

## Semiotics and Semioethics

The science or doctrine of semiotics<sup>1</sup> has been applied throughout history to study the meaning of signs and symbols in numerous fields, such as linguistics, theology, philosophy, literature, architecture, mathematics and logic, medicine, psychiatry and psychology, economics, biology and ecology, as well as learning and education.<sup>2</sup> The term semiotics comes from the Greek *semeiotikos* ‘significance’,<sup>3</sup> or ‘observant of signs’,<sup>4</sup> *semeiosis* ‘indication’,<sup>5</sup> as well as *semeioun* ‘interpret as a sign’ and ‘to signal’,<sup>6</sup> and *semeion* ‘sign’.<sup>7</sup> A similar word, *semeiotics*, referred to the branch of medicine dealing with the interpretation of symptoms in 1670, and earlier in 1588 under the adjective *semeiotal*.<sup>8</sup> The term ‘semiotics’ was acknowledged as the study of signs and symbols in English as early as 1641 in the works of Bishop John

<sup>1</sup> Thomas Sebeok preferred the expression ‘doctrine of signs’ to the more ‘ennobling terms’ science or theory, in reference to John Locke’s use of the expression ‘doctrine’ as ‘a body of principles and opinions that vaguely go to form a field of knowledge’: Susan Petrilli, *Sign Crossroads in Global Perspective: Semioethics and Responsibility* (Transaction Publishers 2010), 6.

<sup>2</sup> For a discussion on semiotics in various disciplines, see Jamin Pelkey (ed.), *Bloomsbury Semiotics Anthology* (Bloomsbury 2022), and for example, Gabriele Aroni, *The Semiotics of Architecture in Video Games* (Bloomsbury Advances in Semiotics 2022); Gabriele Aroni, ‘Semiotics in Architecture and Spatial Design’ in Jamin Pelkey (ed.), *Bloomsbury Semiotics Anthology* (Bloomsbury 2023) 277–96; Gabriele Aroni, ‘Games as Authorial Platforms? An Exploration of the Legal Status of User-Created Content from Digital Games’ (2023) 36 *International Journal for the Semiotics of Law* 2021; and Robert Yelle, *Semiotics of Religion: Signs of the Sacred in Religion* (Bloomsbury Advances in Semiotics 2012).

<sup>3</sup> *Shorter Oxford English Dictionary on Historical Principles*, Sixth Edition (2007) (SOEDHP).

<sup>4</sup> *Chambers Dictionary of Etymology* (2002 [1988]) (Chambers Etymology).

<sup>5</sup> *Chambers Etymology*.

<sup>6</sup> SOEDHP.

<sup>7</sup> *Chambers Etymology*.

<sup>8</sup> *Ibid.*

Wilkins, the first secretary of the Royal Society.<sup>9</sup> It is presently defined as '[t]he science of communication studied through the interpretation of signs and symbols as they operate in various fields',<sup>10</sup> and '[t]he branch of knowledge that deals with the production of meanings by sign systems in various fields'.<sup>11</sup>

Law comprises infinite chains of icons and representations, or 'legisigns',<sup>12</sup> that underpin the foundations of society, and thus constitutes an especially pertinent area of study for semiotics. Yet scholars and semioticians have yet to agree on a definition of *semiotics-of-law*, *semiotics-in-law* or *legal semiotics* and often refer to these expressions interchangeably. Tiefenbrun defines *semiotics of law* as 'a specialized study of sign systems underlying legal informational exchanges', while Broekman, Mootz and Pencak refer to the subject of *legal semiotics* as 'the scientific approach that regards law as a system of signs and meanings'.<sup>13</sup> Some consider that legal semiotics constitutes a special branch dedicated to the study of law within the science of semiotics, others view it as a subdiscipline within legal theory and others as an interdisciplinary method to explore the legal realm.<sup>14</sup> Moreover, legal semiotics comprises *semiotics-of-law* and *semiotics-in-law*. Semiotics of law examines legal information exchanges via the study of sign systems, whereas semiotics in law considers law as a system of signs. The concept of legal semiotics comprises three central elements: 1) studies the legal realm as an infinite sign system, 2) offers a method or methods to perform this ambitious undertaking, which will be discussed and applied in the present book and 3) provides a common language for scholars, practitioners and the general public.<sup>15</sup> The 'common language' element of legal semiotics is crucial as legal terminology constitutes a language of its own – separate and yet closely connected to everyday idioms – which was until

<sup>9</sup> Ibid.

<sup>10</sup> *Oxford English Dictionary*, Second Edition (1989), Online Edition (OED).

<sup>11</sup> SOEDHP.

<sup>12</sup> See Roberta Kevelson, *Peirce, Science, Signs* (Peter Lang 1996), 51.

<sup>13</sup> Susan Tiefenbrun, *Decoding International Law: Semiotics and the Humanities* (Oxford University Press 2010), 24; Jan Broekman, Francis Mootz III and William Pencak, 'Preface – Semiotics in the Seminar' in Jan Broekman and Francis Mootz III (eds.), *The Semiotics of Law in Legal Education* (Springer 2011), v.

<sup>14</sup> For a discussion on the definition of legal semiotics, see Clara Chapdelaine-Feliciati, 'Semiotics in Law and Jurisprudence' in Jamin Pelkey (ed.), *Bloomsbury Semiotics Anthology* (Bloomsbury 2023); Clara Chapdelaine-Feliciati, Encyclopedia Entry 'Semiotic of Law', SEMIOTICON SEO-Semiotics Encyclopedia Online. <https://semioticon.com/seo/semiotics-of-law/> (accessed 2 July 2023).

<sup>15</sup> 'Semiotics in Law and Jurisprudence' (2023), 266–69. The author wishes to thank Ulf Linderfalk for a rich discussion on the distinctions between (textual) interpretation and legal semiotics, and the latter's possible added value, as well as linguistics and legal semiotics, during her panel at the Cambridge International Law Conference, Cambridge University, Faculty of Law (2023).

recently only accessible to a privileged few. As noted by Hargitt, '[w]hile based on ordinary language, legal language is a jargon primarily characterized by a complex and specialized lexicon, which requires interpretation to be understood and often makes the language completely foreign and incomprehensible'.<sup>16</sup> Exploring the meaning(s) in law constitutes, for semioticians, an exercise in translation, as legal terms and concepts are not readily known by the general public and require an interpretation in layman's terms. This is particularly important in human rights law because the content of international treaties and domestic legislation should be easily accessible to all individuals so they be *informed of* and *exercise* their rights. Already in 1947, Dr Chang, the Chinese representative to the drafting committee of the UDHR (1948), underscored the importance of ensuring that international instruments are easily comprehended by all persons: '[a] declaration of human rights should be brief and readily understandable by all. It should be a document for all men everywhere, not merely for lawyers and scholars.'<sup>17</sup> Accordingly, the use of specialized or ambiguous terminology constitutes a critical obstacle to the realization of human rights and fundamental freedoms, especially for subordinate identity groups that do not master this language, such as girl children.

Legal semiotics therefore allows for an examination of the triadic relationship between 1) authority or 'master signifiers',<sup>18</sup> 2) the language of law and 3) the general public. Indeed, 'master signifiers' – notably lawyers, judges, scholars and policymakers, hence influential individuals in a given society – play a central role in constructing and interpreting the language of the law and its many meanings. Wessel argues in this regard that 'the language of international law is nothing but a rhetorical device of the powerful'.<sup>19</sup> As noted by Cyran:

The reality of legal discourse is that an institution (government) is achieving its goals by using language and employing functionaries, or 'authoritative figures', [to] (sic) define meaning. The authorities consist of courts (through judges) and legislatures (through legislators). Thus, unlike in a natural

<sup>16</sup> Samantha Hargitt, 'What Could be Gained in Translation: Legal Language and Lawyer-Linguists in a Globalized World' (2013) 20 *Indiana Journal Global Legal Studies* 425, 427.

<sup>17</sup> Draft International Declaration of Human Rights, 3rd session, Third Committee, 91st meeting (2 October 1948) UN Doc A/C.3/SR.91, 48.

<sup>18</sup> Edward Cyran, 'Common Law Lawyers Should Mind Their Trial Practices: Understanding, Identifying, and Correcting a Semiotic Imbalance' in Jan Broekman and Francis Mootz III (eds.), *The Semiotics of Law in Legal Education* (Springer 2011), 120.

<sup>19</sup> Jared Wessel, 'International Law as Language – Towards a "Neo" New Haven School' (2010) 23 *International Journal for the Semiotics of Law* 123, 125.

discourse where anyone can participate in the decision-making process of meaning through communication, in an artificial discourse, only those who communicate with the functionaries can actually influence the meaning of signs.<sup>20</sup>

This language, in turn, holds significant power in shaping our understanding of society. Semioticians can thereby deconstruct the ‘master discourse’ and its impact on the social order, especially as concerns the most vulnerable groups in society, including girl children. Wagner refers to the ‘discourse of power’ and the necessity to question its content and origins, especially when it creates inequalities: ‘[o]nce citizens become aware of the fact that they are speakers of a specific discourse, they are indeed empowered to *speak differently* – to each other as well as to their respective social institutions’.<sup>21</sup> Legal semiotics therefore allows for a critique of the symbols employed in legislation and courts, notably their substance and *raison d’être*. Kevelson defines legisigns as ‘provisional judgements, held and acted on as if they were truths’, although they are in fact the product of an ‘ad hoc community that comes together out of a common purpose’.<sup>22</sup> As shall be examined in this monograph, there is a significant gap between, on the one hand, the ‘master signifiers’ in international law, that is, those who engage in the drafting of human rights treaties, notably government representatives, legal experts and UN officials, and on the other hand, the object of those treaties, thus individuals exposed to violations. Since girl children occupy a subordinate position in society on account of their sex and age, they are not only absent from the drafting process, but also oftentimes unacquainted with the content of treaties, the legal terminology and the *modus operandi* of treaty bodies. In many cases, they are oblivious to the international legal framework altogether. Accordingly, girl children are passive objects of the very master discourse of international law that should promote and protect their rights.

While the science of semiotics is a useful method to decode international law, legal scholars nevertheless tend to adopt a traditional approach to interpretation and often examine treaty law separately from linguistics, and even more so, from semiotics. In their interdisciplinary publication, Smolka and Pirker combine their respective fields of linguistics and law to argue that ‘legal interpretation . . . should no longer be considered merely a legal afterthought –

<sup>20</sup> ‘Common Law Lawyers’ (2011), 118.

<sup>21</sup> Anne Wagner, ‘Promises and Prospects’ in Anne Wagner and Jan Broekman (eds.), *Prospects of Legal Semiotics* (Springer 2010), vi.

<sup>22</sup> *Peirce Signs* (1996), 51.

as if meaning were “all in the text”.<sup>23</sup> Kevelson’s seminal work at Penn State University, pursued successfully by Broekman, Catá-Backer and Mootz,<sup>24</sup> has instilled a growing awareness of the relevancy of legal semiotics within academia. Yet very few lawyers, judges and law professors engage with this science. In this regard, Tiefenbrun notes that ‘[s]emiotics is only at the infant stage in its adoption by the legal community as a workable theory and method’.<sup>25</sup> She further argues that only ‘a courageous few’ have delved into this doctrine.<sup>26</sup> The present book adopts the novel legal semiotics approach, and thus the principles and methods of the science of semiotics, to interpret and decipher the meaning of signs in the legal field, more specifically in international law. The next section will firstly present the origins of semiotics and key schools of interpretation within semiotics theory, notably decodification semiotics and interpretation semiotics as they relate to our analysis of the girl child. We shall thereafter examine the second element of legal semiotics, that is, the ‘methods’ or ‘frameworks’ employed to examine the law. For this purpose, we will describe the ‘signific’ and ‘semioethic’ methodologies applied in this book to ‘decode’ the provisions of international treaties and examine whether they sufficiently protect the girl child.

## I ORIGINS AND MEANING

In order to understand the concept of semiotics, it is important to examine the notions of sign and symbol. The term ‘sign’ is defined as ‘[a] basic element of communication, either linguistic (a written or spoken word) or non-linguistic (an image, article of clothing, etc.) consisting of two indivisible elements the relation between which is arbitrary (*signifiant* [signifier] and *signifié* [signified]), and which derives its meaning only from its relationship to other signs within the same sign system’.<sup>27</sup> Instead, the expression ‘symbol’ comes from the Greek *sumbolon*, a ‘mark, token, watchword, outward sign’ and refers to a

<sup>23</sup> Jennifer Smolka and Benedikt Pirker, ‘International Law and Pragmatics: An Account of Interpretation in International Law’ (2016) 5 *International Journal of Language & Law* 1, 2. Smolka and Pirker observe that ‘[i]nternational legal scholarship is focusing, more and more, on the interpretation of international law. This development had engendered a rich set of interdisciplinary approaches. The powerful and diverse international judiciary is now recognized to play the role of a veritable “law maker”... But one has to take a closer look to find scholarship that engages with linguistics’: 15.

<sup>24</sup> See for example Jan Broekman and Larry Catá Backer (eds.), *Lawyers Making Meaning: The Semiotics of Law in Legal Education II* (Springer 2013).

<sup>25</sup> *Decoding International Law* (2010), 23.

<sup>26</sup> *Ibid.*, 24–25.

<sup>27</sup> SOEDHP.

material object representing an abstract concept or quality.<sup>28</sup> The science of semiotics therefore examines the meaning of all forms of communication, both verbal signs, namely language, and nonverbal signs, such as images and sound, and their symbolic as well as concrete implications. In this regard, Tiefenbrun observes that the process of interpretation or ‘decoding’ signs constitutes a ‘systematic process of finding keys to hidden codes that unlock the doors to meaning’.<sup>29</sup>

The origins of semiotics as a discipline in the western world can be traced back to Mesopotamia in 3000 BCE and thereafter in ancient Greece, where signs were interpreted for divinatory and medical purposes.<sup>30</sup> In Mesopotamia, divinatory tablets were structured along a combination of signs which allowed one to ‘infer something hidden or non-present from something perceptible or present’, and in Greece, signs were perceived as ‘the instrument of mediation between the total knowledge of the gods and the more limited knowledge of humankind’.<sup>31</sup> The process of semiotics also finds its origins in medical symptomology, uncovered in the Corpus Hippocraticum, the collection of very varied texts illustrating medical theory and practice during the fifth and fourth centuries BCE,<sup>32</sup> which operates a threefold analysis of symptoms as signs to be interpreted in patients: 1) anamnesis (analysis of the causes), 2) diagnosis (analysis of the sickness) and 3) prognosis (oriented towards the future).<sup>33</sup> In fact, it is noteworthy that the Greek term *semeion* refers to both ‘signs’ and ‘symptoms’,<sup>34</sup> and that semiotics is described as ‘the branch of medical science relating to the interpretation of symptoms’,<sup>35</sup> for, as shall be discussed in this chapter, the doctrine of semioethics reproduces this convergence by examining signs as ‘symptoms’ of social illnesses within the communication order.

Semiotics has been criticized in recent years as a gnoseological science claiming neutrality and objectivity, applied to conduct an abstract and descriptive analysis of signs, that ignores the wider context in which they are created and interpreted, as is the case with the Saussurian binary model of signs which shall be examined in the next section. However, various schools of thought

<sup>28</sup> Ibid.

<sup>29</sup> *Decoding International Law* (2010), 24.

<sup>30</sup> Giovanni Manetti, ‘Ancient Semiotics’ in Paul Cobley (ed.), *The Routledge Companion to Semiotics* (Routledge 2009), 13.

<sup>31</sup> Ibid., 14, 15.

<sup>32</sup> Ibid., 16.

<sup>33</sup> ‘Semioethics’ (2009), 150; ‘Ancient Semiotics’ (2009), 16.

<sup>34</sup> OED.

<sup>35</sup> Ibid.

emerged within what is now identified as ‘modern semiotics’, and which progressively addressed the reductive view of signs to acknowledge their inevitable axiological reading, from the triadic or ‘interpretation approach’ adopted by Peirce, Welby, Bakhtin and Rossi-Landi to the signifiés theory devised by Welby, and followed by Morris, which considers the relationship between signs and values. Ponzio and Petrilli expanded Welby’s signifiés theory and Sebeok’s ‘Global Semiotics’ to create the field of semioethics that explores the meaning of signs and language for the purpose of addressing societal issues.<sup>36</sup>

## II DECODIFICATION SEMIOTICS

The first phase of modern semiotics, also identified as the discipline of semiology or ‘study of signs’,<sup>37</sup> is founded upon the binary sign model elaborated by Ferdinand de Saussure in his *Cours de linguistique générale* (*Writings in General Linguistics*), and thereafter published by students of his course in 1916.<sup>38</sup> The Saussurian model is binary on two counts. First, each sign is dyadic: it comprises both the sign vehicle, the ‘signifier’ (for example, a word) and the content of the sign, the ‘signified’ (the concept conveyed by the word). Each signifier may stand for more than one concept. For instance, as shall be examined in Chapter 2, the signifier ‘girl’ can refer to female children but also to domestic workers and even prostitutes, or simply to young women. Likewise, each signified (concept) may be represented by various signifiers (words). The concept of girlhood can be signified by the expressions ‘young girls’, ‘teenage girls’, ‘teen girls’, ‘adolescent girls’, ‘young women’ as well as ‘youths’ and ‘juveniles’. The Saussurian model is also binary for signs relate to each other: the first sign is understood in relation to another sign. For example, the meaning of a word is understood by contrasting its meaning with another word, as the term ‘girl’ might be identified by contrasting it with ‘boy’, ‘woman’ or ‘man’.

The Saussurian sign model was heavily criticized by several semioticians on the grounds that it operates an artificial ‘equal exchange logic’ whereby the signifier and the signified, and signs more generally, are conceived as static entities that relate to each other in a mechanical manner. In this context, signs

<sup>36</sup> *Semioetica* (2003); ‘Semioethics’ (2009).

<sup>37</sup> *Merriam-Webster Dictionary of the English Language*, Eleventh Edition (2003), Online Updated Edition (Webster). The OED defines semiology as ‘[t]he branch of science concerned with the study of linguistic signs and symbols’.

<sup>38</sup> Simon Bouquet and Rudolf Engler (eds.), *Ferdinand de Saussure: Writings in General Linguistics* (Oxford University Press 2006).

are perceived as mere signals that are recognized and decoded.<sup>39</sup> Bakhtin and Voloshinov argued that the Saussurian matrix was too restrictive for it failed to acknowledge the central role played by the interpretant: individual and collective responses to signs. Saussure examined signs separately from the signifying process and thereby neglected to account for the 'specificity of human communication interaction ... the capacity for plurilingualism or heteroglossia, for plurivocality, ambiguity, polysemy, dialogism and otherness'.<sup>40</sup> Indeed, the Saussurian approach was largely inspired by the School of Lausanne on pure economics and the theory of equal exchange value which considers an object of analysis outside its larger context. Consequently, it applied the categories developed by pure economics whereby laws regulating the market economy are studied outside the social relations of production and common structures. In this regard, Rossi-Landi devised the 'postal package theory',<sup>41</sup> to illustrate that, in his view, Saussure conceives signs as merely postal packages sent off from one postal office and received by another, and communication as solely a collection of signs assembled by the sender and identified by the receiver. Rossi-Landi stressed that under the Saussurian approach, 'the receiver needs only to register the content of the message, that is, decode the message without interpreting it'.<sup>42</sup> The Saussurian model is described as 'decodification semiotics' and 'the semiotics of the code and message',<sup>43</sup> for it is based on the premise that signs are recognized and decoded in an objective and systematic manner.

### III INTERPRETATION SEMIOTICS: PEIRCE'S TRIADIC APPROACH

Interpretation semiotics appears to address the weakness of the binary model for it acknowledges that signs may be interpreted differently by various individuals and in different contexts. It is particularly relevant in international law because human rights treaties constitute 'signs' that may be attributed several

<sup>39</sup> Susan Petrilli, *Victoria Welby and the Science of Signs: Significs, Semiotics, Philosophy of Language* (Transaction Publishers 2015), 151.

<sup>40</sup> Susan Petrilli, *Sign Studies and Semioethics: Communication, Translation and Values* (De Gruyter Mouton 2014), 6; see Valentin Voloshinov, *Freudianism: A Critical Sketch* (Indiana University Press 1987 [1927]).

<sup>41</sup> See Ferruccio Rossi-Landi, *Significato, comunicazione, e parlare comune* (Meaning, Communication and Common Speech) (Marsilio 1998 [1961]); Ferruccio Rossi-Landi, *Language as Work and Trade: A Semiotic Homology for Linguistics and Economics* (Bergin & Garvey Publishers 1983).

<sup>42</sup> *Significs* (2015), 151.

<sup>43</sup> Massimo Bonfantini, *Le tre tendenze semiotiche del novecento* (The Three Semiotic Trends of the Twentieth Century) (1981) 30 *Versus* 21.



meanings globally. Interpretation semiotics was developed before the Saussurian model, notably in the works of Charles Peirce and Victoria Welby, during the second half of the nineteenth century and early twentieth century, although it became commonly known much later, in the 1930s, and is therefore identified as the second phase of modern semiotics. Peirce, who is widely acclaimed as the forefather of contemporary semiotics, developed a triadic analysis of signs, inspired by the work of the Conimbricenses in the Latin Age,<sup>44</sup> which considers that the sign has three components: 1) the object, 2) the 'sign' or *representamen* and 3) the interpretant – that interact to create an understanding of any object, real or virtual.<sup>45</sup> The first sign component is the object, or 'dynamical object': the object as it is in reality, the 'material' object. The second sign component is the sign or *representamen*, that is, the 'interpreted object': the object as it is represented by the sign. Lastly, the interpretant is the meaning that is given to the object through interpretation. This triadic approach is also described as 'object-interpreted-interpretant'.<sup>46</sup> Hence, if one were to apply Peirce's triadism to examine the semiotics of the concept 'girl': 1) the 'real object' of study is the conceptual notion of the girl child, 2) it is represented by the word 'girl' (the sign *representamen*) and 3) its definitions in dictionaries and how it is understood by individuals constitute the interpretant.<sup>47</sup> In the Peircean perspective, every interpretant is in turn dependent upon other interpretants, for any definition is based upon the definitions of each word it comprises.<sup>48</sup> For example, the conceptual notion of girl child rights is defined by several *representamen*, such as claims, liberties, privileges, powers and immunities,<sup>49</sup> and each of

<sup>44</sup> John Doyle (ed.), *The Conimbricenses: Some Questions on Signs* (Marquette University Press 2001).

<sup>45</sup> Floyd Merrell, 'Charles Sanders Peirce's Concept of the Sign' in Paul Copley (ed.), *The Routledge Companion to Semiotics and Linguistics* (Routledge 2001), 28; Charles Hartshorne and Paul Weiss (eds.), *The Collected Papers of Charles Peirce* (Harvard University Press 1931–1935); Christian Kloesel (ed.), *Writings of Charles S Peirce: A Chronological Edition* (Indiana University Press 1982–2000).

<sup>46</sup> Charles Hartshorne and Paul Weiss (eds.), *The Collected Papers of Charles Peirce* (Harvard University Press 1931–1935); *Sign Crossroads* (2010), 51; Nicole Everaert-Desmedt, 'Peirce's Semiotics' in Louis Hébert (dir.), *Signo* (online) (2011), 3. [www.signosemio.com/peirce/semiotics.asp](http://www.signosemio.com/peirce/semiotics.asp) (accessed 12 March 2023).

<sup>47</sup> For a discussion on Peirce's triadism and the law, see 'Semiotics in Law and Jurisprudence' (2023).

<sup>48</sup> Nicole Everaert-Desmedt, 'Peirce's Semiotics' in Louis Hébert (dir.), *Signo* (online) (2011), 3. [www.signosemio.com/peirce/semiotics.asp](http://www.signosemio.com/peirce/semiotics.asp) (accessed 12 March 2023).

<sup>49</sup> See Wesley Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (Yale University Press 1923). Also, for a discussion on those senses of the term, see Bernard Jackson, 'Legal Semiotics and Semiotic Aspects of Jurisprudence' in Anne Wagner and Jan Broekman (eds.), *Prospects of Legal Semiotics* (Springer 2010), 24.

these signifiers has its own definition and definitions, composed of signifiers which in turn are also defined in dictionaries. In this regard, interpretation semiotics is also referred to as 'semiosis', which is the 'process, or relation, or situation, in which something carries out the role of the sign': the sign stands for another sign, and thereby creates another sign.<sup>50</sup> The interpretant, that is, *definitions in dictionaries and what individuals and communities understand it to mean*, has the potential of engendering another sign indefinitely, in an 'unending chain of deferrals from one interpretant to another',<sup>51</sup> a phenomenon entitled 'infinite semiosis'.<sup>52</sup>

Peirce developed another triad comprising the immediate, dynamical and final interpretants. The immediate interpretant concerns the meaning normally given to a sign, the dynamical interpretant refers to the meaning of a sign in a specific context and the final interpretant relates to 'the sign as it appears at the extreme limits of its interpretative possibilities, that is, it concerns all those possible responses that signs may provoke in the unlimited chain of interpretants'.<sup>53</sup> This triad is particularly relevant for the analysis of the content of international treaties as it underscores that while a number of concepts may be universally acknowledged and understood, certain notions are interpreted differently according to various sociological, cultural, regional and economic factors. Hence, the terminology employed to define the girl child and describe her rights must be sufficiently clear so as not to be misinterpreted, especially in its extreme limits, in ways that could diminish her rights.

Although Peirce recognized the important role played by the interpretant, his triadic approach was nevertheless criticized on the grounds that it operates a unilateral and abstract analysis of signs and fails to account for human influence on the conception of signs as well as its corresponding impact.<sup>54</sup> Firstly, Peirce overlooked the intention behind the conception of signs and the choice of signifiers. He disregarded the motivation – what we shall refer to as 'meaning-intention' – of the master signifiers who create signs and select the representamen, as well as the power relations involved. Secondly, Peirce failed to examine the concrete and symbolic outcomes of the use of concepts and sign vehicles. While he acknowledged that signs may be interpreted differently according to various contexts, and thus shall have diverse impacts in different communities, he nevertheless neglected to account for the valutative aspect of signs: the

<sup>50</sup> *Sign Crossroads* (2010), 49, 53.

<sup>51</sup> *Ibid.*, 51.

<sup>52</sup> Susan Petrilli, *The Self as a Sign, the World, and the Other: Living Semiotics* (Transaction Publishers 2013), 21.

<sup>53</sup> *Signifies* (2015), 155.

<sup>54</sup> *Sign Studies* (2014), 129.

repercussions of the final interpretation on human beings and society. While Peirce demonstrated interest in the relationship between signs and values in his later works,<sup>55</sup> his triadic approach did not encompass an ethical component, and thus disregarded the axiology of signs, that is, the theory of their value. Accordingly, this valutive aspect of semiotics was thereafter also neglected by Peircians.<sup>56</sup> This may appear as somewhat surprising since Peirce's research was greatly influenced by the works of Victoria Welby, who emphasized the role of interpretation in the doctrine of semiotics, and with whom he corresponded regularly over the course of decades.<sup>57</sup> In fact, Welby expanded the science of semiotics as conceived by Peirce to address the relation between signs and values, an approach which was thereafter followed by Charles Morris.

#### IV THE VICTORIA LADY WELBY SIGNIFICS THEORY

Lady Welby occupied a privileged position within English society as the goddaughter of Queen Victoria and was, therefore, able, in spite of her subordinate status as a woman at the time, to publish many articles in newspapers and scientific journals as well as books and essays in the fields of philosophy, science, mathematics, anthropology, education and social issues, as well as share her theories through an epistolary network of over 450 leading personalities of her time.<sup>58</sup> Lady Welby's approach to semiotics constitutes a landmark for, in addition to studying the meaning of signs and symbols, she conceived a new discipline, coined 'significs', to explore their intentional or volitional aspect, and ultimate significance. Her definition of significs was enshrined in the 1911 edition of the *Oxford English Dictionary* (OED) as 'a proposed science and educational method based upon the importance of realizing the exact significance of terms and conceptions, and their influence on thought and life'.<sup>59</sup> Welby chose to name this new approach 'significs' in reference to the 'unconsciously philosophical question' which initiates the analysis of meaning: 'What does this signify?' which encapsulates questions such as "What is the sense of ...?", "What do we intend by ...?", "What is the meaning of ...?" (...) "Why do we give value to experience?"<sup>60</sup> She wished to distinguish her approach from the general semiotics doctrine of her

<sup>55</sup> 'Semioethics' (2009), 151.

<sup>56</sup> Ibid.

<sup>57</sup> See Charles Hardwick and James Cook (eds.), *Semiotics and Significs: The Correspondence between Charles S. Peirce and Victoria Lady Welby* (Indiana University Press 1977).

<sup>58</sup> *Sign Crossroads* (2010), 53–55; *Sign Studies* (2014), 126.

<sup>59</sup> Oxford English Dictionary 1911 Edition (OED 1911).

<sup>60</sup> *Sign Studies* (2014), 129–30.

time, and noted that as a new term ‘significs’ presented the advantage of not having been used and thus did not have technical associations, contrary to terms such as ‘semantics’ which refers generally to ‘the study of the meaning of signs’,<sup>61</sup> and ‘sensifics’ which could be associated with ‘sense’.<sup>62</sup>

Welby’s numerous travels throughout her childhood, in countries spanning four continents, such as Canada, the United States, Mexico, Italy, France, Morocco, Turkey and Syria,<sup>63</sup> opened her linguistic and cultural horizons, and she became aware, at a young age, of the diversity of interpretations that signs and words could have within different political, social, cultural and economic contexts. In this regard, she criticized the presumption of certain semioticians and British scholars of her time that signs have the same meaning for all individuals and interpretants. Welby coined the expression ‘plain meaning’ to refer to this restrictive approach:

[w]e have been postulating an absolute Plain Meaning to be thought of, as it were, in capital letters. We have been virtually assuming that our hearers and readers all share the same mental background and atmosphere. We have practically supposed that they all look through the same inferential eyes.<sup>64</sup>

She was particularly concerned with the ‘widespread belief that a text can evolve into a single reading, into an absolute and definitive interpretant valid for all times’.<sup>65</sup> As previously mentioned, her work falls within interpretation semiotics and it is noteworthy that well before Saussure’s decodification semiotics, she had already identified the latter’s central shortcoming: the myth of the single universal meaning of terminology.

Welby developed the *Threefold Laws of Meaning* – Sense, Meaning, and Significance – as a framework to examine the import of all forms of human expression. She explained this Meaning Triad in the following terms:

[T]he one crucial question in all Expression, whether by action or sound, symbol or picture, is its special property, first of Sense, that in which it is used, then of Meaning as the intention of the user, and, most far-reaching and momentous of all, of implication, of ultimate Significance.<sup>66</sup>

<sup>61</sup> OED.

<sup>62</sup> *Sign Studies* (2014), 125–26.

<sup>63</sup> *Significs* (2015), xix.

<sup>64</sup> Victoria Welby, ‘Meaning and Metaphor’ (1893) 3 *The Monist* 510, 512.

<sup>65</sup> *Sign Studies* (2014), 141.

<sup>66</sup> *Significs and Language* (1911), 9. Welby’s scientific writings are presently available in the Welby Collection, Clara Thomas Archives and Special Collections, York University Libraries (Toronto, Canada), consulted by the author *in loco*, and the Lady Welby Library at the University of London Library (United Kingdom).

Welby's theory of significs seems particularly suitable to examine the semiotics of terminology in the international legal realm as concerns girl children, for in addition to studying the sense of words, it enables an analysis of the reason behind the selection of terms to define the girl child and phrase her rights, and their ultimate significance. In this regard, it appears more appropriate than Peirce's 'immediate-dynamic-final interpretant' triad, which does not consider the 'meaning-intention' and 'ultimate significance' of signs. Welby's *Threefold Laws of Meaning* allow for the examination of the significance of terminology and thus its possible interpretations according to diverse political, economic, social and cultural factors, which is crucial when studying the content of international treaties adopted by states worldwide. This book shall therefore apply Lady Welby's Meaning Triad as a framework to examine whether the content of international law sufficiently protects the girl child.

### 1 Sense

The Meaning Triad comprises three levels of analysis that shall be examined in this book. The first level of meaning, *sense*, corresponds to the textual meaning of the provisions of international human rights treaties relevant to girl children. *Sense* refers to the words used to describe the girl child and the content of her rights and fundamental freedoms in treaty provisions, and what they are understood to signify within the international legal framework. This first step is reflected in the 'General Rule of Interpretation' established in the Vienna Convention on the Law of Treaties (1969) under article 31(1), which considers word analysis as the starting point of treaty interpretation: '[a] treaty shall be interpreted in good faith in accordance with the *ordinary meaning to be given to the terms* of the treaty in their context and in the light of its object and purpose'.<sup>67</sup> In this perspective, Welby's *sense* element corresponds to the 'textual approach' of the Vienna Convention based on the assumption that the text has an intrinsic meaning, independently from the circumstances of its drafting, similar to Saussure's equal exchange logic between the signifier (the treaty text) and the signified (the agreement between the parties). Since the Vienna Convention is the central international instrument codifying the rules of treaty interpretation, its recognition of the primacy of the text, or *sense*, is particularly relevant to our analysis. This book shall refer to the ordinary meaning of the terms employed in relevant international treaties, unless it could be argued that the drafters intended a special meaning. Indeed, article

<sup>67</sup> Vienna Convention (1969), art. 31(1) (emphasis added).

31(4) of the Vienna Convention places the burden of proof on those arguing that the term has a special meaning: '[a] special meaning shall be given to a term if it is established that the parties so intended'. In this regard, Gardiner contends that should the context be technical or specialized, words shall be interpreted accordingly.<sup>68</sup> While in fields such as intellectual property and in complex contracts, treaties should be examined in light of the special meaning of the terms employed, it is argued that human rights treaties belong to a different category. For rights to become universal, their 'representamen' and 'signifier' – the treaty provisions – must be easy to comprehend and thus accessible to all human beings, across cultures, and regardless of socio-economic status. Accordingly, provisions should be clearly formulated so that all individuals can understand their meaning, including the final interpretant(s). This concern for clarity and accessibility is embedded in the text of the UDHR,<sup>69</sup> and the international community thereafter avoided specialized legal terminology in human rights treaties, although as shall be discussed in the next chapters, ambiguous terms and concepts are still employed. Hence, this book shall analyze the ordinary meaning of terms in treaties relevant to the girl child, except when there is a clear indication that the drafters gave them special meaning. The sense of the terminology employed to identify the girl child and describe her rights shall be assessed by examining the definitions offered within international instruments and English dictionaries. As noted by Kadelbach: '[t]he emphasis on "ordinary meaning", understood as the common use of the term, is probably the reason for the use of dictionaries of all sorts in order to determine an everyday understanding'.<sup>70</sup> This book shall primarily refer to the OED and the Webster; however, it will also turn to other dictionaries providing a more comprehensive historical perspective of terms.

The examination of the sense of international treaties nevertheless involves certain limitations. Firstly, it is acknowledged that the exploration of the sense element through interpretative semiotics can become a form of infinite semiosis, since the recourse to dictionaries to elucidate the ordinary meaning of words can become a never-ending process where definitions carry out the role of the sign. As noted by Barthes, dictionaries are 'vertiginous' objects in which each word is defined in relation to other terms, which in turn are also

<sup>68</sup> Richard Gardiner, *Treaty Interpretation* (Oxford University Press 2015), 369.

<sup>69</sup> Following Dr Chang's interventions, see Draft International Declaration of Human Rights, 3rd session, Third Committee, 91st meeting (2 October 1948) UN Doc A/C.3/SR.91, 48.

<sup>70</sup> Stefan Kadelbach, 'Interpretation of the Charter' in Bruno Simma et al. (eds.), *The Charter of the United Nations: A Commentary* (Oxford University Press 2012), 76–77.

defined in reference to other terminology.<sup>71</sup> However, in the case at hand, we shall restrict our analysis to the first and second levels of the definitions of terms examined, for instance, we shall explore 1) the terminology ‘girl child’ and 2) relevant terms employed to describe this concept in dictionaries, as well as pertinent synonyms and antonyms, such as woman, man and boy; however, we shall not embark on a boundless analysis of each term thereafter. Moreover, our study is not restricted to dictionaries, as it primarily focuses on definitions offered in international treaties and is thus more circumscribed.

Secondly, the ‘ordinary meaning’ or textual approach is complicated by the historical meaning of terminology: certain terms adopted during the drafting of the treaty might not have the same sense today, or tomorrow. In this regard, it is worthy of note that several terms referring to the child, and the girl child, have been re-examined since the drafting of relevant international instruments pertaining to children. For instance, the expression ‘juvenile’, employed in the UN Standard Minimum Rules for the Administration of Juvenile Justice (1985), as well as in the CRC General Comment on Juvenile Justice (2007),<sup>72</sup> is today recognized as having negative connotations, since the commission of an offence suddenly becomes the central identity vector defining the child, including the girl child. Accordingly, expressions such as ‘girls in conflict with the law’, ‘young people’ and ‘youths’ are preferred.<sup>73</sup> The present author recommended the use of the expression ‘child justice’ in 2007,<sup>74</sup> and the CRC Committee adopted this new terminology in its general comment replacing the expression ‘juvenile justice’ in 2019.<sup>75</sup> This book shall

<sup>71</sup> Roland Barthes, *Œuvres complètes* (Complete Works of Roland Barthes) (Éditions du Seuil 2002), 513.

<sup>72</sup> See for example the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), (adopted 29 November 1985) UN Doc A/Res/40/33; United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted 14 December 1990) UN Doc A/Res/45/113; United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (adopted 14 December 1990) UN Doc A/Res/45/112; CRC General Comment No. 10: Children’s Rights in Juvenile Justice (25 April 2007) UN Doc CRC/C/GC/10.

<sup>73</sup> For a discussion on the terminology employed to refer to children in conflict with the law, see Andrew Becroft, ‘Children and Young People in Conflict with the Law: Asking the Hard Questions’ (2009) 57 *Juvenile and Family Court Journal* 1; Clara Chapdelaine-Feliciati, ‘Child Justice in Canada and the Four Ps: Protection, Prosecution, Prevention, and Participation’ (2007) 15 *Critical Criminology* 267; Gayle Rhineberger-Dunn, ‘Myth versus Reality: Comparing the Depiction of Juvenile Delinquency in Metropolitan Newspapers with Arrest Data’ (2013) 83 *Sociological Inquiry* 473.

<sup>74</sup> ‘Child Justice’ (2007).

<sup>75</sup> CRC General Comment No. 24: Children’s Rights in the Child Justice System (18 September 2019) UN Doc CRC/C/GC/24; the Committee specifies that ‘the term “child justice system” is used in place of “juvenile justice”’ in its first footnote, and defines the ‘child

thus consider historical meaning while examining treaty provisions, and notably refer to the *travaux préparatoires* to elucidate the drafters' intentions.

Thirdly, the concept of 'ordinary meaning' itself raises questions. Professor McDougal, in his legendary criticism of the textual approach during the drafting of article 31 of the Vienna Convention, questioned whether one could identify a plain meaning of words:

In reality, words had no fixed or natural meaning which the parties to an agreement could not alter. The 'plain and ordinary' meanings of words were multiple and ambiguous and could be made particular and clear only by reference to the factual circumstances of their use.<sup>76</sup>

Moreover, the Special Rapporteur of the International Law Commission, Waldock, recognized that '[w]ith regard to the expression "ordinary meaning", nothing could have been further from the Commission's intention than to suggest that words had a "dictionary" or "intrinsic" meaning in themselves'.<sup>77</sup> This criticism of the ordinary meaning echoes Welby's concern of the 'plain meaning' of words which led her to devise her theory of signifiés and The Meaning Triad, notably the second and third elements of 'meaning' and 'significance'.<sup>78</sup> The textual approach has been criticized on the grounds that it appears to examine the text in a vacuum and fails to acknowledge the intention of the master signifiers, that is, the treaty drafters, and the role of the interpretant. During the Vienna Conference, some delegates noted that interpreting 'words in accordance with dictionary definitions . . . might conflict with the will of the parties'.<sup>79</sup> Others observed that words could be interpreted differently by different individuals and institutions.<sup>80</sup> This latter

justice system' as 'the legislation, norms and standards, procedures, mechanisms and provisions specifically applicable to, and institutions and bodies set up to deal with, children considered as offenders' (para. 8); it refers for example to the 'child justice system' and 'principles of child justice' (para. 3).

<sup>76</sup> UN Conference on the Law of Treaties (Vienna, First Session, 26 March–24 May 1968), 31st Meeting (19 April 1968) UN Doc A/CONF.39/11, Professor Myres McDougal, United States of America, 167, para. 44.

<sup>77</sup> UN Conference on the Law of Treaties (Vienna, First Session, 26 March–24 May 1968), 33rd Meeting (22 April 1968) UN Doc A/CONF.39/11, Sir Humphrey Waldock, 184, para. 70.

<sup>78</sup> 'Meaning and Metaphor' (1893), 512–13.

<sup>79</sup> UN Conference on the Law of Treaties (Vienna, First Session, 26 March–24 May 1968), 32nd Meeting (20 April 1968) UN Doc A/CONF.39/11, Mr Santiago Martínez Caro, Spain, 174, para. 32.

<sup>80</sup> UN Conference on the Law of Treaties (Vienna, First Session, 26 March–24 May 1968), 31st Meeting (19 April 1968) UN Doc A/CONF.39/11, Professor Myres McDougal, United States of America, 167, para. 41. In this context, he quoted McNair's declaration that: 'it begs the question whether the words used are, or are not, clear – a subjective matter because they may be clear to one man and not clear to another, and frequently to one or more judges and not to



statement is aligned with Peirce's third triadic element: the interpretant. Peirce underscores that 'no man's interpretation of words is based on exactly the same experience among different persons'.<sup>81</sup> Kolb argues that the 'subject of interpretation', that is, the person or institution interpreting the treaty, is a considerable factor to consider, and notes in this regard that 'le qui l'emporte souvent sur le comment' ('the person who interprets often has precedence over the means employed to interpret', my translation).<sup>82</sup> As previously noted, each individual may attribute different meanings to the same sign, and the final interpretant may push this divergence to the extreme. For example, as shall be discussed in this book, certain concepts, such as the 'best interests of the child' principle enshrined in the CRC, may be perceived by certain States parties or individuals as sanctioning harmful practices, such as child marriage or FGM, in the name of the girl's 'best interests'.<sup>83</sup> Since the textual approach may lead to diverse interpretations, it can also allow States parties to act in bad faith when implementing treaty provisions. Hosseinnejad argues that 'to assume that words have a "plain" meaning independent from the tradition within which the word is used permits interpreters to interpret legal texts according to whatever seems suitable to them'.<sup>84</sup> This is particularly problematic as concerns the human rights and fundamental freedoms of the girl child since States parties may choose to interpret provisions so as not to protect her rights fully. Accordingly, in order to address these shortcomings, the present book shall examine the sense of the 'ordinary meaning' of terms under an extra-textual or 'teleological' approach which gives effect to the object and purpose of the treaty as indicated in article 31(1) of the Vienna Convention, and as supported by several of the Vienna Convention drafters.<sup>85</sup> In some

their colleagues', Lord Arnold Duncan McNair, *The Law of Treaties* (Oxford Clarendon Press 1961), 372.

<sup>81</sup> *Collected Papers* (1931–1935), vol. 5, 506.

<sup>82</sup> Robert Kolb, 'Is There a Subject-Matter Ontology in Interpretation of International Legal Norms?' in Mads Andenas and Eirik Borge (eds.), *A Farewell to Fragmentation: Reassertion and Convergence in International Law* (Cambridge University Press 2015) 476–77. Kolb notes for instance that states and the ICJ might adopt different approaches and notably have different agendas.

<sup>83</sup> Ladan Askari, 'Girls' Rights under International Law: An Argument for Establishing Gender Equality as Jus Cogens' (1998–1999) 8 *Southern California Review of Law and Women's Studies* 3, explains that the indeterminacy of this standard 'exposes it to multiple interpretations', noting that FGM could be perceived as allowing the girl child to become an accepted member of her community: 19.

<sup>84</sup> Katayoun Hosseinnejad, 'On the Nature of Interpretation in International Law' (2015) 4 *UCL Journal of Law and Jurisprudence* 225, 240.

<sup>85</sup> See for example Martin Ris, 'Treaty Interpretation and ICJ Recourse to *Travaux Préparatoires*: Towards a Proposed Amendment of Articles 31 and 32 of the Vienna Convention on the Law of Treaties' (1991) 14 *Boston College International and Comparative Law Review* 111, 113,

cases, it will be acknowledged that the word examined might have only one meaning, or at least, one main ordinary meaning.<sup>86</sup> While the treaty text is the basis of our interpretation, other elements shall also be examined to clarify the context, object and purpose of the treaty, as stated in the Vienna Convention:

31(2) The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty
- b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

In the semiotic analysis conducted in this book, we shall refer to the preamble of treaties to clarify the content of provisions, where relevant. Moreover, as stipulated under article 31(2)a) of the Vienna Convention, together with the context, we shall consider ‘any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty’ and in line with article 31(3) of the Vienna Convention, we shall consider subsequent agreements ‘between the parties regarding the interpretation of the treaty’ and ‘subsequent practice in the application of the treaty’. For example, we shall refer, where relevant, to subsequent agreements, such as the Optional Protocols to the CRC, even though the latter were not ratified by all States parties to the Convention, for they indicate an intention by several parties to address specific issues, notably children in armed conflict and sexual exploitation.<sup>87</sup> Finally, our analysis will not be limited to the text and the object and

115; Shabtai Rosenne, ‘Interpretation of Treaties in the Restatement and the International Law Commission’s Draft Articles: A Comparison’ (1966) 5 *Columbia Journal of Transnational Law* 205, 221; UN Conference on the Law of Treaties (Vienna, First Session, 26 March–24 May 1968), 31st Meeting (19 April 1968) UN Doc A/CONF.39/11, Mr E. K. Dadzie, Ghana, 170, para. 70.

<sup>86</sup> See for example UN Conference on the Law of Treaties (Vienna, First Session, 26 March–24 May 1968), 32nd Meeting (20 April 1968) UN Doc A/CONF.39/11, Professor Stanislaw Nahlik, Poland, 174, para. 23: ‘[o]f course, the same word might have several meanings, but that was true of certain words only. Moreover, among different meanings of a word, there was usually one which could be considered as its “ordinary meaning” or “natural meaning”’.

<sup>87</sup> Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC) (New York, adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222: 173 States parties; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC) (New York, adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS 227: 178 States parties. For a discussion on the OPSC, see Clara Chapdelaine-Feliciati et al., ‘United Nations Handbook on the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography’ (UNICEF Office Research 2009).

purpose of the treaties examined, for we shall also consider Welby's second triadic element: the 'meaning-intention' of the parties.

## 2 Meaning

The second level of Welby's Triad is the *meaning* of the word employed, 'the intent which it is desired to convey – the intention of the user'.<sup>88</sup> This level corresponds to the intention behind the selection of a term, the 'meaning-intention'.<sup>89</sup> The *meaning* of terminology in international law is the intention of the drafters when choosing specific terms to describe rights as well as States parties' duties under the treaty. It shall be investigated in this book by studying the *travaux préparatoires* of international treaties, notably the CRC, CEDAW and ICCPR, which describe the negotiations leading to the selection of terminology to formulate rights during the drafting processes. The UN Institute for Training and Research (UNITAR) emphasizes that the *travaux préparatoires* enable us to:

trace the origin of each significant word and phrase and, in addition, identify proposals which were made in the course of negotiations, but which were not implemented ... and which for this very reason can shed light – albeit sometimes a negative one – on the meaning of the text adopted.<sup>90</sup>

One can argue that the second triadic element 'meaning-intention' is reflected under article 32 of the Vienna Convention which stipulates that '[r]ecourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion'. Lauterpacht famously noted that the *travaux* constitute a fundamental element, perhaps the most important, of treaty interpretation, and is an essential tool to identify the intention of the parties.<sup>91</sup>

While the *travaux* offer essential insight to identify the *meaning-intention* of the drafters, they nevertheless comprise some limitations which should be acknowledged. The first issue is what we mean by *travaux préparatoires*: what is included in these documents? For instance, do they comprise the declarations of agreement, instructions to negotiators, diplomatic exchanges and

<sup>88</sup> Victoria Welby, *What is Meaning? Studies in the Development of Significance* (Macmillan 1903; reprint in John Benjamins, *Foundations of Semiotics* (1983)), 5–6.

<sup>89</sup> Petrilli, *Signifying and Understanding: Reading the Works of Victoria Welby and the Signific Movement* (De Gruyter Mouton 2009), 264.

<sup>90</sup> *Travaux préparatoires ICCPR* (1987), xxii.

<sup>91</sup> Sir Hersch Lauterpacht, 'De l'interprétation des traités: Rapport' (Treaty Interpretation: Report) (1950-II) 43 *Annuaire de l'Institut de droit international – Yearbook, Institute of International Law* 366, 397.

documents emanating from international agencies? It is notable that the drafters of the Vienna Convention chose not to offer a definition of the *travaux préparatoires*, so as not to restrict their content.<sup>92</sup> This begs the question whether the *travaux* solely incorporate discussions that occurred during official meetings, or also communications and statements made outside this context. Many negotiations occur both *behind* closed doors during private meetings and *outside* closed doors during ‘informal’ conversations. Indeed, as noted by Ris: ‘crucial deliberations . . . often occur in private and thus never appear in the negotiation record’.<sup>93</sup> This uncertainty as to the content of the *travaux* has the additional shortcoming that any statement made during the framing of the treaty could be considered a part of the preparatory work, including in informal settings. It also raises the following question: at which time do comments made by delegates matter? Moreover, states’ interventions during official meetings can be misleading. As noted by the Brazilian delegation during the Vienna Conference:

Although the preparatory work must undoubtedly be borne in mind, the utmost caution was necessary. States sometimes concealed their real views on the questions under discussion at conferences or resorted to friendly States to express them. A certain degree of confusion was thereby created, and gave rise to mistrust.<sup>94</sup>

In the case at hand, since state representatives are aware that their interventions are recorded in the *travaux préparatoires*, they may prefer not to formally disagree with a formulation of rights that would protect girl children, and instead pressure other states, including those that share common political and commercial interests, to voice their opposition. A government delegation may even request other states to present its suggestions in their own name. One must also bear in mind that since the drafting process spans over a decade, as with the CRC and CEDAW, and two decades for the Twin Covenants, several states undergo significant regime changes during these time periods.<sup>95</sup> The same state may send different representatives to the working group over the course of a decade or two, and in some cases, give them completely

<sup>92</sup> Julian Davis Mortenson, ‘The Travaux of Travaux: Is the Vienna Convention Hostile to Drafting History?’ (2013) 107 *American Journal of International Law* 780, 807.

<sup>93</sup> ‘Recourse to Travaux Préparatoires’ (1991), 113.

<sup>94</sup> UN Conference on the Law of Treaties (Vienna, First Session, 26 March–24 May 1968), 32nd Meeting (20 April 1968) UN Doc A/CONF.39/11, Ambassador Gilberto Amado, Brazil, 176, para. 53.

<sup>95</sup> Yehli Shereshevsky and Tom Noah, ‘Does Exposure to Preparatory Work Affect Treaty Interpretation? An Experimental Study on International Law Students and Experts’ (2018) 28 *European Journal of International Law* 1287, 1289.

opposite instructions. This may account for the fact that some states strongly support a certain vision of human rights, or in the case at hand, of girl child rights, at the beginning of the drafting process, and thereafter adopt a completely different approach. Hence, the contributions of states may vary significantly throughout the course of treaty preparation, thereby preventing consistency and thus a reliable diagnosis of their meaning-intention.<sup>96</sup>

Furthermore, a state, acting in bad faith, could purposely bring out an issue during the official meetings, in the hopes that such a declaration will later be used to interpret treaty provisions. This issue was raised during the Vienna Conference: 'it was only too easy for a State wishing to evade its obligations to inject an element of uncertainty by referring to preparatory work'.<sup>97</sup> Hence, the *travaux préparatoires* cannot offer a complete depiction of the drafting process and must be read in light of the abovementioned limitations. In this book, we shall restrict our analysis to the discussions that occurred between the drafters as reported in the *travaux préparatoires* of the CRC, CEDAW and ICCPR, including the preliminary drafts of provisions, while acknowledging that these official documents cannot offer an exhaustive account of negotiations and debates, such as confidential agreements taking place behind closed doors, in hallways, at receptions and other informal venues.

The second issue to be considered is that the semiotic reading of the *travaux préparatoires* is affected by historical subjectivism.<sup>98</sup> Indeed, one cannot examine the past objectively, and reference to history in international law will inevitably be political. As noted by Klabbers:

[W]hile relying on history, we do not adopt it wholesale: we pick out the bits and pieces, and the versions of history, that are convenient for whichever

<sup>96</sup> It is worthy of note that in the case at hand, this problem does not apply so much to the CRC as most states sent consistently the same, or almost always the same, delegates to meetings: see Nigel Cantwell, 'Origins, Development and Significance of the United Nations Convention on the Rights of the Child' in Sharon Detrick (ed.), *The United Nations Convention on the Rights of the Child: A Guide to the Travaux préparatoires* (Martinus Nijhoff 1992), 23.

<sup>97</sup> UN Conference on the Law of Treaties (Vienna, First Session, 26 March–24 May 1968), 31st Meeting (19 April 1968) UN Doc A/CONF.39/11, Professor Eduardo Jiménez de Aréchaga, Uruguay, 170, para. 65.

<sup>98</sup> For a discussion on historical subjectivism and the CRC, see Clara Chapdelaine-Feliciati, 'Les réserves en droit international ont-elles des limites? Étude sémiotique du droit à l'éducation de la Convention relative aux droits de l'enfant' (Do Reservations have Limits under International Law? Semioethic Study of the Child's Right to Education under the Convention on the Rights of the Child) (2022) 35 *Revue internationale de sémiotique juridique/International Journal for the Semiotics of Law* 309. The author wishes to thank José Manuel Aroso Linhares and Mario Ricca for judicious comments on 'semiotic transmutation', historical subjectivism and the *travaux préparatoires* during her presentation at the Conference *The Limits of Law*, Coimbra University, Faculty of Law, Portugal (2019).

argument we happen to be making . . . whereas we ignore the less useful or welcome aspects and versions . . . what matters is not whether to look at history generally, but which history to look at, and whose history to look at.<sup>99</sup>

A semiotic analysis of the *travaux préparatoires* which were drafted over thirty (CRC) to seventy years ago (Twin Covenants) undertaken in a modern perspective may not account for the historical dynamics of that era. Likewise, such an analysis might be influenced by the semiotician's own awareness of events that took place afterwards and which were not considered by the drafters at the time. Additionally, as is the case with treaty provisions, the *travaux* may be read in contemporary or instead historical language, which adds an additional layer of interpretation. Linderfalk argues that the former refers to language conventions 'adhered to at the time the treaty is interpreted', and the latter 'adhered to at the time the treaty was concluded'.<sup>100</sup> In the former case, the semiotician might neglect to take into consideration the meaning of terms at the time they were selected, and in the latter, s/he might fail to examine the impact of that terminology today. The semiotician might also question whether the meaning of the terms selected was meant to evolve according to future schools of thought and international developments, or whether they were fixed once enshrined in the treaty.<sup>101</sup> Accordingly, a semiotic analysis of the *travaux préparatoires* constitutes a transformation or transmutation of historical documents. Moreover, the *travaux* themselves are the product of the interpretation, by their authors, of the discussions that took place during the drafting process. These authors also have a *meaning-intention* which may have influenced the final product, thereby creating a new *sense* of the *travaux préparatoires*. Consequently, a semiotic analysis involves two levels of transformation of the *travaux*: that of their authors, and that of semioticians, both acting as Peirce's 'immediate' and 'dynamical' interpretants, thereby adding their own subjective layers of interpretation.<sup>102</sup> In this regard, it is worthy of note that several scholars criticize the claim of objectivity in interpretation. Zarbiyev notes that '[i]nterpretation represents a danger to the

<sup>99</sup> 'Declining Travaux' (2003), 270.

<sup>100</sup> Ulf Linderfalk, *On the Interpretation of Treaties: The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties* (Springer 2007), 73. Smolka and Pirker contend that judges' decisions to analyze the former or the latter are often acted upon mechanically, without acknowledging the shortcomings of either approach, and thus often lack transparency: 'International Law Pragmatics' (2016), 3.

<sup>101</sup> Rahim Moloo, 'Changing Times, Changing Obligations? The Interpretation of Treaties over Time', Proceedings of the Annual Meeting, American Society of International Law, 106 *Confronting Complexity* (Cambridge University Press 2012), 262–63.

<sup>102</sup> *Collected Papers Peirce* (1931–1935); 'Peirce Concept Sign' (2001), 28.

integrity of law, implying that it does a certain level of discretion, which is antithetical to certainty that is seen as an essential part of any legal system'.<sup>103</sup>

The third issue to be considered is that the sense of the *travaux préparatoires* may differ when they are translated into other languages. For instance, the English version of the propositions submitted by delegates may differ from its French version, which adds another layer of uncertainty.<sup>104</sup> In this book, we shall thus consider these factors, and while our analysis shall be conducted in the contemporary English language, we shall also acknowledge the sense that was given to certain terms at the time they were selected by the drafters, including by referring to dictionaries. The *travaux préparatoires* nevertheless constitute an essential element of interpretation, both to elucidate the sense of the treaty text, and its meaning-intention. As regards the former, the Vienna Convention confirms that the *travaux préparatoires* constitute an element of treaty interpretation for they may assist in understanding the context or textual environment of the terms of the treaty. The decision to locate the *travaux* in article 32, separately from article 31 which enshrines the General Rule of Interpretation, constitutes a sign in itself, especially as article 32 refers to '[s]-upplementary means of interpretation', thereby implying that the *travaux* are subordinate to the text of the treaty. As previously noted, the Vienna Convention gives precedence to the textual ordinary meaning of a word rather than the intent of the drafters when elucidating the sense of the treaty. Kadelbach underscores that the ICJ, 'along the lines of the [Vienna Convention], has moved towards preference of the textual over the original intent approach'.<sup>105</sup> This does not signify that reference to the *travaux* is not pertinent to elucidate the sense of treaty provisions. Presently, UNITAR notes that individuals who accept professional responsibility in interpreting treaties, such as States parties, members of treaty bodies, judges and lawyers, hence the master signifiers 'will not normally feel able to rely exclusively upon the interpretation which someone else has placed upon the preparatory work'.<sup>106</sup> In this regard, UNITAR emphasizes that '[n]o lawyer would feel satisfied about his identification of a meaning of a treaty unless he had examined the preparatory work'.<sup>107</sup>

<sup>103</sup> Fuad Zarbiyev, 'The Cash Value of the Rules of Treaty Interpretation' (2019) 32 *Leiden Journal of International Law* 33, 37.

<sup>104</sup> See last section of this chapter for a discussion on authentic languages and translations of international instruments.

<sup>105</sup> 'Charter Interpretation' (2012), 77.

<sup>106</sup> *Travaux préparatoires ICCPR* (1987), xxii.

<sup>107</sup> *Ibid.*, xxii. It is however noteworthy that the UN Institute for Training and Research (UNITAR) solely employs masculine pronouns to refer to lawyers, for it could imply that this profession does not encompass women.

Lady Welby's first two laws of meaning, that is, the examination of the sense of terms and the investigation of the meaning-intention of the drafters, constitute two distinct although interconnected components of the semiotic analysis, and are equally important to establish the significance of international treaties. Whereas in the rules of interpretation of the Vienna Convention, the intent of the drafters is examined solely for the purpose of identifying the sense of the treaty provisions, and solely as a subsidiary element, this book examines the *travaux préparatoires* to uncover the meaning-intention of the delegates in choosing a term as it sheds light on the power struggles between delegates – and the competing interests they may represent – in shaping the symbolic and concrete significance of treaty provisions as concerns the girl child. As noted by Klabbers:

The *travaux préparatoires* somehow connect the stultified text of a treaty to the real world of politics, of intercourse between states with their powers and their weaknesses, their sympathies and antipathies, their motivations and intentions.<sup>108</sup>

The *travaux* allow us to identify treaty provisions that were reached unanimously, and those that instead triggered significant debates, in some cases, over the course of decades. This second element of The Meaning Triad is particularly useful to ascertain which girl child rights encountered the most resistance from certain States parties, and thus which are less likely to be implemented at the domestic level.

### 3 Significance

The third level of meaning, *significance*, is the ultimate, covert or overt, import of the language used to phrase rights under international law. Welby underscores:

Significance is always manifold, and intensifies its sense as well as its meaning, by expressing its importance, its appeal to us, its moment for us, its emotional force, its ideal value, its moral aspects, its universal or at least social range.<sup>109</sup>

The significance of terminology in international law is that it moulds the substance of rights, their scope, as well as the extent of States parties' obligations. In this regard, terminology shapes the notion of rights and their potential

<sup>108</sup> 'Declining Travaux' (2003), 286.

<sup>109</sup> *What is Meaning?* (1903), 5–6.



universal recognition and implementation at the domestic level, and conversely, their possible denial, dismissal or violation. The significance of terminology shall be explored in this monograph by analyzing the consequences of the formulation of rights in treaties on their substance as well as on the corresponding obligations of States parties. We shall endeavour to answer the following questions: is the girl child clearly identified under international law? Who is protected under the umbrella of the ‘girl child’ identity vector? Is the boundary for the beginning, and for the end of girlhood, clearly delineated in the international legal framework? What happens to young women located at the frontiers of girlhood and womanhood? Are the rights of girl children phrased in sufficiently clear terms? Could they be (mis)interpreted by the dynamical and final interpretants? Do provisions, as formulated, take into consideration the obstacles that girl children face in exercising their rights? Do treaties tackle specific human rights abuses experienced by girl children, such as child marriage? Do treaties tend to focus only on certain forms of abuse, thereby disregarding other issues, such as the over-sexualization of girls and unrealistic beauty ideals? Are the rights phrased in a paternalistic approach or do they truly empower girl children? Do treaty provisions protect girl children in both the Global South and Global North, the West and East and across social classes? Finally, do treaty provisions address the intersectional discrimination experienced by girls on account of class, race, religion, culture, (dis)abilities and sexual orientation as well as girls in specific circumstances, such as armed conflict, detention and girl child refugees?

#### 4 *The Lady Welby Legacy*

Welby’s study of the meaning and value of signs was followed by Charles Morris who underscored that the science of semiotics could not be studied separately from axiology, defined as the ‘study of the nature, and criteria of values and of value judgments especially in ethics’.<sup>110</sup> Morris argued that every sign has not only meaning in terms of ‘linguistic meaning’, the approach followed by Peirce and Saussure, but also an intrinsic social and ethical meaning. In this regard, he stated that: ‘[i]n many languages there is a term like the English term “meaning” which has two poles: that which something signifies and the value or significance of what is signified’.<sup>111</sup>

<sup>110</sup> Webster.

<sup>111</sup> Charles Morris, *Signification and Significance: A Study of the Relations of Signs and Values* (MIT Press 1964), vii.

Although influential, Lady Welby's contribution to the semiotics discourse was neglected, in part because she often published anonymously to ensure her work be recognized on its own merit, noting that 'the only honor she valued was that of being treated by workers as a serious worker'.<sup>112</sup> Moreover, when Lady Welby did sign her work, she tried to remove her title: 'may I confess that in signing my book "V Welby" I hoped to get rid as far as possible of the irrelevant associations of my unlucky title? . . . You will understand my desire to be known as simply as possible'.<sup>113</sup> Finally, it is noteworthy that most (male) semioticians failed to acknowledge her work in their publications, even though they underscored her influence on their discoveries within their correspondence to her.<sup>114</sup> For instance, although Ogden's research was significantly inspired by Welby's work – exchanging over sixty letters with her discussing significs theory, and staying at her home, with access to her library and papers – he mentions her only once and briefly in his book *The Meaning of Meaning: A Study of the Influence of Language upon Thought and the Science of Symbolism*.<sup>115</sup>

Victoria Welby's theory of significs nevertheless had a strong bearing on the development of legal semiotics in The Netherlands through Jacob de Haan, who applied her Meaning Triad as a framework to analyze legal language, notably in his 1916 doctoral dissertation. It is worthy of note that it took 100 years for The Meaning Triad to be applied again in the legal field, in another dissertation in law, this time at the University of Oxford, by the present author. This 100-year gap could be explained by de Haan's early departure. Although de Haan was extremely prolific in his lifetime as he held the first Chair of Legal Significs at the University of Amsterdam, published two books and over forty articles, and coined the expression 'legal significs', his work unfortunately came to an end when he moved to Jerusalem and was assassinated, on political grounds, shortly thereafter.<sup>116</sup>

Welby was only recently recognized as the foremother of modern semiotics, notably through the works of Thomas Sebeok and Susan Petrilli.<sup>117</sup> Sebeok

<sup>112</sup> Letter from Victoria Welby to Charles Peirce (22 December 1903), Victoria Lady Welby Correspondence, consulted at the Clara Thomas Archives and Special Collections, York University Libraries, File 1970-010/012(7), Inventory No. 443, 9.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid., 63; *Sign Studies* (2014), 126–27.

<sup>115</sup> Charles Ogden and Ivor Richards, *The Meaning of Meaning: A Study of the Influence of Language upon Thought and the Science of Symbolism* (Harcourt 1923); See *Sign Studies* (2014), 126–27; *Significs* (2015), xxiii, 177–205.

<sup>116</sup> *Signifying* (2009), 757–58.

<sup>117</sup> See for example Sebeok's essay 'Women in Semiotics' in *Global Semiotics* (Indiana University Press 2001); *Significs* (2015).

described Welby as ‘the legendary foremother and prime mover of “significs” and “sensifics” species of turn-of-the-century (and subsequent) semiotics’.<sup>118</sup> In fact, since Welby’s *Threefold Laws of Meaning* only received attention recently by semiotic scholars, it has as yet not been formally criticized. One could argue that the weakness of Welby’s theory is that while it allows for an examination of the significance of signs, and the ‘deconstruction’ of their content, it does not propose a methodology to modify them to avoid potential negative outcomes, thereby ‘rebuilding’ their structure. Welby’s analysis of the value of meaning and its ultimate significance, as well as her concern for ‘the effects, consequences and implications of the conjunction between signs and values for human behaviour’<sup>119</sup> nevertheless paved the way for the discipline of semioethics elaborated one century later, which addresses this shortcoming.

#### V SEMIOETHICS AND RESPONSIBILITY

The semioethics approach was introduced by Ponzio and Petrilli in 2003. It ‘critiques the reification and hypostatization of signs and values and, instead, investigates the processes that produce them’.<sup>120</sup> Initially coined ‘ethosemiotics’ by Ponzio, to refer to Aristotle’s concept of ethos (ethical appeal) and ‘teleosemiotics’, from the term ‘teleo’ which signifies ‘end’, it was finally identified as ‘semioethics’ to underline the interconnectedness between semiotics and ethics.<sup>121</sup> This new approach expands the ancient medical semiotics of symptomology found in the *Corpus Hippocraticum* – which studied physical and mental symptoms in patients triadically in terms of anamnesis, diagnosis and prognosis – to examine current symptoms of the globalized world, in all fields of human behaviour, for the purpose of 1) uncovering their causes, 2) offering a diagnosis and 3) identifying potential remedies. Petrilli explains:

[S]emioethics proposes to examine symptoms – in our case symptoms of the worldwide social malaise – generated by the current communication order and its passive reproduction. Semioethics proposes a critical reading of the world-as-it-is and is committed to the search for possible remedies and improvements.<sup>122</sup>

<sup>118</sup> *Significs* (2015), xxix.

<sup>119</sup> *Sign Studies* (2014), 127.

<sup>120</sup> *Ibid.*, 12; *Semioetica* (2003).

<sup>121</sup> ‘Semioethics’ (2009), 152–53.

<sup>122</sup> *Sign Studies* (2014), v.

The semioethics matrix was greatly influenced by Sebeok's global semiotics theory,<sup>123</sup> which aims to examine signs in a multidisciplinary and holistic manner. Global semiotics is a 'metascience concerned with all academic disciplines as sign-related' that recognizes the 'universal role of signs in creating the reality of human consciousness'.<sup>124</sup> Petrilli notes that global semiotics 'unites what other fields of knowledge and human praxis generally keep apart either for justified needs of a specialized order, or because of a useless and even harmful tendency towards short-sighted sectorialization'.<sup>125</sup> The semioethics approach 'interrogates the human world today on the assumption that it is not the only possible world, that this world has not been established definitely, once and for all, by some conservative ideology'.<sup>126</sup> In this regard, this book adopts a semioethics approach for it does not perceive the predicament of the girl child as a fatality that cannot be addressed, nor does it consider international treaties as static entities one cannot amend to clarify the wording of rights.

### 1 *Ethical Responsibility*

The semioethics approach, in line with the global semiotics theory, underscores the responsibility of semioticians in analyzing signs and their significance. It considers that signs should be evaluated not solely for the purpose of offering a diagnosis, but also for identifying possible avenues to address societal problems and humanize the communication order. In this regard, semioethics aims for ethical responsibility:

As a scientific method and philosophical vision of life, semiotics is adequately equipped to contribute to the quest for social change – hence the invitation to eventual 'semioticians', or if you please 'semioethicians', whether by profession or simply as actors on the stage of life, to take up the challenge.<sup>127</sup>

Semioethics addresses Welby's critique of semioticians who passively reproduce problematic signs and ambiguous terminology rather than attempt to question and deconstruct their meaning:

The question is, whether this state of things is quite so inevitable as most of us seem to think. Certainly, so long as we are content to live in the fool's

<sup>123</sup> *Global Semiotics* (2001).

<sup>124</sup> *Sign Crossroads* (2010), 25, 5.

<sup>125</sup> *Ibid.*, 25.

<sup>126</sup> 'Semioethics' (2009), 158.

<sup>127</sup> *Sign Studies* (2014), vii.

paradise of supposing that only the ... prejudiced ... or the ignorant can possibly mistake our meaning, and that our misreading of others are simply due to their obscurity ... or literary incapacity, we shall ourselves contribute to the hopelessness of the situation. But this is a subject which cannot be dealt with in an incidental way; it is rather a hope for the future, that one of the most practically serviceable of subjects – that of Meaning, its conditions and its changes – shall be seriously taken up'.<sup>128</sup>

The present book adopts a semioethics approach for it not only examines the *sense*, *meaning* and *significance* of provisions enshrining the rights of the girl child in international treaties, but also proposes to amend the wording of these provisions, where necessary, to strengthen the protection of the girl child. It studies the content of international human rights treaties, which constitute important elements of the communication order, to identify potential remedies to the current predicament of the girl child. It notably recommends terminology that will clarify the status of the girl child in the CRC and the CEDAW to avoid misinterpretations by States parties, international and national institutions, individuals and communities and the girl child herself. In this regard, it takes into consideration the various conceptions of girlhood worldwide stemming from sexism and childism so that the provisions of international treaties unambiguously protect the girl child. The proposed reformulation of key provisions aims to ensure that rights are clearly stated, even when read by Welby and Peirce's 'final interpretants', that is, States parties, communities and individuals who do not consider girl children as rights holders.

The semioethic theory is novel and commentators have not, as yet, developed a critique of this approach. One can identify two potential shortcomings of the semioethic approach. First, it is important to bear in mind that the first phase of semioethics whereby one detects potential weaknesses in language within the communication order, does not automatically ensure the second phase of semioethics, that is, it does not signify that one can find the proper terminology to replace it. Welby stresses that '[i]t is, unfortunately, one thing to see the needless traps of which language is full and quite another to succeed in avoiding them'.<sup>129</sup> Hence, while this book shall endeavour to suggest amendments to provisions to strengthen the protection of the girl child under international law, it will also underscore the limitations of those recommendations.

Second, one can contend that a potential risk of the semioethic theory would be to consider that establishing a diagnosis of the impact of signs and modifying them accordingly suffices to address social problems. Indeed, the modification of the

<sup>128</sup> Victoria Welby, 'Meaning and Metaphor' (1893), 512.

<sup>129</sup> Letter from Welby to Peirce (24 May 1903), Clara Thomas Archives, File 1970-101/021(7).

wording of provisions enshrining the rights of the girl child shall not guarantee that violations of her rights will cease. As explained in the Introduction, many factors impact the protection of girl child rights in the international legal framework. We therefore undertake a semioethic approach while acknowledging that modifying the formulation of provisions shall not in itself ensure that girls' rights be respected at the domestic level. It is nevertheless argued that a major step to advancing the rights of the girl child rests in the terminology employed to phrase her rights. Accordingly, the semioethic analysis of international law constitutes an essential endeavour to improve her condition worldwide.

## VI SEMIOTIC ANALYSIS OF TREATIES IN ENGLISH

This book conducts a semioethic analysis of the content of international treaties in English, which is one of the six official languages of the UN, along with Arabic, Chinese, French, Russian and Spanish,<sup>130</sup> and a working language of all UN treaty bodies.<sup>131</sup> It is worthy of note that English holds precedence over other official and working languages in everyday UN proceedings,<sup>132</sup> and that the drafting of international treaties occurs predominantly in this language.<sup>133</sup> Furthermore, the vast majority of doctrinal work on the interpretation of treaties is conducted in English, and several leading periodicals have recently switched

<sup>130</sup> UN General Assembly Resolution 2, 'Rules of Procedure Concerning Languages' (1 February 1946): '[i]n all the organs of the United Nations, other than the International Court of Justice, Chinese, French, English, Russian and Spanish shall be the official languages'; Arabic became an official language in 1973; see UNGA Res (XXVIII) (18 December 1973) 'Inclusion of Chinese among the Working Languages of the General Assembly, its Committees and its Subcommittees and Inclusion of Arabic among the Official and the Working Languages of the General Assembly and its Main Committees, Amendments to Rules 51 and 59 of the Rules of Procedure of the Assembly'. English is also one of the two languages of the ICJ. UN Charter, art. 39: 'The official languages of the Court shall be French and English'.

<sup>131</sup> UNGA Res 2, 'Rules of Procedure Concerning Languages' (1 February 1946): '[i]n all the organs of the United Nations . . . English and French [shall be] the working languages'. Most notably for our analysis, the working languages of the CRC Committee are English, French and Spanish; see 'Committee on the Rights of the Child Rules of Procedure' (18 March 2015) UN Doc CRC/C/4/Rev.4, rules 34–38 (original English); the working languages of the CEDAW Committee are the same as the official languages of the UN; see 'Rules of Procedure of the Committee on the Elimination of Discrimination Against Women' (28 May 2008) UN Doc HRI/GEN/3/Rev.3, rules 24–26; the working languages of the HR Committee are Arabic, English, French, Russian and Spanish; see 'Rules of Procedure of the Human Rights Committee' (11 January 2012) UN Doc CCPR/C/3/Rev.10, rules 28–32 (original English).

<sup>132</sup> See Jacqueline Mowbray, 'Language in the UN and EU: Linguistic Diversity as a Challenge for Multilateralism' (2010) 8 *New Zealand Journal of Public and International Law* 91; Anne Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads* (Springer 2001), 106–8; Jesús Baigorri Jalón, *Interpreters at the United Nations. A History* (Universidad de Salamanca 2004), 34.

<sup>133</sup> Christian Tomuschat, 'The (Hegemonic?) Role of the English Language' (2017) 86 *Nordic Journal of International Law* 196, 203.

to this language in order to increase their readership and influence.<sup>134</sup> In this regard, Bohlander notes that ‘English has become the *lingua franca* in international legal academic and practical dialogue’.<sup>135</sup> However, while English may occupy a privileged position within the six official languages of the UN, all are placed on an equal footing as authentic languages of the international human rights treaties examined in this volume, such as the CRC and CEDAW,<sup>136</sup> and to the exception of Arabic, in the ICCPR and ICESCR.<sup>137</sup> This signifies that the treaty text is equally authoritative in each of these languages.<sup>138</sup> It is acknowledged, in this regard, that the semiotic investigation of the *sense* of treaty provisions conducted in this monograph might not account for differences that exist in other authentic languages of these treaties.<sup>139</sup> Each language carries a unique identity and may convey concepts that cannot be fully translated or transmuted into other languages, notably across distinct legal traditions.<sup>140</sup> In this regard, the International Law Commission underscores:

[F]ew plurilingual treaties containing more than one or two articles are without some discrepancy between the texts. The different genius of the languages, the absence of a complete *consensus ad idem*, or lack of sufficient time to coordinate the texts may result in minor or even major discrepancies in the meaning of the texts.<sup>141</sup>

<sup>134</sup> Claude Truchot, ‘The Spread of English: From France to a More General Perspective’ (1997) 16 *World Englishes* 65, 66–67; Tomuschat, ‘Hegemonic English Language’ (2017), 213–27; Michael Bohlander, ‘Language, Intellectual Culture, Legal Traditions and International Criminal Justice’ (2014) 12 *Journal of International Criminal Justice* 491; Celina Frade, ‘Power Dynamics and Legal English’ (2007) 26 *World Englishes* 48.

<sup>135</sup> ‘Language International Justice’ (2014), 491.

<sup>136</sup> CRC, art. 54: ‘[t]he original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations’; CEDAW, art. 30: ‘[t]he present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations’.

<sup>137</sup> ICCPR, art. 53(1) and ICESCR, art. 31(1) (same text): ‘[t]he present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations’.

<sup>138</sup> See Vienna Convention (1969), art. 33(1): ‘[w]hen a treaty has been authenticated in two or more languages, the text is equally authoritative in each language’.

<sup>139</sup> For a discussion on authentic languages and semiotics, see Clara Chapdelaine-Feliciati, ‘The Semiotic Puzzle: Authentic Languages and International Law’ (2020) 5 *International Journal of Legal Discourse* 317.

<sup>140</sup> ‘Hegemonic English Language’ (2017); Dinah Shelton, ‘Reconcilable Differences? The Interpretation of Multilingual Treaties’ (1996) 20 *Hastings International and Comparative Law Review* 611; ‘Translation Legal Language’ (2013); ‘International Law Language’ (2010); *Treaty Interpretation* (2015).

<sup>141</sup> International Law Commission, Yearbook, 1966, vol II, UN Doc A/CN.4/SER.A/1966/Add.1, 225, para. 6.

The discrepancies are compounded by the number of authentic languages, time constraints and limited translation support.<sup>142</sup> One could surmise that if the analysis of the *sense* of provisions is circumscribed to English, it is also restricted as concerns its *significance* for the protection of the girl child. However, it is argued that the conclusions drawn from the semiotic analysis of a treaty in the English language are significant on three grounds. Firstly, it impacts States parties and individuals whose official language is English,<sup>143</sup> and secondly, states whose official language is a language other than the authentic languages of the treaty, as they may choose to refer to the English version. Presently, close to half of the states in the world have an official language other than the UN official languages, and nearly 4.8 billion people do not have as a mother tongue or second language any of the UN official languages.<sup>144</sup> Any of these States parties may refer solely to one authentic language, such as English. In this regard, if a weakness were identified in the wording of rights in English, it could impact the interpretation of human rights on any continent, even if other authentic texts did not present such a problem. Thirdly, given the equal authority of each authentic language, states whose official language is an authentic language other than English – that is, Arabic, Chinese, French, Spanish and Russian – can also choose to refer to the English version, and could thereby invoke weak wording in the English text to limit their duty to protect girl children. Hence, the English text also impacts the interpretation of the other authentic texts of the treaty even if the provisions of the latter are formulated in strong terms. At the same time, it is acknowledged that the suggestion to amend the English wording of treaties will not in itself suffice to improve the protection of the girl child in the international legal framework, for authentic texts in other languages, such as French and Spanish, could also comprise weaknesses not addressed in this book. A similar semiotic and semioethic exercise, conducted in the other authentic languages of the UN, would thus be appropriate, and could be the object of another study.

<sup>142</sup> 'Linguistic Diversity' (2010), 107; 'Reconcilable Differences' (1996), 621.

<sup>143</sup> This is significant, given that the population of English speakers is estimated at over 387,307,788.156 worldwide: World Development Indicators (WDI) (2022) The World Bank, Total Population. <https://databank.worldbank.org/reports.aspx?source=2&series=SP.POP.TOTL&country=WLD#> (accessed 11 August 2023).

<sup>144</sup> UN Department for General Assembly and Conference Management. [www.un.org/dgacm/en/content/multilingualism-coordination](http://www.un.org/dgacm/en/content/multilingualism-coordination) (accessed 23 August 2023). These include states in all regions and with some of the world's highest populations, such as Brazil, Indonesia, Bangladesh and Japan.