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Soft Law as a Distinct Subtype of International Legal Discourse: On the Issue of Differentiation in the Linguistic Aspect

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Abstract. The article analyzes the discourse of international soft law from the perspective of its structural, communicative, modal, lexico-semantic, and syntactic features that differentiate these quasi-legal texts from universally binding hard law. The goal of the research is to identify the linguistic and communicative parameters of soft law discourse as a distinct subtype within the realm of international legal discourse. It is found that linguistic parameters of soft law include the use of passive constructions, impersonal sentences, elaborate hedges, and the use of verbs with semantics of recommendation, desirability, and declaration, introducing legal texts. In the position of the phrasal subject, names of objects or action goals are used instead of designations of participating states. These linguistic means realize the modality of recommendation, desirability, permissiveness, and possibility, as opposed to the modality of obligation characteristic of hard law texts. The communicative parameters of soft law discourse encompass the specificity of communicative purpose and communicative structure. The communicative purpose is polycomponential, comprising an invariant component – the recommendation of coordinated rules of international conduct, and variant strategies: interpretation of norms of international law, identification of solidarity regarding states' intentions to act in a unified direction, and preparation of future documents with mandatory legal force. From the perspective of communicative structure, soft law discourse is structured through both linear and interactive communicative moves. The typical linear structure correlates with the substantive-compositional organization of soft law text and includes five components – communicative moves: Adoption, Justification, Definition of key terms, Establishment of recommended normative rules and scope of application, and means of enforcement as an optional component. The interactive structure pertains to the qualification of normative expressions based on the criterion of the function attributed to the stated norm or its components, such as clarification, commentary, reservations, etc. For texts of international soft law, two-component interactive moves are typical, where preceding moves or a series of moves contain various justifications for why the subsequent normative provision is necessary. A perspective for future research involves differentiating the genres of soft law from a linguistic perspective.

Key words: international legal discourse, soft law, communicative parameters, modality, lexico-semantic devices, syntactic features.

Introduction. The discourse of soft law is understudied in both linguistic and international legal research, which is associated with the complexity of defining the concept of "soft law," encompassing a broad spectrum of international agreements and the strategic situations they create. Soft law texts mostly have a recommendatory nature, incorporating hybrid genres that combine international legal obligations with the political positions of the participating states in the documents (Guzman, Meyer, 2011: 173).

Thus, the umbrella term "soft law" encompasses an extraordinary variety of documents. On one hand, these are documents containing non-legal international norms established in declarations, UN General Assembly resolutions on important

issues in international relations, codes of conduct, and guiding principles of activity, as well as recommendations of international organizations such as the International Atomic Energy Agency, the International Maritime Organization, the Food and Agriculture Organization, and the International Civil Aviation Organization. On the other hand, soft law includes a particular type of norms in international law, namely, "general" norms and principles that are used in international treaties and then further developed and detailed in hard law documents.

The categorization of soft law discourse is complicated not only due to the extraordinary variety of documents lacking binding legal force but also because there is

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no unified classification of document names in international law. Documents may not necessarily have all structural components, and there is no established form stereotypically associated with the canons of a particular genre. The structural formatting of documents depends solely on the agreement of their participants.

Therefore, considering such extralinguistic factors, criteria for determining the parameters of soft law remain a gap in contemporary linguistic research. This underscores the relevance and novelty of this article, which aims to fill this gap.

Literature review. The issue of the soft law discourse, the material of which forms the basis for this research, is the subject of individual studies in both linguistic (Kravchenko et al., 2022; Kravchenko, Soshko, Markova, 2022; Markova, 2022), and interdisciplinary perspectives (Byers, 2021; Mantilla, 2023; Ramos, 2021; Sassòli, 2022; Sulyok, 2024). The most acceptable viewpoint regarding the scope of the "soft law" concept involves considering documents of this type as texts that have a quasi-legal character, influencing the international behavior of states but, at the same time, are not universally obligatory for execution. In the European Union, the term "soft law" is used to denote acts that do not possess binding force but have practical or legal significance within their competence (D'Amato, 2009; Mörrth, 2004). Soft law instruments include those creating non-specific obligations related to a wide range of activities of participating states (Abbott & Snidal, 2000).

The problem of differentiating soft law discourse from hard law remains a largely unexplored aspect of contemporary discourse analysis and linguistic genealogy. Linguistic works focused on the issues of soft law cover various aspects of its study, such as the specifics of the structure of soft law discourse (Kravchenko, Nikolska, 2020), characteristics of modality in international legal texts (Kravchenko et al., 2022a; Markova, 2022), taking into account the differences in markers between binding and soft law texts, as well as the issue of translational adaptation of modality. Scholars have attempted to construct a discursive model for pre-translation analysis of international legal discourse, identifying differences for texts of hard and soft law (Kravchenko, Soshko,

Markova, 2022). They have also explored the pragmatic features of legal texts (Kravchenko, Pozhar, 2023), including the aspect of rendering the pragmatics of soft law texts in Ukrainian translations (Kravchenko et al., 2022).

The identified characteristics of soft law texts form the conceptual framework of this research, allowing for the establishment of criteria to distinguish between the discourses of soft and hard law.

The goal of the research is to identify the linguistic and communicative parameters of soft law discourse as a distinct subtype within the realm of international legal discourse.

Materials and research methods. The material for the study consisted of texts of international soft law, including Beijing Declaration (hereinafter – BD) (1995), Declaration of Principles of Tolerance (hereinafter – DPT) (1995), Universal Declaration of Human Rights (hereinafter – UDHR) (1948), Declaration of Ethical Principles in relation to Climate (hereinafter – DEPRCC) (2017), Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (hereinafter – DBPJVCAP) (1985), Framework Convention for the Protection of National Minorities (hereinafter – FCPNM) (1995), United Nations Framework Convention on Climate Change (hereinafter – UNFCCC (1992), and Rio Declaration on Environment and Development (hereinafter – RDED) (1992).

The article employed methods of structural-syntactic analysis to identify the syntactic features of statements nominating norms of soft law; genre analysis to uncover components of the genre model of soft law discourse; structural-compositional analysis to identify structural components of the text corresponding to linear communicative moves, and elements of communicative-pragmatic analysis to determine invariant and variant components of communicative purpose as one of the parameters of soft law, as well as to identify the functions of interactive communicative moves.

Results and Discussion. The analysis of soft law documents has allowed the identification of distinctive features of this discursive pattern:

(1) Document title. The left part of the title should include designations such as

Framework Convention, Charter, Declaration, Recommendations, Principles (in variations like Basic Principles, Guiding Principles, Set of Principles), Measures, Code, Final Act, Strategies, Minimum Standard Rules, Appeal, and so on.

The right part of the title should refer to a specific thematic area predominantly regulated by soft law, such as international jurisdiction, ecology, international waterways, human rights, international legal responsibility, and international economics, eg., Rio Declaration on Environment and Development, the United Nations Declaration on the Rights of Indigenous Peoples, UN Declaration against Corruption and Bribery in International Commercial Transactions, Framework Convention for the Protection of National Minorities, Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, Principles Relating to Remote Sensing of the Earth from Outer Space, WHO Framework Convention on Tobacco Control. The inclusion of such regulatory areas under soft law is explained by the fact that, for various reasons, it is difficult for participating states to reach consensus in issues related to them.

(2) Predicates represented by verbs expressing the modality of "desirability" instead of "obligation": *proclaim, declare, solemnly announce, call upon, recommend, recognize*:

The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations (UDHR, 1947).

We declare the following: (DPT, 1995).

We also recognize that broad-based and sustained economic growth in the context of sustainable development is necessary to sustain social development and social justice (BD, 1995).

(3) Textem composition, specifically the absence of a concluding part containing provisions for document implementation; the lack or minimal representation of provisions that in some way restrict the rights of participants through references to other documents.

(4) Means of expressing deontic modality of recommendation with elements of desirability modality, permissive modality, modality of possibility, and epistemic

modality:

It is essential for international harmony that individuals, communities and nations accept and respect the multicultural character of the human family (article 2 (3), DPT, 1995) (epistemic modality).

Wishing to follow-up the Declaration of the Heads of State and Government of the member States of the Council of Europe adopted in Vienna on 9 October 1993 (FCPNM, 1995) (desirability modality).

All Parties (...) take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions (article 4 (1 f), UNFCCC, 1992) (modality of possibility).

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b) above (article 14, UNFCCC, 1992) (permissive modality).

Regarding the last two examples, it is worth noting that deontic permissive modality in soft law documents borders on the modality of possibility but differs based on the criterion of "permission for a specific action – the possibility of performing such an action." If permissive modality is indexed by the modal verb "may," the modality of possibility is marked by hedges of various extents and structural complexity, serving as a kind of disclaimer about limitations on responsibility during the implementation of the document's rules, depending on the individual capabilities of states. Such hedges attenuate the overall deontic modality of documents by increasing the degree of alternative application.

In addition to the mentioned parameters of soft law texts, their constitutive feature is specific syntactic and semantic characteristics.

The analysis of international legal texts of soft law allowed identifying the following structural and syntactic features:

(1) The use of impersonal sentences:

To ensure that present and future generations are able to meet their needs, it is urgent that all States and pertinent actors: (a) promote the implementation of the United Nations 2030 Agenda for Sustainable Development and its SDGs (Article 5, DEPRCC, 2017).

It is essential for international harmony that individuals, communities and nations accept and respect the multicultural character of the human family (article 2 (3), DPT, 1995).

(2) The use of the passive voice:

Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures (article 5, DBPJVCAP, 1985).

(3) Functioning in the position of the phrasal subject of a noun / a nominal phrase to denote the object of regulation, instead of nominating member states as actors.

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities (Principle 15, RDED, 1992) (combination of the passive with the location of the object of regulation in the position of

the phrasal subject).

For texts of "soft law," invariant features also include marked themes, insert constructions softening the mandatory nature of rules, and other linguistic devices (impersonality, subjectivization, objectivization, nominalization), intertextual references to "authoritative sources," etc., contributing to reducing categoricity and coercion in favor of modality of desirability.

In particular, linguistic features specific to the soft law genre are presented in Table 1 based on a fragment from Article 2 of the Declaration of Principles on Tolerance.

As affirmed by the UNESCO Declaration on Race and Racial Prejudice measures must be taken to ensure equality in dignity and rights for individuals and groups wherever necessary (article 2, DPT, 1995).

| The text of the article | Linguistic tools | Function in the implementation of the institutional communicative goal |
|---|---|---|
| As affirmed by the UNESCO Declaration on Race and Racial Prejudice measures must be taken | intertextual inclusion through reference to an expert or authoritative source | implements the evidential modality |
| to ensure equality in dignity and rights for individuals and groups | passive voice; a noun to indicate the object of the action, instead of the subject of the action, intended for the implementation of the declared measures | a means of distancing and mitigation |
| wherever necessary | the nouns to denote universal values | implements the strategy of appeal to value as a component of manipulative argumentation |
| | | reduction of categoricalness |

Table 1. Features of linguistic embodiment specific to the soft law genre

In some studies, linguistic means typical for certain genres of legal and international legal discourse, are considered as components of "rhetorical strategies" (Harris, 1988; Rasmussen, Engberg, 2017). From this perspective, rhetorical strategies include not only syntactic and stylistic devices such as nominalizations, complex nominal phrases (numerous modifiers), parallel structures, ambiguous expressions, adverbial

specifying constructions, passive voice, but also the way of organizing the text with its division into compositional parts, differentiation of sentences by their length and complexity, etc. (op. cit.).

Summarizing the limited literature on the issue of legal genres (Harris, 1988; Rasmussen, Engberg, 2017) allowed us to add parameters to the characteristics of soft law genres, such as communicative purpose

and the structure of typical "speech moves" used to achieve the communicative goal. The communicative purpose of soft law genres is noted for its complex nature, including both invariant and variable components. The invariant component of communicative purposes involves recommending coordinated rules of international conduct. Variable components may be facultative: alongside the obligatory recommendation of behavioral rules, a document may also aim to prepare propositive international documents with mandatory legal force, interpret norms of international law, or simply express solidarity regarding intentions to act in a coordinated direction.

Regarding such a characteristic as typical for international legal genres "speech moves," Bhatia distinguishes two types of their structure: linear (Bhatia 1993, 135-36), implemented at the macro-level of the text and correlated with the content-compositional structure, and interactive (Bhatia 1993, 117), which include normative expressions themselves and their qualification in the form of reservations, specifications, and comments.

In genres of soft law within international legal discourse, both types of speech acts interact. Typically, a soft law text constitutes a linear five-component structure of communicative acts, including:

Move 1-2: Adoption – Justification;

Move 3: Definition of key terms;

Move 4: Establishment of recommended rules of conduct, and Scope of application;

Move 5: Means of enforcement (optional).

In (1-2), the second communicative move is integrated into the first, as the pragmatic part of "Adoption," introduced by performative verbs such as *adopt*, *proclaim*, *declare*, is separated from the thematic part, i.e., from the phrasal subject indicating the participants of the document. It is linked to the justification part, containing intertextual references to previous texts and socio-political realities ("shared knowledge"). The features of the structure of linear and interactive moves are illustrated through the analysis of a soft law document, such as the Declaration of Principles on Tolerance (1995), presented in Tables 2 and 3.

| Linear communicative moves and their functions | Text of the document |
|--|--|
| Communicative move 1A – Implementation: thematic part | The Member States of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris at the twenty-eighth session of the General Conference, from 25 October to 16 November 1995 |
| Communicative move 2 – Justification | Bearing in mind that the United Nations Charter states... |
| Communicative move 1B – Implementation: rhematic part | Adopt and solemnly proclaim this Declaration of Principles on Tolerance |
| Communicative move 3 – Definition of terms | Article 1 - Meaning of tolerance |
| Communicative move 4 – Establishing recommended rules of conduct and scope of implementation | Article 2 – State level 2.1 Tolerance at the State level requires just and impartial legislation, law enforcement and judicial and administrative process (...). 2.2....2.3...2.4. Article 3 – Social dimensions Article 4 – Education |
| Communicative move 5 – Means of security | Article 5 - Commitment to action We commit ourselves to promoting tolerance and non-violence through programmes and institutions in the fields of education, science, culture and communication. |

Tables 2. The structure of linear communicative moves in soft law documents

| Qualification (to justify subsequent regulations) | Means of qualification | Expression denoting a previously justified normative provision |
|--|---|---|
| In order to achieve a more tolerant society | adverbial structure to express the general purpose of the document | States should ratify existing international human rights conventions, and draft new legislation |
| where necessary | an insert construction-hedge that reduces the degree of modality of necessity in favor of increasing the modality of desirability | |
| to ensure equality of treatment and of opportunity for all groups and individuals in society | infinitive construction specifying the purpose | |

Table 3. The structure of interactive communicative moves in soft law documents

Conclusion. The discourse of soft law is characterized by genre hybridity, combining features of both international legal and political discourses. Linguistic parameters of soft law include the use of passive constructions, impersonal sentences, elaborate hedges, and the use of verbs with semantics of recommendation, desirability, and declaration, introducing legal texts. In the position of the phrasal subject, names of objects or action goals are used instead of designations of participating states. These linguistic means realize the modality of recommendation, desirability, permissiveness, and possibility, as opposed to the modality of obligation characteristic of hard law texts.

The communicative parameters of soft law discourse encompass the specificity of communicative purpose and communicative structure. The communicative purpose is polycomponential, comprising an invariant component – the recommendation of coordinated rules of international conduct, and variant strategies: interpretation of norms of international law, identification of solidarity regarding states' intentions to act in a unified

direction, and preparation of future documents with mandatory legal force. From the perspective of communicative structure, soft law discourse is structured through both linear and interactive communicative moves. The typical linear structure correlates with the substantive-compositional organization of soft law text and includes five components – communicative moves: Adoption, Justification, Definition of key terms, Establishment of recommended normative rules and scope of application, and means of enforcement as an optional component.

The interactive structure pertains to the qualification of normative expressions based on the criterion of the function attributed to the stated norm or its components, such as clarification, commentary, reservations, etc. For texts of international soft law, two-component interactive moves are typical, where preceding moves or a series of moves contain various justifications for why the subsequent normative provision is necessary.

A perspective for future research involves differentiating the genres of soft law from a linguistic perspective.

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М'яке право як окремий підтип міжнародно-правового дискурсу: до проблеми диференціації у лінгвістичному аспекті

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Анотація. У статті аналізується дискурс міжнародного м'якого права з точки зору його структурних, комунікативних, модальних, лексико-семантичних і синтаксичних особливостей, які відрізняють ці квазіюридичні тексти від загальнообов'язкового жорсткого права. Метою дослідження є визначення лінгвістичних та комунікативних параметрів дискурсу м'якого права як окремого підтипу в межах міжнародно-правового дискурсу. З'ясовано, що лінгвістичні параметри м'якого права включають використання пасивних конструкцій, безособових речень, складних хеджів, дієслів із семантикою рекомендації, бажаності та декларації, які вводять юридичні тексти. У позиції фразового суб'єкта замість позначень держав-учасників використовуються назви об'єктів або цілей їхньої дії. Ці мовні засоби реалізують модальність рекомендації, бажаності, дозволеності та можливості на протилежності модальності зобов'язання, характерної для текстів жорсткого права. Комунікативні параметри дискурсу м'якого права включають специфіку комунікативної мети та комунікативної структури. Комунікативна мета є полікомпонентною, оскільки містить інваріантну складову – рекомендацію узгоджених правил міжнародної поведінки, та варіативні стратегії: тлумачення норм міжнародного права; виявлення солідарності щодо намірів держав діяти в єдиному напрямку; підготовки майбутніх документів з обов'язковою юридичною силою. З точки зору комунікативної структури, дискурс «м'якого права» структурований за допомогою лінійних та інтерактивних комунікативних ходів. Типова лінійна структура співвідноситься з змістовно-композиційною організацією тексту м'якого права та включає п'ять компонентів – комунікативних ходів: прийняття, обґрунтування, визначення ключових термінів, встановлення рекомендованих нормативних правил і сфери застосування, а також факультативний компонент – інструменти, що забезпечують виконання норм документу. Інтерактивна структура стосується кваліфікації нормативних висловлень на основі функціонального критерію – функції, що приписується встановленій нормі або її компонентам: роз'яснення, коментар, застереження тощо. Для текстів міжнародного м'якого права типовими є двокомпонентні інтерактивні ходи, де попередні ходи або ряд ходів містять різні обґрунтування того, чому необхідне наступна нормативна регламентація. Перспективою для майбутніх досліджень вбачаємо диференціацію жанрів м'якого права з лінгвістичної точки зору.

Ключові слова: міжнародно-правовий дискурс, м'яке право, комунікативні параметри, модальність, лексико-семантичні засоби, синтаксичні особливості.