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EDITORIAL

Lex erotica? From interpretation to composition

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1. Introduction

As successive volumes and editorials of LJIL have shown,[1] interpretation has been a recurring concern for international lawyers as long as there have been texts to pour over. Amidst uncertainty, we grab tight to a familiar heuristic practice. Whether in navigating Hart's 'core' and 'penumbra' amid court proceedings,[2] or in tracing meaning all the way down to structural or historical forces,[3] interpretation is the bread-and-butter of international legal work. In critical circles especially, it is the grindstone that keeps sharp the tools of structuralism, historicization, and the varying materialisms by which we have come to question the givens of the field. Indeed, interpretation is so axiomatic with scholarship and practice, whether doctrinal or critical, that it is almost impossible to imagine our lives without it. Indeed, why would we even *want* to imagine life without the heuristic that makes our profession possible?

Following prior invitations to pause the 'unmasking' of international law,[4] and instead look upon it with 'wonder and curiosity',[5] this editorial invites readers to reflect upon the limits of interpretation as a style of engaging with one's object, whether this be a recent ICJ decision, a discursive system or a hegemonic technique. Looking upon interpretation itself as an aesthetic experience and an object with its own effects allows us to notice what we international lawyers do when we interpret and, crucially, what we *don't* do. This allows us to situate interpretation as only one of several 'ways of seeing' what international lawyers do – and should do. Another, which this editorial sketches, is that of composition, which is arguably more attuned to the creative process of the international legal craft, and to the experiences and ties international law affords to those who engage with it.[6]

*I would like to thank Renske Vos and the editors-in-chief for their insightful comments on earlier drafts. All errors remain my own.

[1]See e.g. I. Venzke, 'What Makes for a Valid Legal Argument?', (2014) 27 LJIL 811; P. Merkouris, 'Debating Interpretation: On the Road to Ithaca', (2022) 35 LJIL 461.

[2]H. L. A. Hart, *The Concept of Law* (1961), 123. For a representative selection of works on interpretation, see I. Venzke, *How Interpretation Makes International Law: On Semantic Change and Normative Twists* (2012); E. Bjørge, *The Evolutionary Interpretation of Treaties* (2014); A. Bianchi, D. Peat, and M. Windsor (eds.), *Interpretation in International Law* (2015); D. Peat, *Comparative Reasoning in International Courts and Tribunals* (2019).

[3]This phrase about infinite regress was popularized by Bertrand Russell who recounts the story of a woman who challenges a cosmologist's explanation of the world during a lecture by stating that the world rests on the back of a giant turtle. When the lecturer asks what the turtle stands on, she retorts: 'Sorry, professor, but it's turtles all the way down.' This idea has been taken up in critical pedagogy to demonstrate the power of interpretation in global governance, as in David Kennedy's Global Law & Governance LLM seminar at Harvard Law School which the author had the pleasure of auditing and teaching on from 2019–2021.

[4]E. Cusato et al., 'In Praise of Multiplicity: Suspending the Desire to Change the World', (2024) 37 LJIL 1.

[5]S. Stolk and R. Vos, 'International Legal Sightseeing', (2020) 33 LJIL 1.

[6]B. G. Scharffs, 'Law as Craft', (2001) 54 *Vanderbilt Law Review* 2245, at 2253.

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2. Fifty shades of international legal interpretation

Isolating interpretation as a bounded practice, an object of study, is not an easy task. It looks very different depending on your project and your 'method'. Jurists primarily concerned with the coherence of international law as a system of formal rules have largely construed interpretation in narrow terms, as an intermittent process applied carefully, with restraint and only to those rules with ambiguous meaning.[7] Most of the time, lawyering is only a question of applying the rules, not ascertaining them. When rules are to be ascertained through interpretive techniques, this most often demands strict adherence to the written text, its 'plain meaning' and the original intent of the drafters as laid down in the Vienna Convention on the Law of Treaties.

This is not the only mode of interpretation which, as far as our interpretive 'rules' are concerned, ranges from the textual to the teleological. Buttressed by an instrumentalist approach, more 'pragmatic' or progressive jurists push against and reframe the boundaries of interpretation to suggest that a novel fact-pattern, a new development, a pressing global event, necessitates an 'evolutive' response from the law that might otherwise lose its status as valid, useful, or just.[8] This is one way to read the many authoritative statements on human rights by courts, states, and policymakers that interpret rules according to underlying rationales or wider policy objectives. Although such pragmatic readings are often decried as thinly-disguised policy arguments, they, too, require interpretive choices to be made about materials, norms, interests, and frames.[9]

Yet interpretation does not reach its limit at the radical edge of progressive lawyering.[10] For over 40 years, critical international lawyers have pushed beyond the settled boundaries and binaries of international law to re-interpret them. Guided by a set of political and aesthetic commitments, critical scholars have opened many trapdoors underneath what the 'mainstream' jurist had formerly regarded as solid ground.[11] With a range of 'tools' at their disposal, critical scholars set about chipping away at the assumptions that many international lawyers had taken for granted to show that these, too, were yet more interpretive choices. In so doing, they demonstrated that international law's universality, objectivity and rationality bore their own political (read: Euro-, andro-, anthropo-, and capito-centric) valences. However factual they were made to look by hegemonic actors or disciplinary common sense, they were, to quote Nietzsche, 'only interpretations' dressed up as facts by people with projects and a will to power.[12]

This brief map of interpretation across international law's diverse modes of thought shows that, however distant our starting points and however opposed our aims, international lawyers have made their careers by interpreting. This style perhaps reaches its *dénouement* in a recent call to 'demystify' treaty interpretation. Situating interpretation as a 'feel for the game', Bianchi and Zarbiyev read interpretation as a hermeneutic practice, the awareness if not the mastery of which denotes professional competence and success.[13] They suggest that reflecting on 'what we as international lawyers do when we engage in the activity of treaty interpretation' will allow international lawyers to perform legal exegesis 'more knowingly, more skilfully and arguably more effectively'.[14] Indeed, by bringing to the formal mode of treaty interpretation the interpretive insights of post-structuralism, Bianchi and Zarbiyev provide a full-circle moment for international legal interpretation, a celebration of interpretation in all its diverse modes.

[7]See e.g. R. Gardiner, *Treaty Interpretation* (2015), xvii. Like many practitioners' texts, this book styles itself as a 'user's guide' to interpretation.

[8]M. Koskenniemi, 'What Is International Law For?', in M. Evans (ed.), *International Law* (2024), 29 at 36.

[9]D. Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (2016).

[10]See N. K. Modirzadeh, '"Let Us All Agree to Die a Little": TWAIL's Unfulfilled Promise', (2023) 65 *Harvard International Law Journal* 79.

[11]J. d'Aspremont, 'Martti Koskenniemi, the Mainstream, and Self-Reflectivity', (2016) 29 LJIL 625.

[12]F. Nietzsche, 'Notebooks, Summer 1886-Fall 1887', in W. Kaufmann (ed.), *The Portable Nietzsche* (1988, trans. W. Kaufmann), 458.

[13]A. Bianchi and F. Zarbiyev, *Demystifying Treaty Interpretation* (2024), 9.

[14]Ibid., at xiii.

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Now might be as good a time as any, then, to shift from the user's guide to the user's experience of interpretation. Doing so makes international legal work look strange again and, indeed, makes various interpretive shades look quite similar. The reason for this similarity lies in the centrality of meaning to all interpretive endeavours. Observing what such meaning-centrism allows the interpreter to do, and what it prevents them from doing, begins to provincialize interpretation for lawyers and others.[15]

3. Beyond the urge to mine for meaning

In the same year that the International Law Commission began to look towards interpretation by formulating draft provisions for interpreting treaties, the cultural critic Susan Sontag was already proposing a turn away from that very practice.[16] In her 1964 essay, 'Against Interpretation', Sontag described the problem with interpretation as a way of engaging creative works such as art, music, and literature.[17] Interpretation approached the object of study not as a thing-in-itself but as an 'imitation of reality'.[18] The creative object was not seen on its own terms, but as a representation of some external 'reality' that provided the invisible referent against which viewers attempted to understand, explain, and evaluate the meaning of the work before them. Interpretation is thus a particular way of engaging with the object to decipher what it means and what the author is trying to say. Such concerns prompt the interpreter to look outside or beneath the work – to the social context or the author's biography – to fully understand and explain it. This is familiar to international lawyers, too, in how we turn to drafters' intentions, *travaux préparatoires*, or to other disciplines, histories, and structural forces to explain (and explain *away*) a text.

This representationalist way of engaging with one's object is visible across international legal interpretation.[19] Whether in picking apart a treaty provision in a court pleading or in seeking to abolish hegemonic structures, interpretation entails reconciling the meaning of an object with the wider, pre-figured reality of the interpreter. These objects and realities may be highly situated and depend on our training, perspectives, and positionalities, but how international lawyers treat 'object' and 'reality' is similar across these situations and experiences. The object for the 'formalist' lawyer is the body of rules and frameworks that are thrown over the messy reality of (political) fact. Here, it is hoped that the rendering of the law will sufficiently cover and resolve this factual matrix to keep states in line. The more pragmatic lawyer's aim is to put law to use as part of a wider set of policy goals. This, too, configures the legal object around certain *a priori* normative commitments such as 'peace', 'justice' or 'the rule of law'.

For its part, critical scholarship has often sought to posit international law's rules, practices, institutions, and discourses against a 'hidden' – and ultimately more important – reality beneath.[20] This has been framed as the relationship between the surface *parole* of substantively indeterminate arguments and the deep *langue* of a formal grammar that structures those arguments.[21] As critique has developed, the political stakes of these efforts have demonstrated ever more urgently the

[15]J. Berger, *Ways of Seeing* (1972). For a book-length challenge to meaning-centrism in international legal thought, see J. d'Aspremont, *After Meaning: The Sovereignty of Forms in International Law* (2021).

[16]Third Report on the Law of Treaties by Sir Humphrey Waldock, Special Rapporteur, 1964 YILC, Vol. II, A/CN.4/SER.A/1964/ADD.1, 52 (Draft Article 70).

[17]S. Sontag, 'Against Interpretation', (1964) 8 *Evergreen Review*, reproduced in S. Sontag, *Against Interpretation and Other Essays* (2009), 3–14.

[18]Ibid., at 3.

[19]A. Lang, 'International Lawyers and the Study of Expertise: Representationalism and Performativity', in M. Hirsch and A. Lang (eds.), *Research Handbook on the Sociology of International Law* (2018), 122.

[20]This, despite the challenge to international law's substantive determinacy in early critical interventions. As d'Aspremont notes, 'Even unfixed, hidden, strategically and ideologically defined, the meaning that accompanies the forms of the international legal discourse has remained construed as the cause and origin of those forms as well as of what such forms do', see d'Aspremont, *supra* note 15, at 8.

[21]M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (2006).

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hegemonic and violent forces that underpin international law. Antony Anghie and Third World Approaches to International Law have powerfully revealed how a cultural 'dynamic of difference' underwrites international legal doctrines as colonial technologies. Others have performed similar unmaskings to reveal how international law reproduces the hidden dynamics of Eurocentrism, patriarchy, and capitalist exploitation. Interpretation is thus an incredibly powerful hermeneutic in international law: as a professional mode, a policy instrument, and a critical attitude that has sparked international law's rise, consolidation, instrumentalization, and deconstruction.

But as Sontag and others have pointed out, interpretation is not a panacea. When put in the service of the system itself, interpretation becomes pious; however 'insistent', its ultimate aim is to shore up the status quo. This has been a major critique of doctrinal scholarship, which is often seen as buttressing certain political positions under the guise of law while ignoring its troubling assumptions and effects. The critical mode of interpretation also has its limits. It is characterized by a 'zeal' towards the 'troublesome text' that 'excavates' and 'destroys' as it 'digs "behind" the text, to find a sub-text which is the true one'.[22] Rita Felski has recently pointed out the trouble with this 'hypercritical' stance: it not only cannot reassemble or repair the text, but positions the critic as a criminal detective standing back in distrust as they search for clues before accusing the culprit: international law.[23] As a way of exerting power over a text by reworking its meaning based on an outside reality, interpretation seems unable to move beyond this 'suspicious' mode and its power analytic,[24] or to engage textual autonomy as well as formal, aesthetic, and compositional aspects of international legal work and the works it produces. How, then, to get beyond textual mining and leave meaning in the ground?

4. Toward composing and the composition

Thinking of international law *compositionally* helps us 'edge closer' to international legal work.[25] Composition is not a commonly-used word in international law; most often it suggests the 'make-up' of international benches or the membership of the UN Security Council.[26] In contrast to these accounts, which are also 'representationalist' in the way described above, this editorial suggests a 'compositional' way of seeing international law that allows us both to attend to the experience of the international legal craft, and to the surface appearances and forms of texts, events, and institutions. It does so in two ways.

First, to look upon international legal work compositionally entails looking at the processes by which international legal works themselves – treaty drafts, court decisions, UN reports, even scholarship – are composed. This is to treat composition as a *verb* and to chart the many choices and connections, large and small, by which those who do things with law, whether individually or collectively, realize a text, argument, or project in the world. Where interpretation would have us consider the substantive components of an argument or what the text says, composition attunes us to a much wider range of non-substantive choices and perhaps unconventional connections including choices as to genre (why *this* kind of treaty; why 'guidelines' not 'conclusions'?), form (why *this* institutional structure, *that* format for a report?), as well as other technical devices (narratives, metaphor, characterization), as well as the material upon which we rely to perform our work. These range from the 'material sources' of law to the materials that allow us to do things

[22]See Sontag, *supra* note 17, at 4.

[23]R. Felski, *The Limits of Critique* (2015), 7 and 85.

[24]Ibid., 30–39. This is not to deny the liberatory experience of law or critique themselves, see P. Schlag, 'Un Ésprit Sérieux', (2024) 47 *Dalhousie Law Journal* 71.

[25]R. Felski, *Hooked: Art and Attachment* (2020), xi.

[26]See L. Hodson, 'Gender and the International judge: Towards a Transformative Equality Approach', (2022) 35 LJIL 913. Others have foregrounded composition as assembly: on the 'emergent co-composition of social (and legal) order' see D. van den Meerssche, 'The Multiple Materialisms of International Law', (2023) 11 LRIL 197, at 200.

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with those sources, including institutional buildings, offices, desks, Wi-Fi connections, online libraries, time, and coffee.

This way of seeing the compositional experience of the international legal craft is something to which Edward Said alluded in articulating the idea of being 'inward with' a creative work as a way of experiencing it in the process of its creation. Said elaborates that 'the idea would be in reading and presenting [the work] to get [oneself] finally in the position of the author writing it':

> There's a wonderful expression where we say, "He's inward with it"; in other words, that you and the piece are at the same point of unfolding and disclosure. And obviously, there's a certain amount of technical preparing, rehearsing, which is part of the experience of the performer, the musician, the interpreter. But what you have to be able to do is to get beyond all of that and live the piece in its own terms at the same time that you are, in fact, presenting it as yours.[27]

In approaching a work on its own terms, 'the ultimate test of the persuasiveness of what you're doing', Said suggests, 'is that it sounds as if it is being composed and staged at that very moment'.[28] The above effort to map interpretation is just such an attempt to get 'inward with it' as more than simply a hermeneutic exercise, but a style, a way of relating self, object, and reality based on affective registers of emotional distance, suspicion, and domination of the object. Being attuned to these experiences of interpretation gets us to notice the relationship between *how* we go about crafting international law and *what* the law itself eventually looks like. In other words, it brings the question of law's aesthetic forms, styles, and moods to the forefront alongside the question of law's meaning. How the law speaks in a sober tone, how brackets are deployed in draft treaties, and how participants experience negotiating conferences are all relevant aspects of international legal work that deeply shape buy-in, establish or break political ties, foster or diminish hope, comfort, and desire for a better international law.[29]

A second advantage to looking at international law compositionally is that it allows us to look upon it as an aesthetic object based on its own sets of formal, stylistic and aesthetic features. This is to observe composition as *noun*, as *a* composition. Looking upon international law in this way can be exceptionally difficult not only because of ingrained patterns that have us look outside the text to explain it, but also because of prior intellectual or normative commitments to doing so as a way to avoid universalizing the subjective experience, reifying the text and reproducing a naïvely decontextualized understanding of the status quo. Yet in looking at the surface, we better grasp the subtle force of the technical and the aesthetic in ways that interpretation misses.[30]

Drawing on Peter Goodrich, thinking compositionally about a work of international law – a finalized treaty, an institutional mechanism, a UN report, a monograph – is to ask *how* it 'plays its role and achieves its end' for the observer, if at all.[31] This is to momentarily shift the criteria of assessment away from the task of rendering a value judgment as part of the search for meaning. As Latour noted in his 2010 'compositionist manifesto', looking closely and directly at international law is not to uncover 'what is constructed and what is not' but to appreciate 'what is well or badly constructed, well or badly composed'.[32] For this, the familiar language of interpretation, focused on the relation between the object and its reality, is ill-suited. Here, an alternative language is required, one that appreciates how international legal works – rules, arguments, institutions, discourses – are built or put together (*componere*) 'from utterly heterogeneous parts that will never

[27]D. Barenboim and E. Said, *Parallels and Paradoxes: Explorations in Music and Society* (2002), 55.

[28]Ibid., at 56.

[29]A. Riles, 'Infinity within the Brackets', (1998) 25 *American Ethnologist* 378; I. Tallgren, 'We Did It? The Vertigo of Law and Everyday Life at the Diplomatic Conference on the Establishment of an International Criminal Court', (1999) 12 LJIL 683.

[30]A. Riles, 'A New Agenda for the Cultural Study of Law: Taking on the Technicalities', (2005) 53 *Buffalo Law Review* 973.

[31]P. Goodrich, *Advanced Introduction to Law and Literature* (2021), xi.

[32]B. Latour, 'An Attempt at a "Compositionist" Manifesto', (2010) 41 *New Literary History* 471.

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make a whole, but at best a fragile, revisable, and diverse composite material'.[33] Some critical scholars already point to this in identifying how international law has become modular and interoperable in ways that reveal its craft-like and customizable qualities.[34]

This rendering of international law as a 'still life'[35] image to look at is particularly well-suited to capturing experiences of ambivalence, disillusionment, faith, joy, and even love in a field that interpretation has largely painted as righteously sober or unrighteously banal.[36] It allows us to see how international institutions in the 'International City of Peace and Justice' in The Hague establish relations of commitment among the general public during open days by framing international justice as exhibitions, interactive tours, and gift shops.[37] It makes the aesthetic choice to produce a set of 'draft articles' in identical form to a binding treaty relevant as part of the authorizing function of legal form.[38] It helps to appreciate how the organizational structure of a treaty or judgment, or the table of contents in a legal commentary recruits the reader into a particular mode of engagement, sets up expectations, and forges communal ties.[39] These interventions might be said to find their antecedents in the plea to take form – that is, formalism – seriously as professional ideal.[40] However much they chime with existing 'formalisms', though, to observe international law as such is 'to approach the diversity of juristic forms, be they theoretical, educational, institutional, judicial or legislative, from the perspective of their literary and aesthetic qualities, situated in their historical and geographical context and place'.[41]

5. An erotics of international law

Thinking compositionally about the international legal craft and the works that result will not 'change the world'.[42] It will not even 'interpret it'.[43] That is the point. It means circumventing the interpretive impulse to uncover and re-signify as well as the affective registers of 'suspicion, fear, even anger'.[44] Bracketing interpretation as an effort to control the text surfaces alternative modes of practical and scholarly engagement with international law. It asks us to slow down, notice and attend to the visible appearances of international legal forms and devices outside what we expect and know according to our political pre-commitments.[45] And it demands the suspension – even temporarily – of the 'hermeneutic of suspicion' in favour of what Raul Ricoeur called a 'hermeneutic of recovery', what queer theorist Eve Sedgwick called 'reparative reading': an

[33]Ibid., at 474.

[34]I. Roele, *Articulating Security: The United Nations and its Infra-Law* (2022); D. Desai and A. Lang, 'From Mock-Up to Module: Development Practice between Planning and Prototype', (2022) 33 *Law & Critique* 299.

[35]'A Still Life of International Law: Description', Law & Society Association Global Meeting, Lisbon, 14 July 2021.

[36]See G. Simpson, *The Sentimental Life of International Law: Literature, Language, and Longing in World Politics* (2021); N. Blokker, 'Introduction to the Thematic Issue on The Love for International Organisations', (2024) 21 *International Organizations Law Review* 395.

[37]See Stolk and Vos, *supra* note 5.

[38]K. van Douwen, 'Seventeen Men at Lake Success: In Search of the International Law Commission', (2024) 37 LJIL 557, at 574–76.

[39]D. Kennedy, 'The International Style in Postwar Law and Policy: John Jackson and the Field of International Economic Law', (1995) 10 *American University International Law Review* 671. Elsewhere, I consider how global health lawyers produce this regime as an 'emerging field' and thereby leave it in a constant state of becoming, see R. Clements, 'Professional Field-Work: Constructing Global Health Law as an "Emerging Field"', (2024) 15 *Transnational Legal Theory* 170

[40]See Koskenniemi, *supra* note 8, at 44.

[41]See Goodrich, *supra* note 31, at ix.

[42]See Cusato et al., *supra* note 4.

[43]From Marx's Theses on Feuerbach, '[t]he philosophers have only interpreted the world, in various ways; the point is to change it', available at https://www.marxists.org/archive/marx/works/1845/theses/theses.pdf.

[44]See Felski, *supra* note 23, at 124.

[45]In the epigram to her essay, Sontag quotes Oscar Wilde as saying: '[i]t is only shallow people who do not judge by appearances. The mystery of the world is the visible, not the invisible', see Sontag, *supra* note 17, at 3. Seeing the visible is a largely descriptive exercise, see A. Orford, 'In Praise of Description', (2012) 25 LJIL 609.

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orientation towards the works of international law in which the observer is open to the possibility of surprise, to infinite traces,[46] as well as to 'inspiration, invention, solace, recognition, reparation, or passion'.[47] It move us away from interpretation as a user's guide to international law and towards the user's experience of crafting and living it. *Per* Sontag, composition entails not a hermeneutics, but an 'erotics' of law tuned to the 'capacities and experiences of desires, frustrations, expectations, feelings, senses and passions' that compose international legal work.[48]

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[46]See d'Aspremont, *supra* note 15, at 27.

[47]See Felski, *supra* note 23, at 17.

[48]M. Franca and N. Luna, 'Erotics of Law', in M. Sellers and S. Kirste (eds.), *Encyclopedia of the Philosophy of Law and Social Philosophy* (2021), 1. See Sontag, *supra* note 17, at 14: '[w]hat is needed is a vocabulary – a descriptive, rather than prescriptive, vocabulary – for forms'.

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