rules. They rather promote Strawson's intention-centered theory drawing a parallel between ceremonial act like marrying, and non-ceremonial act like asking a question and come up with the hypothesis that as convention is crucial to the illocution of ceremonial acts, so is intention to communicative act, the alternative to non-ceremonial act (ibid, 1979). Their contribution was threefold: 1) to suggest a very general speech act schema (SAS) for communicative illocutionary acts, 2) to show how inferences based on mutual contextual beliefs (MCBs) play a role in communicative speech acts, and 3) to make detailed use of Grice's notion of Conversational Implicature in completing the theory. The most general form of SAS consists of the following ordered steps:

a) S is uttering e. b) S means ... by e. c) S is saying so-and-so. d) S is doing such-and-such. From this perspective, a more refined approach to speech act theory consists in striking a balance between convention and intention.

3. Speech Act in Legal Language

According to Tiersma, legal text is different from ordinary speech for the fact that legal texts are characterized by particular illocutionary forces of "creating,

Table 1. The five general functions of illocutionary acts following Searle (1979).

Speech Act Type	Direction of Fit	S = Speaker X = Situation
Declarations	Both	S causes X
Representatives	Make words fit the world	S believes X
Expressives	None	S feels X
Directives	Make world fit the words	S wants X
Commissives	Make world fit the words	S intends X

modifying, or terminating the rights and obligations of individuals or institutions” (Tiersma, 2010; Motulsky, 1948). And such legal texts are referred to as written performatives by Austin, and operative or dispositive by lawyers and the genres include documents such as: constitutions, deeds, contracts (treaties fall within this category), orders, statutes, wills, decrees (ibid, 2010). In further details the author states: “each genre of legal text tends to have its own stereotypical format, is generally written in legal language (or ‘legalese’), and usually contains one or more legal speech acts that are meant to carry out its intended functions. Thus a contract almost always contains one or more promises, a will contains verbs that transfer property at death and a deed transfers property during the lifetime of its maker.” Legal texts, despite their nature, have normative characteristics in that they describe and set standards and rules of behavior. This gives a sense that legal rule is necessarily formulated in the imperative as observed by Capitant (1928 as cited in Slomanson, 2011) in his doctoral thesis “The imperative and the indicative”, he observed “are two distinct moods of the verb. These two moods translate two distinct notions which one can describe as imperative and indicative... The opposition between the indicative and the imperative is the opposition between what is and what should be...”. In a different study but with similar opinion, Lawrence Solum states that: “laws might be seen as speech acts-as types of commands and authorizations” (Solum, 2019); Trosborg (1994) classifies legal speech acts as directive, commissive and constitutive.

As can be noted, the pragmatic properties of legal discourse have been explored by many authors, especially within speech act theory framework. However, conspicuously missing from those studies or rare attempts are macro-speech act analyses. Many are analyses confined to micro-speech act, that is, they look at single utterances rather than considering texts or sequences of texts in their entirety. This tendency of limiting the analysis to sentential level is a shortcoming for we think that texts can have specific illocutionary force dependent upon the type of register. A contract for example in written format might be seen as a macro-speech act of commissive. The special interest in this study is to contribute to legal practice by considering this dimension of macro-speech act in treaties.

Treaties

In his book “*Fundamental Perspectives on International Law*”, Slomanson defines a treaty as “a generic term covering all forms of international agreement in writing concluded between states.” (Slomanson, 2011: p. 351). Treaties are forms of international law that determines the relationship among nations. It can be a protocol, a covenant, convention, a pact but this nomenclature has no effect beyond a variation in terminology and treaty in essence, as Slomanson puts it, is a limitation over states’ sovereignty or as Tiersma puts it, an authoritative text of agreement among states referred to as an “integrated agreement” in lawyers’ jargon. As such, we perceive treaty as law, a command, an order, an imperative from authority that molds behaviors and inspires obedience.

A treaty, as specifically and contextually defined in *Vienna Convention On the Law of Treaties* (vol-2, chapter XXIII, article 2), is “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.” By agreement we infer a convention, a legally binding contract whereby states or parties share a range of vision and opinions framed into rules that each commits itself to abide by. We then perceive a treaty as a law, though not necessarily always in form of a command, an order, but rather a free will commitment. Considering both definitions, we logically come up with the conclusion that discourses of the type of treaties have an allusion to the world-fit-words category of illocutionary acts, especially the directive by reference to the work of Slocum and the commissive by reference to *Vienna Convention On the Law of Treaties*.

4. Objective and Research Questions

4.1. Objectives

This paper is of interdisciplinary nature for its subject matter is pragmatics but it also cuts across language of law. The main objective is to determine the nature of the type of speech act illustrated in the language of convention, especially the textual metafunction from a corpus of international treaties using speech act theory (the illocutionary act) as “measurement-rod”. The writer is also particularly interested in doing a macro-speech act analysis to determine illocution in this specific register.

4.1.1. Rationality of Choosing Research Objects

The main rationale backing up the choice of these specific objectives is that the essential of research related speech act theory has been focused on utterances as taken separately, that is, utterances as not part of a full speech (e.g. entire text of a particular register) thus referred to as micro-speech act analysis. Even though those analyses provide valuable understanding of the theory, more insightful details my stem from considering a holistic analysis of discourses as they are formulated in different registers. This is what is referred to here as macro-speech act, a type of analysis on which there is hardly any literature.

4.2. Research Questions

To reach the goal mentioned above, the following questions should be responded: 1) What types of illocutionary acts are found in the discourses of U.N. treaties? 2) To what extent are they used? 3) How do those types of illocutionary act reflect the nature of discourse pattern of treaties?

5. Method

5.1. Data Sources and Selection Criteria

To address the questions put above, it is necessary to examine a number of cases

from drafts of different natures. The data for this study are therefore drawn from a corpus of international treaties as certified true copies of transcripts of convention on pacific resolution of conflicts, prohibition of the hostile use of environmental modification technique, human right, treaties on armament and the like are accessible on www.treaties.un.org. Preambles are subtracted from the analysis as those parts are mere statements of conditions and circumstances and their selection will not do justice to this study since they do not have mood on their own. Identification of utterances for analysis is done at the level of mood based on linguistic aspects as defined in Halliday (1993, 1994) where, only independent clauses have mood. The mood system comprises two main elements (subject and finite) which combine to express the mood of the clause. Utterances are analyzed and classified with full awareness of their formal (propositional contents) and functional meanings as significant difference may be found between those.

Slomanson observes that treaties exist under two types-the lawmaking treaties and the contractual treaties. Lawmaking treaties are those that set up new rules in international law and the contractual treaties entail adherence to contract and imply promise or agreement. The former is the type of law dealt within treaties. For not being a work of fiction, law discourses may serve researchers with valuable data for analysis within speech act theory.

5.2. Method of Analysis

The data were analyzed in terms of three different functional categories (mood, illocutionary act/force and type of speech act in congruence with Searle's 1979 classification). As mentioned earlier, mood accounts for independent clauses so, in utterances like the following from "Revised General Act for the Pacific Settlement of International Disputes", article 5:

If, when a dispute arises, no permanent conciliation commission appointed by the parties is in existence, [a special commission shall be constituted] for the examination of the dispute within a period of three months from the date at which a request to that effect is made by one of the parties to the other party.

Only the part between square brackets has a mood. This pressing for only independent clauses considerably reduces the number of utterances to be taken account of for analysis.

SPSS 25 was used for descriptive statistics and the interest in using it is precisely and simply a univariate analysis for frequency distribution as to know to what extent particular moods, types of speech, and illocutionary forces have been used, alongside their percentage. This quantitative detail is complemented with a qualitative in-depth analysis of an illustrative case. Possible concomitant use of quantitative method and qualitative one is generally preferable over a single use of either (Muijs, 2004). Through this analysis, the interpersonal relation or the rapport that is promoted through international conventions constituting the contextual motives subsumed under this specific genre of this written law

was taken account of.

6. Findings

Table 2 contains the statistical details of the three variables under scrutiny as distributed among the categories of mood, speech act and illocutionary force.

Taking mood as basis for analyzing a discourse, we refer to Halliday and followers' theory of metafunction (Halliday, 1978, 1994; Martin, 1992). Underpinning the theory is the assumption that any instance of language simultaneously accomplishes three functions: *the ideational metafunction, the interpersonal metafunction and the textual metafunction*. The ideational metafunction represents the world as conceived by the speaker while the interpersonal metafunction of language serves an instrument of constructing and maintaining social relationship via language use. In other words, purposes and nature of social relations determine language use specifics among individuals. And, finally, the textual metafunction concerns the mode of communication, "the function of marshalling communicative acts into larger wholes, into the communicative events or texts that realize specific social practices, such as conversations, lectures, reports, etc." (Kress & Van Leeuwen, 1996: p.346).

Mood refers to subject^{finite} (Thompson, 2014) and counts only in independent clauses and exists under three basic categories in English; some may distinguish four but for formal purposes a distinction of three categories is maintained: declarative, interrogative and imperative. Kress & Van Leeuwen (1996: p. 347) stated: "An example of a grammatical system which helps enact social interaction is mood, which offers a choice between different basic speech acts such as stating, questioning and commanding." From this basis, we registered 664 moods from eight (8) transcripts of the United Nations treaties: U.N. (1949, 1958, 1966, 1974, 1976, 1997, 2013, 2017). The documents cited are precisely Chapter II of *Pacific Settlement of International Disputes: Revised General Act for the Pacific Settlement of International Disputes*; *Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite*. Brussels, May, 21: Chapter XXV. *TELECOMMUNICATIONS*; *Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Technique*. New York, December, 10: Chapter XXVI. *DISARMAMENT*; *International Convention on the Elimination of All Forms of Racial Discrimination*: Chapter IV. *Human Rights, Arms Trade Treaty*; *Treaty on the Prohibition of Nuclear Weapons*; *Convention on the Prohibition of the Use, Stockpiling, Production*

Table 2. Mood frequency.

	Frequency	%	Valid %	Cumulative %
Declarative	664	100.0	100.0	100.0
Imperative	0	0	0	0
Interrogative	0	0	0	0

and Transfer of Anti-Personal Mines and on their Destruction; Convention on the Territorial Sea and the Contiguous Zone. Of the three main basic types of mood only the declarative is used throughout the transcripts as shown in the table.

Table 3 is straightly correlated to **Table 4**. This is explained by the fact that the percentages of assertive (simple statement), commissive and directive are respectively determined by frequencies of constitutive, commitment and command.

Assertive, commissive and directive are preferred over the remaining expressive and representative with a high frequency of assertive. Virtually, there is no limited number of the kinds of acts performable via speech (asking, condemning, allowing, etc.) but here in this study, we have used some umbrella terms covering broad categories of functions rather than single items. In this sense for instance, commitment denotes promise, vow or engagement to a course of action in the future in general by the signatories of conventions. Constitutive in this specific context means defining, explaining and reporting to supply information concerning the contract application. And finally, directive characterizes those utterances (speech acts) having the nature of command, order or any speech through which the speaker or writer as in here, instructs a hearer to a course of action.

When we speak of speech act, we almost always mean illocutionary act. It is therefore so obvious to notice that most works on speech act theory focus on illocution rather than locution and perlocution. This fact is confirmed by those couple of tables (**Table 2** and **Table 3**) which are closely correlated. Here, speech act type determines illocutionary act type.

7. Discussion

Legal texts, despite their nature, have normative characteristics in that they describe

Table 3. Speech act types.

Counted in number	Counted in %	Valid %	
Assertive	332	50.0%	
Commissive	261	39.3%	
Directive	71	10.7%	
Total	664	100.0%	100.0%

Table 4. Illocutionary acts frequencies.

	Frequency	Percent	Total
Constitutive	335	50.0	
Commitment	258	39.3	
Command	71	10.7	
Total	664	100.0	100.0

and set standards and rules of behavior. This gives a *prima facie* sense that legal rule is necessarily formulated in the imperative as observed long time ago by Capitant (1928 as cited in Slomanson, 2011) in his doctoral thesis “The imperative and the indicative,” he observed “are two distinct moods of the verb. These two moods translate two distinct notions which one can describe as imperative and indicative ... the opposition between the indicative and the imperative is the opposition between what is and what should be...” Nevertheless, we have got something different in this study. Our results showed that the use of explicit imperative is a very rare exception. In fact, concerning mood, there is an exclusive use of declarative (indicative) at the expense of interrogative an explicit imperative. As to what types of illocutionary acts found in the discourse of U.N. treaties, there is a higher frequency of constitutive, a significant amount of commitment and a rare use of command (imperative). In this case, we register a total of 664 utterances of which, 335 are constitutive (50% of illocutionary act); 258 are commitment (39.3% of illocutionary act) and 71 are command (10.7% of illocutionary act). That perception of imperative style of law discourse therefore does not apply to a treaty to a large extent.

A matter of fact in language use is that what is expressed generally reflects the nature of interpersonal relation between the interlocutors. Since a treaty is the free will expression of equal footed partakers, there seems to be no pressing need to use authoritarian discourse style like imperative and this explains the more inclination to constitutive to define procedures and give information about the application of the treaty. It is then normal that a small number of directive is used in those texts and in line with József (2011, cited in Solum, 2019), who observed that “the imperative mood is *prima facie* not to be used. The exception is, if it is not really a directive.” (p. 123).

The motive for using the commissive in such a register is bound to number of contextual reasons as well, not so different from those mentioned above. A treaty is law and as such, it entails a strict adherence to certain normative conducts. This should be reflected in the use of instructive and commanding language style but, a treaty *a priori* is a negotiation, a signing between allied and associated powers where no party is actually in the position of authority. Then, in such circumstances priority should be given to a more diplomatic approach to issues, raising the need of euphemism and keeping aspects of commitment from all sides in expressions as acting a treaty is an exercise of free will, member states joining voluntarily without coercion whatsoever. This implies a sense of commitment to a common purpose and explains a significant frequency of commissive in the transcripts.

Promise and agreement to observe norms is somehow an obligation though, especially in legal context. An international treaty is a form of self-imposed norm, a duty that states make for themselves exempt from external constraint. Thus the utterance “Each Contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any program—carrying signal by any distributor for whom the signal emitted to or passing through the sa-

tellite is not intended” (*Convention Relating to the Distribution of Program-carrying Signals Transmitted by Satellite. Article 2*) by propositional content, is an explicit commissive. It is a commitment, a promise from member states to take preventive measures against program-carrying distribution from their territories but what is actually intended is more than mere promise, it is an obligation, an order that is made explicit through the utterance that follows in the same paragraph: “This obligation shall apply where the originating organization is a national of another contracting State and where the signal distributed is a derived signal.” Implicit instances of commissive mostly characterize legal transcripts. Utterances of the type “shall ... and shall not...” like “This Convention shall not apply ... from the satellite by the general public.” And “Any State that has deposited a notification in accordance with subparagraph (a) shall notify the Secretary-general of the United Nations in writing...”. The pattern of use of “shall” is highly tricky and care should be taken to clear ambiguity. It is an archaic word that can express futurity, obligation as synonym of “must” and “have to” or even capability. Luckily, it is pretty easier to disambiguate this issue by resorting to transcripts in other UN official languages where such ambiguity does not exist. In French for instance, there are the following possible uses of “shall”: 1) a statement of fact, 2) a prediction and 3) an expression of obligation which are easily distinguishable one from another. So, when we take the French versions of the utterances cited above we will respectively have statement of fact and prediction of what is agreed on to be undertaken, thus the implicit commitment.

In a synopsis, it appears that there is no exclusive use of a particular type of illocutionary act in the register of international treaties; however, it is a rational claim that the constitutive and commissive categories are by and large used throughout legal text related to conventions. We also recognize that those illocutionary categories are in congruence with the ideal of a treaty.

Revised General Act for The Pacific Settlement of International Disputes (Chapter One)

(Adopted by the General Assembly at its 199th plenary meeting, on 28 April 1949)

1)

Dispute shall be submitted

2)

Disputes shall be submitted

3)

A commission shall be constituted.

4)

a) *The commission shall be composed...*

b) *The parties shall nominate...*

c) *The three commissioners shall be appointed...*

d) *These three commissioners must be...*

e) *The parties shall appoint the President.*

- f) *The commissioners shall be appointed.*
- g) *They shall be re-eligible*
- h) *The commissioners may be replaced*
- i) *Vacancies shall be filled within the shortest time*
- 5)
 - a) *Special commission shall be constituted*
 - b) *The necessary appointments shall be made*
- 6)
 - a) *Appointments shall be entrusted to a third Power*
 - b) *The appointment shall be made in concert*
- 7)
 - a) *Disputes shall be brought before the Conciliation Commission*
 - b) *The application shall contain...*
- 8)
 - a) *Either party may replace its own commissioner*
 - b) *The parties shall notify*
- 9)
 - a) *The commission shall meet*
 - b) *The commission shall request*
- 10)
 - a) *The work shall not be conducted*
- 11)
 - a) *The commission shall lay down*
 - b) *Commission shall act in accordance with*
- 12)
 - a) *The parties undertake to facilitate...*
- 13)
 - a) *Expenses shall be divided...*

Utterances 1 (1); (2) are mere assertions about future plans. Their illocutionary force does not extend beyond informing member states on how potential conflicts will be resolved. It actually explains an agreement without constraint whatsoever. 1 (3) on contrary, falls within the categories of directive as speech act and command as illocutionary force. Though featured as those, it is actually conditioned to a request, a demand and therefore transcends voluntary engagement. It is an implicit command, however. 4 (a), (b) and (c) are all simple informative not distinguishable from 1 (1); (2) but, 4 (d) is an explicit directive as a speech act and a command as illocution. It is a rare exception since directive in treaties is generally implicit to keep that sense of euphemism in expression and to appear more like a convention. 4 (e), (f), (g), (h) stand for constitutive but (h) is distinguishable from the others for being optional. It is an option, not a clear-cut and strict point of future plan. (i) On the other hand is commissive. It is a commitment, an engagement to perform a task within limited timeframe. 5 (a) and (b) despite of their constitutive-like feature, are actually directive and command since they must be fulfilled in conformity to external conditions de-

terminated in the precedent article. They are implicit command and so are 6 (a) and (b). 7 (a), (b) are instructions as to address the reconciliation commission in cases of conflict accompanied with a sense of compulsiveness. 8 (a) is an act of permission like 4 (h) followed by a directive 8 (b). 9 (a); (b) inform about future plan but they actually translate an implicit voluntary engagement from members of the commission and are therefore commissive. 10 (a) is an act of prohibition, a restrictive measure as to what should be done or not, reflecting the true instance of law articles. It then falls within the categories of directive and command. So are 11 (a); (b) in more explicit way. The expression “in accordance with” implies the existence of certain conditions of reference to later undertakings “shall lay down...” and “shall act...” as recommended acts. Finally, 12 (a) and 13 (a) inform about the engagement of parties “to facilitate the work of the Conciliation Commission” and to fund the working of the Commission.

In this analysis, expressions are considered in their entirety to set patterns and regularities in line with categories of illocution, speech act and mood. A caveat to remind here is that the utterances are taken in isolation here—that is those parts making the *mood* are drawn from among other words that count much as to determine the meaning of the utterances proper and classify them in different categories. As can be seen it is over simple to determine the mood, yet, much more complex is to classify speech acts and illocutionary acts and the analysis at those levels therefore necessitates considering the utterances in their full length as in the original documents.

Law in popular sense, tends to indicate, first and foremost, imposition from an authority yet, contrary to that common thought of law discourse—that is framing strict rules and command that inspire the authoritarian imposition, the fundamental aspect of this register is informing the terms and conditions of conventional practices. It is a contribution to [Constable \(2014\)](#) who proposes a shift from the approach to seeing law as “system of rules” to claiming law as expressions of social acts. In other words, law should be seen as the definition of our way of being, as a structuralist view applied to language of law whereby, language organizes societies. As noticed, there is a sort of overuse of “shall” throughout the documents, a word that is enormously flexible in usage and confusing in interpretation. It sometimes stands for futurity, often expresses obligation as synonym of “must” or even expresses possibility as synonym of “may”. In jurisdiction it mainly used to either express future action or obligation but in this case proper, it is mostly employed in its future sense as to define, organize and set a path for the functioning of the union. One important rationale of this linguistic choice is bound to the necessity to well define the terms of the convention and another dimension is the need to suppress authority an imposition, to emphasize the conventional nature of treaties and meet the contextual need as well.

8. Conclusion

A treaty is the voluntary expressions of parties on an equal footing power rela-

tion and having *treaty-making power* (*TMP*). As such, it is not so much about a simple establishment of normative rules and standards as is it about negotiation and commitment, neither is it an odd if the entire text appears under the label of declaration. Of course the text in its entirety, has directive as general function. That is trying to get people to act in a certain way; trying for example to get them preserve the environment, to get them resolve conflicts and eliminate racial discrimination. However, the text is composed in a way as to technically imply the voluntary engagement of contracting parties. Obviously, it would not be enough to simply write down a commanding language style text since it is all about convention among states having full freedom of action.

As Kalinowski (1974, as cited in Slomanson, 2011) once observed, it is rare for the legislator to set out legal norms in the form of the normative propositions because, if that were the case, one would have witnessed a repetitive employ of terms like “it is necessary,” “one ought to,” “it is forbidden to,” “it is permitted to,” “one has the right to.” These phrases lend legal texts a normative feature and constitute the illocutionary force of legal utterances. They are, in Kalinowski’s terms, the normative (deontic) features of the language of law. Finally, it is rational to claim that legislative works related to treaties are purely descriptive in mood; and that the illocutions are primarily constitutive and commissive, two categories of “the world-fits-words”.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

- Andor, J. (2011). Reflections on Speech Act Theory: An Interview with John R. Searle. *International Review of Pragmatics*, 3, 113-134. <https://doi.org/10.1163/187731011X563755>
- Austin, J. (1955). *How to Do Things with Words*. Oxford, New York: Oxford University Press.
- Bach & Harnish (1979). *Linguistic Communication and Speech Acts*. Cambridge, MA: MIT Press.
- Constable, M. (2014). *Our Word Is Our Bond: How Legal Speech Acts*. Stanford, CA: Stanford University Press. <https://doi.org/10.1515/9780804791687>
- Elizabeth, F. S., & Gaspar, R. C. (2014). Mitigating Devices: A Comparative Study between Generations of the Corpus. “El habla de Monterrey”. *Verbum et Lingua*.
- Halliday, M. (1978). *Language as Social Semiotic*. London: Arnold.
- Halliday, M. (1993). *Language in a Changing World*. Canberra: ALAA Occasional Paper 13.
- Halliday, M. (1994). *An Introduction to Functional Grammar*. London: Edward Arnold.
- Kress, G., & Van Leeuwen, T. (1996). *Reading Images—The Grammar of Visual Design*. London: Routledge.
- Martin, J. (1992). *English Text; System and Structure*. Amsterdam: Benjamins.

<https://doi.org/10.1075/z.59>

- Motulsky, H. (1948). *Principe d'une realisation methodique du droit prive: la theorie des elements generateurs des droits subjectifs*. Lyon: Dalloz.
- Muijs, D. (2004). *Doing Quantitative Research in Education*. London: Sage Publication.
<https://doi.org/10.4135/9781849209014>
- Nordquist, R. (2020). *Speech Act Theory*. ThoughtCo.com/speech-act-theory-1691986.
- Sadock, J. M. (1974). *Toward a Linguistic Theory of Speech Acts*. New York: Academic Press.
- Searle, J. R. (1969). *Speech Act: An Essay in the Philosophy of Language*. London: Cambridge University Press. <https://doi.org/10.1017/CBO9781139173438>
- Searle, R. J. (1979). *Expression and Meaning: Studies in the Theory of Speech Acts*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9780511609213>
- Slomanson, W. R. (2011). *Fundamental Perspectives on International Law* (Vol. 6). Boston, MA: Wadsworth Cengage Learning, Suzanne Jeans.
- Solum, L. (2019). *Legal Theory Lexicon: Speech Acts*.
<http://www.Isolum.typepad.com/legaltheory/2019/08/legal-theory-lexicon-speech-acts-html>
- Thompson, G. (2014). *Introducing Functional Grammar* (3rd ed.). New York: Routledge.
<https://doi.org/10.4324/9780203785270>
- Tiersma, P. (2010). *Legal Language*. Chicago, IL: University of Chicago Press.
- Trosborg, A. (1994). *Acts in Contracts: Some Guidelines for Translation*. Amsterdam: Benjamins. <https://doi.org/10.1075/btl.2.37tro>
- U.N. (1958). *Convention on the Territorial Sea and the Contiguous Zone*.
<http://www.treaties.un.org>
- U.N. (1966). *International Convention on the Elimination of All Forms of Racial Discrimination*. <http://www.treaties.un.org>
- U.N. (1997). *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personal Mines and on Their Destruction*. <http://www.treaties.un.org>
- U.N. (2017). *Treaty on the Prohibition of Nuclear Weapons*. <http://www.treaties.un.org>
- U.N. Brussels (1974). *Convention Relating to the Distribution of Program-Carrying Signal Transmitted by Satellite*. <http://www.treaties.un.org>
- U.N. New York (1949). *Revised General Act for the Pacific Settlement of International Disputes (Chap: II of Pacific Settlement of International Disputes)*.
<http://www.treaties.un.org>
- U.N. New York (1976). *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Technique*. <http://www.treaties.un.org>
- U.N. New York (2013). *Arms Trade Treaty*. <http://www.treaties.un.org>
- Yule, G. (2000). *Pragmatics*. Oxford: Oxford University Press.