

International Law, Pragmatics and the Distinction Between Conceptual and Procedural Meaning

*Jennifer Smolka and Benedikt Pirker**

Abstract

Using examples from international law, the authors demonstrate the usefulness of pragmatics in studying legal interpretation. In order to do this, they draw on Relevance Theory as a major theory in modern pragmatics. In pragmatics, there is an ongoing debate on the distinction between conceptual and procedural meaning. The paper unpacks this debate and shows how it can be employed to better explain interpretive processes in international law. Procedural meaning occurs in, among others areas, connectives such as “and” and “or”. These connectives frequently appear in the provisions of international treaties. Examples of substantive and procedural norms in international treaties illustrate how procedural meaning plays a central role in interpretation. The article also reveals how interpreters of law are generally unaware of the influence of procedural meaning on their interpretive decisions.

Keywords

international law, legal interpretation, linguistics, pragmatics, Relevance Theory, conceptual meaning, procedural meaning

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* *Smolka*: Translator and linguist, jenniferjanesmolka@gmail.com; *Pirker*: Senior Lecturer, Institute for European Law, University of Fribourg (Switzerland), benedikt.pirker@unifr.ch. The authors would like to thank the participants of the 2017 ILLA Conference in Freiburg, Germany, the editors of this journal and the two anonymous reviewers for their helpful comments on earlier versions of this paper.

1. Introduction

In earlier articles, we have argued in favour of integrating pragmatics into the study of international law using the tools of linguistics and language studies (Smolka & Pirker, 2016; Pirker & Smolka, 2017). This paper intends to draw on this approach by using a conceptual distinction taken from pragmatics to explain processes of international law. The distinction between conceptual and procedural meaning does not typically take centre stage when lawyers consider questions of interpretation. Arguably, however, an understanding of the ordinary meaning of terms that lawyers look for during the interpretation of legal norms can be useful.

To substantiate this hypothesis, we first introduce Relevance Theory. Second, we explore in detail the distinction between conceptual and procedural meaning. Third, we focus on two words, “and” and “or”, which occur frequently in international legal texts. This frequency suggests that they are highly relevant in international law. We analyse whether these words contain procedural meaning. Based on our findings, we then examine a number of examples in international law to test our claim that procedural meaning is relevant to interpretation in international law. We focus on “and” and “or” in their function as connectives in non-negated sentences. More precisely, we examine examples where “and” conjoins and “or” disjoins parts of sentences such as nouns, verbs, and adjectives.

2. Relevance Theory

Within the discipline of linguistics, there are ongoing “border wars” relating to the question of where semantics ends and pragmatics begins; these debates concern the “division of labour” between semantics and pragmatics in understanding the meaning of words and sentences (Börjesson, 2014). Relevance Theory is a particular approach to pragmatics. As will be shown, it also faces certain criticism and should thus not be understood as the only possible approach. For the present purposes, however, we will base ourselves on Relevance Theory. Therefore, first we will present the theory itself, before pointing out some of the criticism that has been raised against it. Relevance Theory claims that the pragmatic “side”, which deals with language in use, is much richer than the semantic “side”, which deals with the “realm of coded meaning” (Walaszweska, 2015: 35). Relevance Theory postulates a model of ostensive-inferential communication which combines the perspectives of the speaker (communicator) and hearer (addressee) to explain how communication works. The communicator must explicitly or overtly show a communicative intention to communicate a particular piece of information to the addressee (ostension); the addressee then has to infer the piece of information (inference, see Zufferey & Moeschler, 2012: 108). Linguistic decoding is

put in a position subservient to inference (Walaszewska, 2015: 35). At the same time, decoding does not become irrelevant. Verbal comprehension involves an element of decoding because an utterance, that is, a word or sentence uttered by a communicator, is a linguistically coded piece of evidence. In a relevance-theoretic account, a correct interpretation ultimately is a joint product of linguistic information, contextual premises and deductive processes (Moeschler, 2009: 452).

Moreover, Relevance Theory holds that meaning is linguistically underdetermined as an essential property of natural language (Carston, 2006: 654). An addressee must contextually enrich or adjust meaning (Carston, 2013: 12–13) in a variety of ways to infer the communicator's meaning (Wilson & Sperber, 2006: 613). Utterances have implicit and explicit content. The principle of relevance applies to both in the process of utterance interpretation (Walaszewska, 2015: 35). To better understand the difference between explicit and implicit meaning, let us look at an example. Peter says to Mary "It is four o'clock" and intends to communicate that they will be late for a meeting starting at four o'clock. Mary can decode certain elements of Peter's utterance, for example "four o'clock". Certain explicit elements of the utterance will furthermore require that Mary inferentially enriches them to fully understand their meaning. "Four o'clock" could be on practically any day, anywhere in the world, but Peter probably intends to express that it is 4 o'clock in the afternoon on 10 July 2018 in London. Even if it is (contextually) inferred, this content falls on the explicit side of the utterance. There are, however, also implicit elements that have to be inferred. Mary can draw inferences from Peter's utterance: She knows that they are to attend a meeting at four o'clock and can thus infer from the situational context that Peter is implying that they will be late for the meeting (see a more detailed discussion in Pirker & Smolka, 2017: 241 ff.). These latter elements of meaning, in turn, fall on the implicit side of the utterance.

In a relevance-theoretic account, the principle of relevance explains how communication is achieved. This principle is a feature of human cognition that always aims to achieve a maximum of cognitive effects in exchange for a minimum of processing effort. This feature also applies to communication. The relevance-theoretic comprehension procedure in communication can be described in the following manner: Follow a path of least effort in computing cognitive effects; test interpretive hypotheses in order of accessibility; stop when your expectations of relevance are satisfied (for a more detailed account, see Carston, 2013: 28). Positive cognitive effects are a worthwhile difference to an individual's representation of the world. This would, for example, be the case of a true conclusion (Wilson & Sperber, 2006: 608) or, for lawyers, the establishment of a legally convincing interpretation of a treaty provision (Pirker & Smolka, 2017: 237). Moreover, communication relies on the human ability to read each other's minds (for more detail, see Moeschler & Auchlin, 2009: 178; Dennett, 1987; Moeschler, 2009: 453, relying on Baron-Cohen, 1995) in the sense that one forms (fallible) hypotheses of what is happening in the interlocutor's mind and what he or she intends to communicate.

In our example, Mary will probably find it unsatisfactory to stop her interpretation of Peter's utterance at the point where he tells her what time it is. Only by drawing additional inferences, as discussed above, will she reach sufficient positive cognitive effects, namely a convincing interpretation of Peter's utterance. This more far-reaching interpretation is more likely to satisfy her expectation of relevance.

To sum up, Relevance Theory aims to build a psychologically plausible, empirically testable (Wilson, 2017: 81)¹ pragmatic theory of meaning and utterance interpretation in context (Sperber & Origgi, 2012: 331). Pragmatics in this sense is viewed as a capacity of the mind, a kind of information processing system for interpreting human communicative behaviour (Carston, 2002: 128–129). Relevance Theory is thus a cognitive pragmatic theory and as such takes an individualist (Foster-Cohen, 2004: 289, 294) and psychological perspective (Blakemore, 1992: 4). In this sense, Relevance Theory is reductionist, as Relevance theorists consider conventions of language use to be sociological or legal questions rather than issues of pragmatics (Reboul & Moeschler, 1998: 172). More precisely, Relevance theorists assume that social conventions can be reduced to the knowledge about them accessible in the individual's mind (De Saussure, 2007: 142).² This contrasts with other theories in linguistics, such as Speech Act Theory and approaches to the study of discourse in a broad sense, which pay close attention to social determinations of linguistic behaviour (De Saussure, 2007: 140). It must, however, be stressed that, put simply, the latter approaches more closely resemble *tools for any analyst of language* rather than a *theory or explanation of natural language understanding procedures* (although some theories following Speech Act Theory aim to bridge the gap between the two) (De Saussure, 2007: 145).

Thus, we attempt to model interpretation in international law with the help of a linguistic theory that does not have a sociological orientation (Blakemore, 1992: 92; cf. Curcó, 2011: 37). Other approaches to the young discipline of legal linguistics³ do have such an orientation, grounding linguistic rules in social conventions of use, *à la* Wittgenstein (Vogel, 2015: 3 ff.). Despite these theoretical differences, the different approaches are united by a common goal: Making legal interpretation more transparent and explicit (Vogel, 2015: 5).

¹ Relevance Theory uses intuitions as data (Clark, 2013: 334) as well as more and more experimental testing (see, for example, Chevallier et. al., 2008: 1742 ff.; Clark, 2013: 338), yet is also open to using, for example, corpus data, the most common alternative to intuitions in studying language (Clark, 2013: 334).

² "Reduction" may, however, be too strong a term, as it cannot be said that Relevance Theory pays no attention to the socio-cultural dimensions of language use. In fact, social information is implicit in the relevance-theoretic notion of "cognitive environment". Communicators and addressees notice and store any relevant information about socio-cultural dimensions and about others as they interact with them – as well as about the physical context in which they operate or have operated in the past (Foster-Cohen, 2004: 289, 294). Over time, they thereby come to recognise features of social class, ethnic identity, power, solidarity, politeness, etc. in individuals through their communicative behaviour. This information is simply stored in the accessible mental context like any other (Foster-Cohen, 2004: 300).

³ They often appear to focus more on modelling interpretation in domestic rather than international law, see Vogel, 2015: 3–4; Müller, 1994; Busse, 1992; Felder, Müller & Vogel, 2012.

Nonetheless, Relevance Theory also faces criticism. According to one account, a number of crucial distinctions that the theory relies upon are difficult to uphold at a closer look. For example, Relevance Theory states that assumptions are processed in a central deductive device. This device functions with the help of elimination rules attached to logical entries for concepts. However, it remains unclear how these logical properties are to be established and separated from other properties (Cummings, 2005: 122–123). What is more, Relevance Theory assumes that in the process of deduction the factors involved in the comprehension of an utterance can be fully circumscribed. This assumption is, however, cognitively untenable, as there are always wider contextual factors that contribute to such comprehension processes (Cummings, 2005: 130). Finally, the theory's notion of relevance is normative, as it is fundamentally about better and worse representations of reality. In assessing what constitutes a normative concept, however, the range of factors that need to be considered is indefinitely large. Again, Relevance Theory's deductive device cannot accommodate such a potentially unlimited number of factors (Cummings, 2005: 132).

As in the following sections we will address the relevance-theoretic distinction between conceptual and procedural meaning, another point of criticism should be mentioned. Relevance Theory's cognitive psychological framework rests on and presupposes a distinction between representation and computation. For this distinction, however, it would be necessary that the same item of information can only assume either logical or encyclopaedic forms. Relevance Theory, however, cannot convincingly show that this is the case. Our overall cognitive functioning, for example with regard to concepts, seems instead to be highly contingent on strategies and problems of the moment (Cummings, 2005: 123–124).

It would lead beyond the scope of the present paper and its limited objectives to engage in detail with these arguments. Presently, it is simply suggested that despite its shortcomings, Relevance Theory and its distinction between conceptual and procedural meaning can arguably be made fruitful to examine and explain the phenomenon of interpretation in international law, keeping in mind and taking into account, where possible, the points of criticism raised against the theory. Keeping all this in mind, we can thus now turn to the distinction between conceptual and procedural meaning.

3. Conceptual vs. Procedural Meaning

A central problem for philosophers of language is the meaning of discourse or sentence connectives such as “and”, “or”, “but” and “therefore” (Escandell-Vidal, Leonetti & Ahern, 2011: xvii–xviii). Many frameworks of linguistic investigation have highlighted that there is a “division of labour” between semantics and pragmatics regarding the meaning of words and sentences. Semantics deals with aspects of meaning encoded in

words and sentences (Walaszewska, 2015: 3–4). Pragmatics investigates the processes by which such encoded meaning is modified in use (Wilson, 2003: 273). In relevance-theoretic terms, semantics deals with linguistic knowledge, while pragmatics involves more general non-linguistic, psychological principles and processes (Escandell-Vidal, Leonetti & Ahern, 2011:xvii). Take the example of a person uttering “Can you pass the salt?”. One cannot decode from the uttered sentence or its words whether this sentence is to be understood as a request or as a question about one’s ability to pass the salt; rather, this information has to be inferred – for instance from the context in which this sentence is used and/or from one’s world knowledge (Reboul & Moeschler, 1998: 55). An addressee who hears (or reads) these words cannot fully understand what is meant based solely on “the words in vacuo”. He or she has to look beyond them to decide whether he or she is dealing with a request or a question.

Scholars initially assumed that discourse connectives did not contribute to the semantic meaning of a sentence (Escandell-Vidal, Leonetti & Ahern, 2011: xvii). Take the sentence “It’s raining, *but* the grass is not wet” (emphasis added, see Wilson, 2012: 25). Semantic meaning was regarded to be *conceptual meaning*, that is, encoding a concept: think of “wet”, “grass” or “rain”. For instance, the word “grass” encodes a concept GRASS which denotes or refers to a herbaceous plant that covers land such as a lawn or pasture. It also comes with general knowledge/beliefs about it, for instance that it is typically short and of green colour, may be cut and dried and used to feed animals, etc. (cf. Carston, 2016: 155). The example illustrates that it is relatively easy to access consciously the meaning of content words, such as nouns, verbs or adjectives, or at least to paraphrase them roughly. The same is much harder, and perhaps in many cases impossible, to do for function words like conjunctions such as “but” – which are, as the example illustrates, often used as discourse connectives (Carston, 2016: 159).⁴ It thus appears that only content words encode concepts, while function words do not (Carston, 2016: 155). For this reason, discourse connectives such as “but” were initially treated as a problem of pragmatics rather than semantics (Karttunen, 1974; Stalnaker, 1974; Karttunen & Peters, 1979; Grice, 1975).

It has, however, been shown in a relevance-theoretic account that, while some words such as discourse connectives do not encode concepts, they do provide a directive or instruction on how the words or sentences they connect are to be deployed within the inferential phase of the comprehension process (Carston, 2016: 158). Some scholars suggested referring to these directives or instructions as *procedural meaning* (Escandell-Vidal, Leonetti & Ahern, 2011: xviii–xix). According to this now standard view in Relevance Theory (Wilson, 2011: 23), procedural meaning indicates the type of inference process that the addressee is expected to go through (Wilson & Sperber, 2012: 158) to arrive at the intended interpretation. It thereby reduces the hypothesis

⁴ If we return to the previous example, “It’s raining, but the grass is not wet”, some might conclude that “but” simply indicates a contrast, yet in semantics, there is nothing “simple” about the notion of contrast (Blakemore, 2002: 99).

space that has to be searched (Wilson & Sperber, 1993: 21) and, consequently, the addressee's processing effort (Escandell-Vidal, Leonetti & Ahern, 2011: xix). For instance, "but" instructs the addressee to activate an inference which results in the contradiction and elimination of an assumption (Blakemore, 2002: 100) which is manifest to the addressee (Blakemore, 2002: 114). In our example, this would be the inferred or manifest assumption that if it rains, grass will become wet.

The description of the meaning of "but" illustrates that discourse connectives belong on the semantic side of the semantics-pragmatics distinction. They have arbitrary linguistic meanings which cannot be inferred, for example, from world knowledge, but have to be learned in the process of language acquisition (Wilson, 2012: 25) – just as one has to learn which word goes with which concept (Wilson, 2011: 10).⁵ This means that any uttered sentence can contain not only one but two types of encoded meaning: conceptual and procedural meaning (Wilson & Sperber, 2012: 150).

We have now established that Relevance Theory argues that there is a distinction between conceptual and procedural meaning and that function words such as discourse connectives have encoded semantic meaning of the procedural type. However, the original account of Relevance Theory that suggested that a given linguistic form could only have either conceptual or procedural meaning, but not both (Carston 2002: 255–256) has been challenged by others (Frasier, 2006; Hussein, 2008). It has thus been found that most, if not all discourse connectives have some conceptual besides their procedural content (Mauri & van der Auwera, 2012: 383).

The next section will show that if we look more closely at the examples of "and" and "or", we discover that there is no clear-cut conceptual-procedural distinction between content and function words. Depending on the perspective, some function words have conceptual or procedural meaning.

4. The Examples of "And" and "Or"

In this paper, we focus on the relevance of the meaning of two sample discourse connectives – "and" and "or" – for interpretation in international law because these two words seem to occur very frequently in international legal documents such as treaties. Based on the previous section, one might be tempted to infer that "and" and "or" are function words used as discourse connectives and should, therefore, have procedural meanings. As we will show here, however, things are more complex. These two func-

⁵ In other words, one has to distinguish between inferential processes which appear to be ruled by general pragmatic principles, such as the principle of relevance, and those that seem to be governed by specific rules triggered by words with procedural meaning. It may well be that many of the procedures set off by procedural expressions look like general cognitive operations, but still their natural language triggers are as arbitrary as any other language encoding (Curcó, 2011: 46).

tion words are generally regarded as having conceptual meaning. For our purposes, however, one can also make a good case that they have procedural meaning.

4.1. “And”

To fully understand the meaning of “and”, we start with the state of the debate on the meaning of “and” in semantics and pragmatics in general before turning to the question of its conceptual and/or procedural meaning. The attribution to “and” of conceptual or procedural meaning is not an easy question; however, the very debate over this question provides us with valuable insights on “and”.

“And” is generally taken to be the natural language counterpart of the operator “&” (Blakemore & Carston, 2005: 570), also “ \wedge ”, in logic, meaning that the semantic meaning of “and” is regarded as identical to that of the logical operator. “And” therefore has only minimal semantics (Blakemore & Carston, 2005: 588): the phrases or sentences conjoined by “and” form a single processing unit (Carston, 2002: 250). This is true if and only if both of the phrases or sentences conjoined by “and” are true (Blakemore, 1992: 78). In other words, “and” encodes no more than the co-occurrence of the linked sentences or phrases, leaving room for a large number of inferred or pragmatic enrichments as long as they are compatible with its semantics, that is, when both conjoined phrases or sentences are true (Mauri & van der Auwera, 2012: 383).

Although “P & Q” is logically equivalent to “Q & P”, the conjunction can be used to convey a pragmatically modified, or enriched (i.e., more informative), meaning (Chevallier et al., 2006: 101–102),⁶ such as a relation of *addition*, *contrast*, *temporal sequence* and *causation*, to name but a few:

Addition: Mary is tall *and* left-handed.

Contrast: Mary is single *and* pregnant.

Temporal sequence: Mary married Paul *and* got pregnant.

Causation: Mary married Paul *and* obtained Swiss citizenship.

The different interpretations can be represented as follows (pragmatically inferred relations in italics, example taken from Moeschler, 2016: 125):

Addition: Mary is tall *and additionally* left-handed.

Contrast: Mary is single *but* pregnant.

Temporal sequence: Mary married Paul *and then* got pregnant.

Causation: Mary married Paul *and because of that* obtained Swiss citizenship.

⁶ Contextual information, such as world knowledge, may override semantic information, but this requires extra effort, that is, extra inferential work. So, in such cases, the utterance should convey more cognitive effects than it otherwise would (Carston, 2002: 233–234).

The pragmatic enrichment of the semantic meaning of “and” is justified by the fact that it provides an interpretation that meets the addressee’s expectations of relevance (Chevallier et al., 2006: 104). In other words, pragmatic enrichment is justified according to the principle of relevance only if the unit conjoined by “and” has cognitive effects over the relevance of each of the conjoined elements taken individually (Blakemore, 2002: 106).

To illustrate the functioning of the principle of relevance with regard to “and”, we will take a closer look at the inferred temporal and causal relations. In the example of “Mary married Paul and got pregnant”, there is no encoded information telling the addressee what temporal relations hold between the conjoined phrases or sentences, such as “and then”. In this case, a temporal order of events that matches the order in which the states of affairs are presented in the conjoined phrases or sentences demands the least cost in terms of processing effort. A sequential reading is further supported by the fact that the addressee can draw on highly accessible scripts of stereotypical sequences of events (Carston, 2002: 252). It is widely assumed in cognitive studies that frequently experienced actions, events or processes and sequences of events are stored in the memory as frames or scripts, here getting married and then founding a family (Carston, 2002: 252). In the example of “Mary married Paul and obtained Swiss citizenship”, a causal reading seems more relevant – or seems to add more cognitive effects – than a temporal reading. Work in many areas of cognition demonstrates that in our striving to achieve a satisfactory understanding of events in the world we very much tend to organise our interpretations in terms of cause-consequence relations (Carston, 2002: 237). As temporal contiguity alone is a powerful determinant of perceived causation (Rock, 1983: 137–138), the addressee is likely to draw on highly accessible causal schemas or knowledge structures, here the fact that marriage to a national from a different country very often makes foreign spouses eligible for naturalisation (Carston, 2002: 238).

The examples also provide one of the strongest arguments in favour of a very minimal semantics for “and” and against lexical ambiguity (Blakemore, 1992: 80)⁷ because, as linguistic research shows, the more examples one considers, the more fine-grained variations one finds among the connections. Any semantic account would have to allow for the encoding of a huge range of different relations, and, where there is lexical ambiguity, it would have to allow for the existence of as many different words, each encoding one of these relations. To give just one example, there is not only a *temporal sequence* relation, but also one of *temporal containment* (“We spent the day in town and I went to Harrods”) (Carston, 2002: 224–225). Furthermore, to suppose a rich semantics or lexical ambiguity for “and” would not explain why, for instance, the same temporal containment relation arises when “and” is removed (“We spent the day in town. I went to Harrods”) (Carston, 2002: 224–225). In Relevance Theory, this fact can be attributed

⁷ An example of lexical ambiguity would be “bank” which can refer to the riverside or the financial institution.

to general cognitive pragmatic principles, such as the search for relevance and recourse to frames, scripts or schemas.

At the same time, “and” does not seem to be semantically empty, as one may be tempted to conclude from the example of temporal containment. It imposes a number of restrictions on the set of possible inferences, such as *explanation*, *evidence*, *reformulation* and certain sorts of *elaboration*. The latter relations may be inferred from the juxtaposition of clauses, that is, two sentences that simply follow one another (a) but are precluded by the presence of “and” (b) (Mauri & van der Auwera, 2012: 384):⁸

- | | |
|----------------|---|
| Explanation: | a) Max fell asleep; he was tired.
b) Max fell asleep <i>and</i> he was tired. (Blakemore & Carston, 2005: 572) |
| Evidence: | a) Jim has a new girlfriend. He goes to NYC every weekend.
b) Jim has a new girlfriend <i>and</i> he goes to NYC every weekend. (Carston, 2002: 245) |
| Reformulation: | a) Language is rule-governed: it follows regular patterns.
b) Language is rule-governed <i>and</i> it follows regular patterns. |
| Elaboration: | a) I met a great actress; I met Vanessa Redgrave.
b) I met a great actress <i>and</i> I met Vanessa Redgrave. (Carston, 2002: 247–8) |

These types of relations have in common that they imply separate processing for the conjoined sentences. To give an example, if the second sentence is treated as an *explanation* for the first one, the separate processing of each sentence emerges from the fact that an explanation is an answer to a “why”-question; questions and answers are by their nature planned as separate utterances, each one satisfying the principle of relevance individually (Blakemore, 1987: 123). One can conclude from this example that the above-mentioned relations are precluded if the individual sentences are conjoined with “and” because, in the process of interpreting “and”, addressees look for complex scripts rather than individual scenarios for each phrase or sentence (Mauri & van der Auwera, 2012: 384).

However, even if “and” is not semantically empty, researchers have challenged its one-to-one correspondence to the logical operator in the light of cross-linguistic data (Assimakopoulos, 2015: 64). There are languages that do not have a connective with the meaning of “and”, while other languages encode semantic distinctions which are not identified within logic. For instance, some languages have dedicated connectives for the sequential vs. non-sequential distinction, such as Serbo-Croatian “pa” (“and then”, see Mauri & van der Auwera, 2012: 379). This fact might be explained by gradual encoding in natural languages, that is, a hypothetical scale going from less coding to more pragmatics and vice versa. Along this continuum, “and” is considered to be very underspecified, leaving a lot to inferential enrichment (Mauri & van der Auwera, 2012: 382). On the hypothetical scale, “and” would thus be seen as semantically weaker than, for example, “but” in the sense that it is compatible with several apparently conflicting pragmatic interpretations, such as addition, temporal sequence, causation and con-

⁸ For a discussion on the possible semantic emptiness of “and”, see Carston, 2002: 256.

trast. By contrast, “but” has a more limited range of interpretations (see the examples above, as well as Moeschler, 2016: 125). In light of the heterogeneity of procedural meaning, which the present paper cannot discuss in greater detail because of lack of space,⁹ it has been suggested that it is not only the encoding vs. pragmatic inference distinction that is gradual, but also the conceptual vs. procedural distinction, including the possibility that a lexical item may encode both conceptual and procedural information (Moeschler, 2016: 128; cf. Moeschler, 2002: 292). Some researchers, however, contest the view that the conceptual-procedural distinction represents a scale with a continuum of cases. They believe that the conceptual-procedural distinction is a categorical one (Escandell-Vidal & Leonetti, 2011: 83).

Consequently, despite the fact that the discussion appears to be ongoing, one might wonder whether “and” actually encodes a concept or, instead, a procedure. An important distinction between conceptual and procedural meaning is that conceptual meaning can be used loosely (Carston, 2002: 260–261). Think for example of “inland fish”, an expression used in European Union law to allow French snail farmers to enjoy subsidies granted to fisheries, or the EU directive that considered carrots to be “fruit”, which enabled the Portuguese to trade and legally label traditional carrot jam (Witczak-Plisiecka, 2013: 644). By contrast, procedural meaning is more rigid, meaning that its semantic content cannot be cancelled, adjusted or modified by pragmatic processing (Escandell-Vidal & Leonetti, 2011: 81).

Since “and” appears to sit on the fence because of its above-mentioned semantic weakness, one might attempt to reinterpret its encoded conceptual meaning as procedural meaning. This would satisfy the above-mentioned notion of rigidity as the proposed procedural meaning is not cancelled in the examples of the different pragmatic interpretations:¹⁰ it was recently suggested that if “and” encodes a procedure, it could be something like “*look for a cognitive effect by taking both conjuncts as premises*”. Such a description of “and” may seem more intuitive to natural language users than the description of “and” in logic (Assimakopoulos, 2015: 69). It may also be justified in the sense that there is no guarantee that the description of “and” in logic should be inherited in the description of natural language, as the latter has always been considered “imperfect” from the logician’s point of view (Assimakopoulos, 2015: 63).

Since “or” is also considered a logical connective, a similar description may be applied to it, as the next section will discuss.

⁹ Procedural meaning covers information encoded in very different linguistic units, such as interjections, diminutives and intonation (Carston, 2016: 161; see also Walaszewska, 2015: 85–94 for an overview).

¹⁰ “And” may also be seen as sitting on the fence in the sense that it only narrowly passes tests that Relevance Theory proposes to classify linguistic items as conceptual (Assimakopoulos, 2015: 65–68). On top of this, Relevance theorists admit that it looks unlikely that there is any watertight test for telling whether some element of encoded meaning is conceptual or procedural (Carston, 2016: 161).

4.2. “Or”

In this section, we again first look at the semantics and pragmatics of “or” before turning to the question of its conceptual and/or procedural meaning. This shows that similarly the distinction between conceptual and procedural meaning is not easy to draw, but that we can, nonetheless, better understand the meaning of “or” by examining the relevant debate.

“Or”¹¹ is generally taken to be the natural language counterpart of the operator “ \vee ” in logic, meaning that the semantic meaning of “or” is seen as identical to that of the logical operator. Just like “and”, “or” therefore only has minimal semantics. It is a kind of coordination, that is, a syntactic construction in which two phrases or sentences conjoined by “or” form a single processing unit (Aloni, 2016) and which is true if one or both of the phrases or sentences conjoined by “or” are true. In other words, “or” encodes an *inclusive* reading: “ $P \vee Q$ ” is logically equivalent to “P or Q or both”. This minimal encoded meaning can be used to convey a pragmatically modified or, rather, enriched or more informative meaning: “P or Q but not both”, that is, an *exclusive* reading (Chevallier et al., 2016: 101–102). One may say that the exclusive reading is compatible with its semantics in the sense that at least one of the conjoined phrases or sentences is true.

As with “and”, the pragmatic enrichment of the semantic meaning of “or” is justified by the fact that it provides an interpretation that meets the addressee’s expectations of relevance. In other words, the pragmatic enrichment or the meaning of “or” is justified according to the principle of relevance only if it is warranted by the context in the sense that exclusive “or” has cognitive effects over the relevance of inclusive “or”. Put differently, the processing benefit has to be worth the processing effort, as interpreting “or” exclusively involves deeper processing than interpreting it inclusively (Chevallier et al., 2016: 104–105). Take the example of a scenario in which Mary tells her husband Paul what she would like for her birthday: “I’d like flowers or champagne”. One could assume that the inclusive interpretation of “or” applies, that is, Mary would be happy if her husband gave her both flowers *and* champagne. However, Mary could very well intend her husband to buy her flowers or champagne, *but not both*. The pragmatically inferred exclusive interpretation can be accounted for by the fact that it is more informative because it is associated with fewer possible true cases than the inclusive interpretation of “or” (Chevallier et al., 2016: 101). An example of a context allowing for pragmatic enrichment would be that Mary knows that her husband is short of money. Paul would enrich the encoded meaning of “or” on the basis of this specific conversational context (i.e., Paul has no money and Mary knows it) and would then arrive at the intended interpretation (Chevallier et al., 2016: 103). Therefore, the context determines whether sentences or phrases conjoined by “or” receive an inclusive or exclusive reading, including contexts where both readings are possible:

¹¹ This paper will only look at “or”, but not at other disjunctive constructions such as “either ... or”.

Inclusive “or”: To play Bardot, the actress needs to be sensuous *or* seductive (having both qualities would not be a problem).

Exclusive “or”: At the moment, Jack is waiting at the airport *or* he is flying over the Alps (he cannot be in both places).

Both readings possible: The ideal candidate should have a law degree *or* a keen awareness of the legal system (both inclusive and exclusive readings are possible).

As the first example, which could be interpreted and understood to mean that Mary would be happy if her husband gave her flowers *and* champagne, illustrates, the two connectives “and” and “or” can be analysed as forming a scale. On this scale, “and” is the more informative element in the sense that it provides information on the existence of both P and Q, while “or” is the less informative one in the sense that it provides information only on the *potential* existence of P and Q. This means that if a communicator utters “P or Q”, the addressee may infer that the communicator either has no evidence to argue that “P and Q”, that is, the stronger element on the scale, or that the communicator thinks that “P and Q” does not hold. If the communicator had evidence for, or more generally intended to communicate, “P and Q”, but chose to utter “P or Q” (Mauri & van der Auwera, 2012: 389), the communicator can be said to be making the addressee do some extra inferential work in deriving the intended interpretation. Consequently, the utterance “P or Q” should convey cognitive effects that the more direct utterance “P and Q” would not (cf. Carston, 2002: 234), that is, cognitive effects that are well worth the addressee’s processing effort. The examples illustrate that, in many cases, one reading is chosen. This is illustrated by the fact that if both readings are to be preserved, a formula such as “and/or” is often used (Mauri & van der Auwera, 2012: 389; for a discussion see Gvura, 2016).

As was the case with “and”, to suppose that “or” has a rich semantics – that is, that both the exclusive and inclusive interpretations of “or” are encoded – would not explain why there are cases where disjunction arises when “or” is removed. Take for example “Don’t poke the cat, she’ll scratch you” and “You need to bring an umbrella, you’re going to get soaked”. The case is, however, less clear than in the examples with “and”. The relation between the clauses in the examples may also receive a *conditional* reading (Simons, 2005: 210). As stated before, in Relevance Theory this fact can be attributed to general cognitive pragmatic principles, such as the search for relevance and recourse to frames, scripts or schemas.

Again, as in the case of “and”, one can also make an argument against seeing “or” as linguistically ambiguous between an inclusive and an exclusive word meaning. If “or” were ambiguous, one would expect its two senses to be expressed by two different words in many languages. However, linguistic investigation reveals that there is no well-attested case of a word meaning “or” just in the exclusive sense. It is thus generally agreed that the semantic meaning of “or” corresponds to the inclusive sense (Chevalier et al., 2006: 101–102).

Cross-linguistic comparison however also reveals that there are not only languages without any connective meaning “or”, but also languages that encode semantic distinctions which are not identified within logic, for example Albanian “ose” (“or”, listing equivalent alternatives) and “apo” (“or”, asking for a choice between alternatives). The semantic distinction can be called “simple” and “choice-aimed” disjunction. This cross-linguistic discrepancy challenges the plausibility of a direct equivalence between the logical operator “ \vee ” and natural language “or” (Mauri & van der Auwera, 2012: 379), that is, the concept that the exclusive vs. inclusive distinction is relevant to all languages and that the notion of inclusive “or” is basic and universal (Mauri & van der Auwera, 2012: 393). One might now be tempted to conclude that “or” is semantically empty (as one might conclude from the two above-cited examples where “or” is removed). The cross-linguistic discrepancy might, however, be better explained in terms of a continuum of cases in which there is a different division of labour between encoding and inference (Mauri & van der Auwera, 2012: 380) – just like that proposed for “and”. We can therefore say that in English the types of disjunction are undercoded: English only has “or”, whereas choice-aimed vs. simple disjunction appears to be quite frequently encoded across other languages (Mauri & van der Auwera, 2012: 393).¹²

If we only look at English, we may sum up that even if “or” has fewer pragmatic interpretations or readings than “and” (and might thus be considered semantically stronger than “and”, yet weaker than, for example, “but”), it is weaker, or less informative, than “and” if one looks at the two connectives as forming a scale. This comes full circle to the fact that the semantics of “or” is minimal and, more importantly, does not seem very strong in the sense that its description in logic does not seem universally relevant in a cross-linguistic comparison. In light of the cross-linguistic discrepancies, alternative semantic accounts of “or” have been suggested (Aloni, 2016). It might not be stretching things too far to attempt to reinterpret the encoded conceptual meaning of “or” as procedural meaning. This would satisfy the above-mentioned notion of rigidity, as the proposed procedural meaning is not cancelled in the examples of the different pragmatic interpretations. In keeping with the proposed procedural description of “and”, one might suggest preliminarily that if “or” encodes a procedure, it could be something like “*look for a cognitive effect by taking one or both disjuncts as premises*”. Such an understanding of “or” may seem more intuitive or, rather, more relevant, to natural language users than the description of “or” in logic.

¹² Choice-aimed disjunction can be represented in English with the help of an interrogative sentence used to elicit a choice: “Are we going to the cinema or are we staying at home?”. Simple disjunction can be represented in English with the help of a declarative sentence used to present equivalent possibilities without the need for any choice: “Tonight I will read a book or watch a movie, I don’t know yet” (Mauri & van der Auwera, 2012: 392).

5. Examples in International Law

We have discussed how words like “and” and “or” are discourse connectives and thus typical cases where the question of their procedural meaning arises. Let us now look at three international law examples to test our claim that thinking about procedural meaning is relevant to interpretive processes in international law and can thereby help provide a more transparent and explicit description of such processes. In the present section, we will look at selected legal norms and how the relevant legal interpreting agents, for example the European Court of Human Rights, have interpreted them. We will examine one example with “or” and two with “and”.

5.1. Example 1: “or”

Article 3 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) prohibits torture. It does so in the following terms:

No one shall be subjected to torture *or* [1] to inhuman *or* [2] degrading treatment *or* [3] punishment.
(emphasis and numbers added)

Or [1] and *or* [3] disjoin nouns (torture or treatment/punishment; treatment or punishment). *Or* [2] disjoins adjectives (inhuman or degrading). As shown in the previous section, “or” can be read as inclusive or exclusive. If we apply this knowledge to the interpretation given to Article 3, we find a puzzling result. The Court’s approach features different readings of the three occurrences of “or” within the same provision. At the same time, the Court only partly discusses what it is doing or how it has arrived at its results. From a linguistic point of view, we can use the notions of procedural meaning and the relevance-theoretic comprehension procedure described in the previous sections as tools to better understand how the Court arrived at its conclusions. These notions show us that decoding the encoded procedural meaning only gets us so far (“look for a cognitive effect by taking one or both disjuncts as premises”). Thus, there is a very limited “ordinary meaning”.¹³ The pragmatic inferences drawn on the basis of the encoded procedural meaning will therefore probably have to play a major role, whether this is explicitly acknowledged or not.

¹³ We assume that the legal notion of “ordinary meaning” refers to the semantic content of words or terms because standard literature in international law, if it addresses linguistics at all, tends to refer to the “semantics” and not the “pragmatics” of terms. See, for example, Venzke (2012: 58). Note, however, that it does not appear entirely clear whether in legal interpretation the ordinary meaning of a word or phrase is to be equated with the encoded meaning or with the usual, most familiar interpretation (Carston, 2013: 19). For a discussion from a relevance-theoretic point of view, see Pirker & Smolka (2017). Note also that there is considerable debate between different theoretical frameworks in semantics and pragmatics on the precise nature of encoded word meaning (Carston, 2013: 12; for an overview, see Börjesson, 2014).

Let us begin with *or* [1] and *or* [3] disjoining nouns. We will first look at the example of *or* [1]. In an early case, the Court held very clearly that a distinction must be drawn between torture and inhuman or degrading treatment. It had to categorize under Article 3 of the Convention the use of five techniques on detainees, namely wall-standing, hooding, subjection to noise, deprivation of sleep and deprivation of food and drink. In the Court's words, "it appears [...] that it was the intention that the Convention, with its distinction between 'torture' and 'inhuman or degrading treatment', should by the first of these terms attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering".¹⁴ Torture should thus be seen as something apart from inhuman and degrading treatment. The category of torture has been refined¹⁵ and evolved over time, but remained separate. Certain practices classified as inhuman or degrading treatment in the past could be considered as torture in more recent case law as standards have evolved. Torture nonetheless remains, to date, a dogmatically separate category.¹⁶ The Court thus appears to read "torture or inhuman/degrading treatment" as meaning *either* torture *or* inhuman/degrading treatment. There is a threshold for a State's behaviour to qualify as inhuman/degrading treatment; there is another threshold for it to become torture; and there is no grey zone between the two, that is, there is no behaviour that constitutes to some part inhuman/degrading treatment and to some part torture. In the Court's interpretation, *or* [1] can thus be said to have a pragmatically inferred exclusive reading. In other words, it receives a reading that is based on meaning encoded in "or", but is enriched by inferences based on contextual premises, such as the dogmatic distinction between the two disjoined nouns.

Or [3] disjoins treatment from punishment. Here, the Court takes a rather broad-brush approach. Dealing with a case in which a person is placed in a social care home, the Court held that Article 3 applies "equally to all forms of deprivation of liberty, and in particular makes no distinction according to the purpose of the measure in issue".¹⁷ It is "immaterial" whether a measure entailing detention is ordered in the context of criminal proceedings or other contexts.¹⁸ As a commentator notes regarding the case law, "[f]requently treatment and punishment go together", especially in cases concerning prison conditions (Schabas, 2015: 182). Consequently, here the Court appears to read *or* [3] as inclusive. The prohibition covers certain forms of treatment, certain forms of punishment, but also certain forms of treatment *and* punishment, that is, *one or both* of the two.

Let us compare this result to *or* [2]. The Court has classified in its case law certain forms of treatment or punishments as inhuman, such as the threat of torture to obtain

¹⁴ *Ireland v. the United Kingdom*, 18 January 1978, § 167, Series A no. 25.

¹⁵ On the purposive element of the definition of torture, see, for example, *Ilhan v. Turkey* [GC], no. 22277/93, § 85, ECHR 2000-VII.

¹⁶ *Selmouni v. France* [GC], no. 25803/94, § 101, ECHR 1999-V.

¹⁷ *Stanev v. Bulgaria* [GC], no. 36760/06, § 206, ECHR 2012.

¹⁸ *Stanev v. Bulgaria* [GC], no. 36760/06, § 206, ECHR 2012.

information without its actual execution.¹⁹ For example, in *Gäfgen v. Germany* a child had been abducted, and because he feared for the child's life the deputy chief of police had ordered that the abductor be threatened by a police officer with considerable pain which would not leave any injuries. Typical inhuman treatment is premeditated or applied for hours, causing bodily injury or at least intense physical and mental suffering.²⁰

Degrading treatment, in turn, is such treatment that “arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance”.²¹ Such treatment or punishment typically diminishes or shows a lack of respect for the human dignity of the victim.²² For example, in *East African Asians v. the United Kingdom*, the United Kingdom had adopted new immigration legislation that singled out British Asians living in African countries and deprived them of their right of entry into the United Kingdom on racial grounds. The Court found that there had been degrading treatment as the measure singled out a group for differential treatment on racial grounds, which constituted a special affront to human dignity.

These definitions contain elements of meaning that visibly overlap (e.g., “threat” and “arouses feelings of fear”). Still, there are cases in which the Court applied only one of the adjectives or terms defined accordingly, stating that a given treatment or punishment is degrading, while in other cases stating that it is inhuman. However, there are also cases handed down by the European Commission and the Court where both terms appear or where there is no clear classification or distinction between the two. The European Commission of Human Rights, at that time competent,²³ found that torture was always “inhuman and degrading treatment”, and that “inhuman treatment is also degrading”.²⁴ In one case, the Court did not specify whether a certain treatment was inhuman or degrading, but simply held that there was a violation of Article 3 without going into further detail.²⁵ In the case, a prisoner had been subject to very dire conditions with extremely limited space and the nauseous stench from a former household waste site close to the prison.

Consequently, we can argue that the Commission and the Court appear to read “inhuman or degrading” treatment/punishment as meaning inhuman *or* degrading *or both*. *Or [2]* is thus read as inclusive.

¹⁹ *Gäfgen v. Germany* [GC], no. 22978/05, § 70, ECHR 2010.

²⁰ *Labita v. Italy* [GC], no. 26772/95, §120, ECHR 2000-IV.

²¹ *A. and others v. the United Kingdom* [GC], no. 3455/05, §127, ECHR 2009.

²² *East African Asians v. the United Kingdom*, nos 4403/70–4419/70, 4422/70, 4423/70, 4434/70, 4443/70, 4476/70–4478/70, 4486/70, 4501/70, and 4526/70–4530/70, Commission report of 14 December 1973, § 208, DR 78-A, p. 5.

²³ Based on the legal situation before the entry into force of Protocol 11 to the ECHR in 1998.

²⁴ *Denmark, Norway, Sweden, and the Netherlands v. Greece*, nos 3321/67, 3322/67, 3323/67, 3344/67, Commission report of 5 November 1969, (1969) 12 YB ‘The Greek Case’ 1.

²⁵ *Brândușe v. Romania*, no. 6586/03, §§ 46–50, 7 April 2009.

This is, however, not a “logical” or somehow self-evident reading of the provision. Take a contrary example in United States constitutional law. The Supreme Court of California was asked to interpret a somewhat similar clause in the California State Constitution, namely then Article 1 (17). This provision prohibited “cruel or unusual punishment”, thereby deviating from the wording used in the Eighth Amendment to the United States Federal Constitution (“cruel and unusual punishment”). In *People v. Anderson*,²⁶ the Court found that the difference in wording had to have significance. It rejected suggestions in the doctrine that the reach of the two norms should be read as coextensive, that is, the inclusive reading of “or”. It read the phrase “cruel or unusual punishment” to mean that the California Constitution prohibits a punishment if “it is either cruel or has become an unusual punishment”. The Court insisted, based on a review of the drafting history, that the delegates to the constitutional convention were “aware of the significance of the disjunctive form and that its use was purposeful”. It explained that the delegates had access to a majority of constitutional models that similarly prohibited cruel or unusual punishment, which again meant the drafters intended for cruel but also for disproportionate and unusual punishments to be prohibited. The Court was therefore convinced that the delegates modified the California provision before adoption to substitute the conjunctive “and” with the disjunctive “or” because they wanted to express their intent that both cruel and unusual punishments were prohibited. In relevance-theoretic terms, the Court can be said to have made implicit use of the scale model of “or” and “and” described in section 4.2. Thus, the Court interpreted the California Constitution’s use of the weaker, less informative element “or” on the scale to be intended to lower the threshold to ensure that it would not become a requirement for a punishment to be *both* cruel *and* unusual to be punishable. According to the Court’s reading, this should make clear that either of the two types of punishment was prohibited on its own. One may conclude from this example that the linguistic description appears to provide a more transparent and explicit explanation of how the Supreme Court, whose reading followed what it thought the drafters of the provision had intended, found the relevant “or” to be exclusive.

The overall purpose of analysing these examples is not to show that the reasoning presented by the various interpretive agents is erroneous or does not rest on sound arguments. It may be entirely sound, and the legal conclusions drawn from the relevant interpretive process may be convincing as well. However, what we aim to show here is that there is no way in which an interpreting agent could decode from the word “or” itself whether it was meant to be inclusive or exclusive (nor do they even appear to have tried to do so). They had to infer this interpretation from the context. Evidently, procedural meaning matters. Encoded meaning appears to be insufficient to explain the full interpretive process that occurred.

²⁶ Crim. No. 13617. Supreme Court of California, 18 February 1972.

5.2. Example 2: “and”

As has been discussed, just like the disjunction “or”, the conjunction “and” can mean a number of things. We will now take a closer look at this second sample discourse connective to test further our claim that procedural meaning matters in legal interpretation.

Take the example of the ordinary legislative procedure of the European Union. Put simply, three institutions have to cooperate to create EU secondary legislation: the Commission, the Council and the European Parliament. If we look at Article 294 of the Treaty on the Functioning of the European Union (TFEU), “and” is used a number of times. For example, Article 294 (2) TFEU reads:

The Commission shall submit a proposal to the European Parliament *and* the Council. (emphasis added)

Intuitively, many lawyers might conclude from the description of the interpretation of “and” in section 4.1 that their interpretation would be an additive reading of “and” in this case. The point of the norm is that the Commission has to submit its proposal to one institution (Parliament) *and additionally* to another institution (Council), and not only to either one or the other. This point of the norm can thus be said to be based on, or compatible with, the encoded meaning of “and” which is, put simply, the co-occurrence of both conjuncts. However, is there more to the legal interpretation of “and” in this example? No other element of the norm tells us anything about the manner in which the submission has to co-occur, for example the temporal sequence of the submission to the conjoined elements, here the two institutions. Is the Commission supposed to submit the proposal to the Parliament *and then* to the Council? Or *simultaneously* to both? As shown above, both options would be possible readings of “and”. Neither reading can be decoded from the norm as it is written. Legally speaking, there is a legal principle of treating the two institutions equally that ultimately can be brought in to decide the matter. Based on this principle, the proposal has to be submitted to both institutions *at the same time* (von Achenbach, 2014: 170). Linguistically, however, no solution emerges from the “ordinary meaning” of “and”. The meaning “and *at the same time*” has to be contextually inferred.

5.3. Example 3: “and”

Another example can be used to show that, depending on the connective word used, the respective procedurally encoded meaning involved in legal interpretation may be stronger or weaker. As section 4.1 discussed, “and” can be said to be semantically more underspecified than other words such as “but”. However, just like, for example, “but”, “and” triggers an examination by the human mind of what connection or relation could possibly hold between the elements linked by “and”.

Let us take the example of Article 5 (3) ECHR. The provision reads:

Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power *and* shall be entitled to trial within a reasonable time or to release pending trial. (emphasis added, second sentence omitted²⁷)

The sentence contains two rights. The first right is the right to appear before a judicial authority²⁸ to have the merits of detention²⁹ considered at an early stage of this detention to counter the risk of ill-treatment that is particularly high at such a stage³⁰ (hereafter “right A”). The second right essentially ensures that a person can only be detained pending trial if the state can demonstrate that there is a convincing justification for the detention³¹ (hereafter “right B”).

The question arises how “and” is to be understood in this context. As stated before, its interpretation necessarily involves its decoded semantic meaning: “look for a cognitive effect by taking both conjuncts as premises”. At a first glance, one might infer an additive or temporal relation (“everyone falling under Article 5 (3) enjoys right A *and additionally* enjoys right B”, or “everyone falling under Article 5 (3) enjoys right A *and subsequently* enjoys right B”).

However, the actual interpretation of Article 5 (3) in the Court’s case law shows how context, or rather world knowledge³², can lead to the abandonment of such pragmatically inferable hypotheses of the intended meaning because they do not seem relevant. The Court is typically confronted with claims falling under the guarantee against any arbitrary or unjustified deprivation of liberty contained in Article 5 (3). To decide a case, the Court thus has to categorize a claim and at the same time clarify the relationship between the two rights enshrined in the provision. In a first decision, the Court indicated that it considered there to be two separate rights contained in Article 5 (3), without clearly spelling out their relationship.³³ It decided the case based on the fact that the magistrate at issue had insufficient review powers, as they did not have the power to order the release of a detained person. The Court thus found there to be a violation of right A enshrined in Article 5 (3). In a later case, the Court was confronted with a system of judicial review that had been revised according to the Court’s earlier decision based on Article 5 (3). It found that judicial review as granted by the law was now consistent with Article 5 (3) and held, this time more expressly with regard to the two parts of Article 5 (3), that “[t]hese two limbs confer distinct rights and are not on

²⁷ The second sentence, which is not relevant for the present example, reads “Release may be conditioned by guarantees to appear for trial”.

²⁸ For more detail, see *Stephens v. Malta* (no. 2), no. 33740/06, § 53, 21 April 2009.

²⁹ See, for example, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 49, ECHR 1999-II.

³⁰ *Ladent v. Poland*, no. 11036/03, § 75, 18 March 2008.

³¹ For more detail, see *Musuc v. Moldova*, no. 42440/06, § 40, 6 November 2007; *Neumeister v. Austria*, 27 June 1968, p. 33, § 4, Series A no. 8; *Bykov v. Russia* [GC], no. 4378/02, § 62, 10 March 2009.

³² According to Relevance Theory, such world knowledge pertains to the individual and can therefore include the specialised knowledge of a legal expert (Pirker & Smolka, 2017: 261 ff.).

³³ *T.W. v. Malta* [GC], no. 25644/94, § 49, 29 April 1999.

their face logically or temporally linked”.³⁴ The Court did, however, not state exactly how it interpreted “and” in its decision.

As an observer, one may object to the Court’s reasoning and argue that it does not appear to do justice to the full text of the norm which includes “and”, that is, the Court appears to disregard the semantically encoded meaning of the conjunction. While the Court’s reading may be contestable, it would not necessarily be considered impossible or wrong from a relevance-theoretic point of view. From the Court’s wording that right A and right B are “separate” and “not on their face logically or temporally linked”, one may conclude that the Court did not simply ignore the meaning of “and”, but did indeed look for a relevant cognitive effect – yet simply could not find one that satisfied its expectation of relevance.

If one keeps in mind that “and” only has a comparatively weak or underspecified form of procedural meaning, one may argue from a relevance-theoretic point of view that the inferable relationship between right A and right B, or its intended meaning, reflect the temporal sequence of events. This means that the same individual is entitled to enjoy right A and right B within a roughly defined timeframe where both rights are enjoyed at the same time or one following each other. What the Court meant in its statement that right A and right B are not temporally linked is, rather, that the temporal order in which these rights become effective has no impact on the effectiveness of each right on its own (e.g., there is no need to rely on right A before one is entitled to rely on right B). The suggested reasoning also explains why the Court used the wording “logical”, as there is no more than a trivially logical relation between the activation of right A and right B, namely that they pertain to the same individual in the same situation.

Relevance Theory allows for a complementary explanation: remember that “and” and “or” can be said to form a scale. Article 5 (3) can thus be interpreted to mean that *both* rights apply, and not only *one or both*. This meaning can, however, also be viewed as relatively underspecified in the sense that other readings of “and” (e.g., a temporal or causal relation) belong to those highly accessible scripts that the interpreting agent, here the Court, may have recourse to in the search for relevance. The Court’s wording whereby the two rights in the norm should be viewed as completely separate can thus be understood as a comment on the relevance of this meaning of “and” in this context. The Court may be said to be guarding against continued testing of less and less accessible interpretive hypotheses of the meaning of “and” in this case. Summing up, the fact that the Court felt the need to express itself in the way described above lends evidence to our claim that procedural meaning is important for interpretation in international law. Semantic meaning matters, but must normally be complemented by a pragmatic inference process.

³⁴ *Stephens v. Malta* (no. 2), no. 33740/06, § 52, 21 April 2009.

6. Conclusion

The present paper aimed to examine whether the distinction between conceptual and procedural meaning in pragmatics has the potential to help model and make more transparent processes of interpretation in international law. Based on a discussion of the conceptual and procedural aspects of “and” and “or”, we examined a number of practical examples in international law. This revealed that interpreting agents in international law struggle with the interpretation of terms like “and” and “or” and are often unable to spell out clearly what the ordinary meaning of these terms is to them (or, at least, they do not give an explicit description or explanation of their reasoning). Procedural meaning provides a convincing way of making their reasoning more explicit. Nonetheless, language is not a code. Therefore, the ultimate interpretive choice taken by a legal interpreting agent remains subjective. In turn, the approach of international law and pragmatics remains descriptive and cannot prescribe one specific “correct” interpretation. However, it can point out certain “guardrail” effects of lexical items. In this approach, it shares similarities to sociologically oriented approaches that are also fundamentally descriptive.

It could arguably be shown that procedural meaning has the potential to help us understand what happens in the process of the interpretation of many lexical items. Of course, this paper merely used selected examples (“and” and “or”), and much must be left to future research. Nonetheless, we hope to have shown that procedural meaning is definitely relevant and necessary to fully understand what a lawyer would call the ordinary meaning of many terms.

Ultimately, there could even be more to procedural meaning. We have seen that procedural meaning has the same function in legal interpretation as it is said to have in the standard relevance-theoretic account: it restricts interpretation, guiding or instructing the addressee to take a certain inference path. According to a suggested revision of the relevance-theoretic account, procedural meaning may also have an argumentative or persuasive function (Wilson, 2011: 27). Put simply, connectives can contribute to relevance on the “effort-saving side”, that is, by guiding the addressee’s path to comprehension. This paper has demonstrated this. However, there may also be additional effects, namely attracting the addressee’s attention and leading the addressee not only to draw an appropriate conclusion, but also to think about the reasons for drawing that conclusion (Wilson, 2016: 16–17; see also Walaszewska, 2015: 15–16).³⁵ Lack of space means that future research will have to discuss this proposal; even at first glance, however, its relevance for lawyers appears to be significant.

³⁵ See also Gvura (2016: 341), who argues that “and” and “or” are not only instructive, but also persuasive. Take Wilson’s example: “If the council fails to repair a pothole and you therefore break your leg, you should sue.” Even if “therefore” were left out, an addressee would infer the relation indicated by that connective. Part of the contribution of the connective is to shift the main relevance (i.e., manipulate the intuition where the main relevance lies: Not on breaking your leg, but on breaking it because the council failed to repair a pothole).

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