Law as Literature in International Law

The importance of Narrative and Language in the creation of *jus cogens* norms

Maria João Pereira de Melo

PhD Candidate – Universidade Lusófona do Porto

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ORCID 0000-0002-1923-2624

ABSTRACT

We propose to reflect on the importance of narrative and language in international law as active elements of creation. To this end, we will rely on the *law as literature* methodological approach, demonstrating that importance in the light of the creation of binding force in *jus cogens* norms.

KEYWORDS

International Law; Narrative; Language; Law as Literature.

1. Introduction

Today's jurists often note the crisis that is raging in international law, marked by the replacement of bilateral dynamics by multilateral ones, as well as by the loss of sovereignty of its main subjects. Aware of the proposals that have emerged in this framework, admittedly instigated by the recovery of a strong practical thinking, we propose to reflect on the importance of narrative and language in international law as active elements of creation, aggregation, and linkage. In this precise sense, we will rely on the *law and literature movement*, especially on the methodological vein *law as literature*,

demonstrating that importance considering the creation of binding force in *jus cogens* norms.

Precisely because this is so, we have decided to divide the work into four critical-reflexive moments.

In a first moment, we will carry out a framing that will allow us to modestly identify the main ideas of the *law and literature movement*, focusing on the *law as literature* methodological vein, following the need of context and experience as intelligibility data inseparable from law. Reference will be made, as is required, to the individuality of law and literature as autonomous domains of knowledge with room for difference and approximation.

In a second moment, we shall explore the importance of *the linguistic turn* for the recognition of that autonomy and for the end of the exclusivity of theoretical reason and the priority of practical reason. Within this framework, the demand for rationality in judgment-decision-making will be considered and, specifically, the pertinence of a narrative rationality.

In a third moment, we will propose the importance of language and narrative in law, concretely in international law, as elements of creation, aggregation, and linkage. In this context, we will meditate on the current crisis of international law and the role of language and narrative in the proposed solutions presented by the doctrine. Seeking to prove the theoretical analysis undertaken, we will demonstrate the important role that narrative and language have in the construction of binding force in *jus cogens* norms, namely through the analysis of a concrete case – the birth of the right of self-determination of peoples.

Finally, by critically reflecting on some legal materials concerning the case study, we will consider the relevance of a requirement of narrative rationality in the judgment-decision, considering Bernard Jackson's (1985) proposal and Castanheira Neves' (2003) critical view.

Thus, we judge our motivations to have been duly clarified, certainly inserted in a concrete domain of law, but no less sincere in their effort to defend the *law and literature movement*, as perfectly adequate – and necessary (!) – to the understanding of the referents of meaning of our temporality and to the dynamization and consolidation of the "juridical as juridical" in its declared subsistence.

2. *Law as Literature*

2.1. *Law and Literature*

Let us begin by pointing out what seems clear to us: the *law and literature movement* is, in itself, an alternative proposal. Its construction is as solid as the energetic debate that sustains it, and this debate is as lively as the conviction that the truth – or what is a project-solution for the truth of our time (temporality...) – is being reached. Thus, it is repeated *ad aeternum*: "Law and Literature is becoming increasingly serious" (Ward 1993a, 43).

It is erroneous, therefore, to limit the movement to the fight against formalism, reducing it – almost – to a simple consequence, condemning it – perhaps – to the ephemerality of passage. Nor does it satisfy any pretension of revolution, pointing to an irresistible force, similar to the idea of *fatum*, as an ineluctable overcoming. In fact, a prudent look would be more appropriate, meditating the debate with attention, and taking advantage of what is concrete about it.

We are undoubtedly in a peculiar historical moment. Between what we have been and what we will be, we oscillate in a present that seems distant and diluted. The firmness of the concreteness of thought is a distant echo. The consistency of reason an abstract idea. Legal discourse, indeed, can be distinguished with difficulty from a myriad of distinct expressions. The "practical-normative reflection", as Aroso Linhares (2004) wrote, assumes a certain "fragmentation", "incommunicability"... and even "esotericism" (Linhares 2004, 90-93). To that exact extent, it is difficult for us to understand the boundary-line that distinguishes autonomy from isolation, practical rationality from casuistry. In short, a balanced sense of community escapes us.

In this precise sense, the role of the *law and literature movement* should be to create meaning as a recovery of essential lessons present in literary classics – *law in literature* – or a methodological dilucidation of the possibility of applying literary criticism techniques to legal texts – *law as literature* (Ward 1993b, 329-330).

But not entirely. The problem also seems to lie in a certain internal need for formal systematization – as if we were more concerned with the movement's organization than with its many uses. It is true that we can see the movement's benefits in that organization, but not in the practical and concrete way that we felt was necessary. Following Gary Minda's (1995) argument,

specifically on this issue, the schematic subdivisions depart from the practical and theoretical contributions of the movement (Minda 1995, 150-151).

Strictly speaking, the author expressly referred to the case of the subdivision – "legal humanism" in the 1970s; "hermeneutics" in the '80s; "narrative" – through feminist theory and critical race theory – in the '90s" – led by Julie Stone Peters (2005). Nevertheless, it confirmed the overcoming of the *law in literature/law as literature* dichotomy, reinforcing Richard Weisberg's (2016) reasoning (also specifically on this issue): it "no longer needs to hold sway" (Weisberg 2016, 40).

In fact, although we well understand the distinction drawn by Julie Stone Peters (2005), and in that sense our work would fit into the *Law as Literature* vein – not so much as a result of marginalized identities, but no doubt following the importance attributed to "narrative rationality" – we lean more towards a critique of these systematic divisions.

Truly, since the late 1990s, there has been an attempt to describe the movement by numerous authors – and from different sources (Weisberg 2016, 38-39; Buescu,Trabuco & Ribeiro 2010, 5-9). The merits of this attempt are not in any way questioned. Quite the contrary, we are perfectly aware of the benefits that systematization allows in these undertakings, as well as of the need for them in order to define the movement in question. It is only considered that insistence on this schematic mode may to some extent limit the research work by demarcating academic thinking into static categories. Indeed, it "no longer needs to hold sway" (Weisberg 2016, 40).

2.2. *Law as Literature*

Focusing especially on the framework of what may be called *law as literature*, let us begin by saying that the substantial difference between literary texts and legal texts is perhaps that the former allows us a certain particular experience with the text, bringing us closer to its language through the dialogue we conduct with the unique and individual conscience of the narrator, while the latter distance us from the start by means of a maestro-language. Translated: a language whose objective will be the clear and harmonious conduction of the multiple behaviors of the community, assuming itself as its ineffable voice, representative not of an individual discourse, but of several uniformed speeches.

The autonomy of law is, therefore, in the autonomy of its own language. That is to say, there is a standardization of community commitments through the

use of legal language, and law does not cease to contain the narratives of the community in the form of those assumed and institutionalized agreements.

To that exact extent, the law is truly like literature and recognizing it cannot seriously mean a lessening of its autonomy. In fact, the legislator does not use words with a linguistic-grammatical literary/common sense, but with a legal sense of its own that will be presented as an extra-textual referential function (Neves 2003, 23-24 and 382). The normative intention alluded expresses a determined and "transfactual" axiological foundation in which "a validity is established, simultaneously requirement and modus of distance and tension of "should-be" before the action and reality that a judgment, a critical discourse of judicial reasoning, is called upon to assume and realize" (Neves 2003, 371).

Indeed, legal language has a specific intentionality, which is normative, and literary language has a specific intentionality, which is aesthetic (Silva 1990, 29). From this it follows that legal language, like literary language, is a language within language – therefore with a distinct semiotic circle. And we must then distinguish between language as a "set of signs, born from social life, which men use for the expression and communication of their ideas or feelings; expression of thoughts and feelings through words" (Machado 1981, 472) from the "set of words proper to a craft or activity" (Machado 1981, 472). The result of this exercise will demonstrate with convincing reasoning that there is a separation between law and literature as distinct and autonomous fields of knowledge.

But please note: the very fact that they start from and of language – a motive inseparable from *the linguistic turn* – is reason enough to make plausible an interdisciplinary relationship between the two fields of knowledge. Even more: reason to reflect on the space of narrativity in the methodological exercise.

3. Approaching the Humanities

3.1. *The Linguistic Turn*

Because of its manifest importance for a reasonable understanding of the express autonomy of legal discourse, but also to better frame the pertinence of the allusion to language and narrative, let us briefly consider *the linguistic turn*.

In that effort, we shall be guided by Castanheira Neves (2003), in *O Actual Problema Metodológico da Interpretação Jurídica – I*, where, based on Richard

Rorty's (1967) essays in *The Linguist Turn: Essays in Philosophical Method*, the author explains in exemplary fashion what may be called a reconceptualization of the very nature of philosophy, with the ideation of the implications that flow from it (Neves 2003).

Primo conspectu, and in summary, the author notes that a radical turn towards language has taken place. Better said: living at this time the "third age of philosophy", we have moved from an "age of being" – Ancient and Middle Ages – to an "age of consciousness" – Modern Age until the analysis of language – to an "age of language". Consequently, the referent of meaning is no longer placed in knowing what the object is or how we know the object; rather, it is necessary that we speak of it (Neves 2003, 116-119).

At first, when language was proposed as a referent, its "constitutive-significant" autonomy was advocated and linguistic analysis ("the logical and intentional signification of a language") was seen as imperative – the rationality was analytic-linguistic as a result of the primacy of the logical interest (Neves 2003, 121-122). However, as Castanheira Neves (2003) explains, this moment was followed by another one – contemporary –, in which there is a new understanding of the problem of signification through the clear acknowledgement of the plurality of languages, rejecting, therefore, scientific language as "the only valid form of meaningful language" (Neves 2003, 123); assuming the importance of pragmatics and specifically of the concrete situations of signification for the understanding of language – of languages! – as "forms of life" (Neves 2003, 125); and legitimizing, from an "analytical perspective" (Neves 2003, 127), the "ethical discourse" (Neves 2003, 127) – "the value-oriented and normative languages and discourses" (Neves 2003, 127). Thus, theoretical reason was no longer exclusive, but captured the "transcendental-constitutive priority of practical reason" (Neves 2003, 123-127).

On the other hand, if the crisis of modern axiomatic reason, based on a subject-object relationship, opened the way to the "transcendental-constitutive priority of practical reason", based on a subject-subject relationship: truth is a practical truth (Neves 2003, 134-135). And it will be a practical rationality that will respond to the specific demand for rationality of the methodological exercise. In this way, following Pinto Bronze, it must be asked: a demand "(of what...) reason?" (Bronze 2020, 113).

Indeed, as Aroso Linhares (2010) explains, considering the Aristotelian intellectual virtues, once the domain of *episteme-techné* or *techné-episteme*

was overcome, the possibility of reinventing its balance "as a major experience of plurality" opened up, very specifically reformulating the challenge of *phronêsis* (Linhares 2010, 28).

The humanistic interdisciplinary facet considered here presents the challenge of the possibilities "of na autonomous praxis-*prattein* and its rationality types" (Linhares 2010, 27). Also, at issue here is whether the approach to the humanities, which enables various conceptions in which law relates in an interdisciplinary manner as part of the world of letters, lightens us any incompleteness (Linhares 2010, 23).

3.2. Narrative Rationality

Having arrived here, as a modality of practical rationality, we chose to develop the pertinence of narrative rationality in the methodological exercise, considering the importance of narrative and language in law.

Narrative rationality acts in the domain of the humanities, in the domain of the "world of life". It is then up to us to know to what extent narrative rationality – "the story that is told, the facts that are narrated" – is pertinent – in the methodological exercise (Bronze 2020, 163).

In the last chapter of this research, we will have the opportunity to elucidate this question more adequately in the light of a concrete case and specifically considering Bernard Jackson's proposal and Castanheira Neves' critical view. For now, it would be more prudent to state the meaning of narrative as a "verbal or written account of certain facts and events" (Machado 1981, 524), which immediately clarifies a common presence in law and literature. The latter as an "irreducibly plural – singular – form of modeling and exchanging meanings outside signification, a domain in which signs refer to the infinite" [Silva, Martins & Gonçalves (Org.) 2011, 17]. The former as a historically determined order of signification, a domain in which signs refer as much as possible to an intended certainty. Surely this is so – regardless of the defense of a continuity perspective of law and the natural referents of individual meaning that are noted in literary works.

Thus, when we propose *law as literature in international law*, we assume the substantial differences that distinguish the fields of knowledge, but also the structural points that bring them together. We assume, therefore, the importance of narrative and language in the creation of law. And we interrogate, consequently, the relationship of narrativity with the judgment-decision itself.

4. Importance of Narrative and Language in the creation of binding force of *jus cogens* norms.

Having announced the importance of narrative and language in the creation of law, it is necessary to delimit the scope of the investigation, pointing out the domain of law that we will investigate and the specific case in question. We have chosen, in fact, a meditative look at international law, demonstrating the importance of narrative and language in the creation of binding force of *jus cogens* norms. In this precise sense, we will begin with a brief reflection on the state of the art of international law considering the importance of narrative and language (4.1.); we will move on to illustrate the creation of binding force of *jus cogens* norms, using the example of the upholding of the right of self-determination of peoples as a *jus cogens* norm and, once again, revealing the importance of narrative and language in this defense (4. 2.); finally, taking this example into consideration and moving on to the fourth part of the investigation, we will reflect on the legal materials in question, demonstrating that in the decisional judgment a methodological requirement of rationality is resorted to, that is not narrative, notwithstanding the demonstrated importance of narrative and language in law (5.).

4.1. International Law, Narrative and Language

Currently, looking critically and reflexively at the state of the art of international law, we notice how the classic questions, related to the criticism of the lack of efficiency and systematization, are joined by questions marked by the emergence of new protagonists – such as multinational companies, international organizations, international private associations, and citizens. We often write about the possibility of replacing a Westphalian model, based on bilateral and multilateral dynamics between states, with a global governance model, based on transnational dynamics. And between the universality that is sought and the complexity of real cases, proposals for solutions have emerged in the doctrine that seek to create effective universality – *ad exemplum*, a global administrative law or global constitutional law – based on the gradual realization of certain principles in concrete cases.

In the argumentation invoked, the importance given to language used in cases is clear, precisely as a way of gradual realization of objectified principles. Critics, on the other hand, emphasize the demoliberal nature of these pro-

posals, repeatedly recalling the real differences between the various cultures of the world and accusing a narrative of imposing the democratic rule of law.

Without going too deeply into the subject, we would just like to underline the implicit recognition of the importance of narrative and language in these proposals, as powerful means of gradually creating binding force in the international legal framework. In fact, invoking the ontological identification between being and language in the Heideggerian sense, we can affirm narrative as the great expression of the creator-self and repeat with many authors: human life is structured through recourse to narrative, the plot created justifies the past and projects the future, and in this almost-written sense the guiding foundations of human action are created.

The relationship of language and narrative with law is thus a given. To point it out is only to recognize the inextricable link between man, society, and law. To explore it is to contemplate the way in which narratives and counter-narratives influence legal materials, pondering the strong influence they have on the concrete realization of law.

But not only. It means capturing these circumstances keeping in mind the possibility of the sedimentation of stronger narratives in the collective spirit to the detriment of others. It is to be shrewd enough to notice the following: ("Is the Plot an inevitable, universal, human concept? Is it a model of our mind's structure?" – as Dieter Axt asked Peter Brooks. The latter agreed and added:) "law makes its own narrative constructs" (Axt 2020, 326). *Ultima analysis*, is to understand the fluidity with which these stories and counter-stories converge, building upon each other and coexisting globally. For even if conflict exists, and it does, we know it to be remarkable in the art of strengthening structural narratives and creating other ones.

For example, Monica Hakimi (2017), in *The Work of International Law*, aptly portrays the importance of conflict in international law, arguing that there is an "insurmountable limit" whose systematic violation leads to the collapse of the system: the principle of prohibition of the threat or use of force (Hakimi 2017, 1-46). In other words, we can say that there is a structural narrative under which the United Nations was created – peacekeeping (Pereira 2018, 91) – by systematically violating the imperative norm that sustains it, one leads to the collapse of the U.N. system. But the violation itself will always be supported by other narratives that are intended to be sedimented.

Finally, if we consider the creation of the United Nations, we can reasonably state: there are in these conceptions of the spirit new and unknown realities

that coalesce with other already sedimented interests. Conferences for the discussion of legal materials are a perfect example of this circumstance. Let us think of the importance attached to the language of the United Nations Charter. Let us remember the arguments put forward at the Dumbarton Oaks (1944) and San Francisco (1945) Conferences (Musgrave 1997, 67). Without doubt, it was in the shadow of a strong narrative, that the U.N. system as we know it was created. But not only that. Through the abstract-precision of the language, the Charter was able to be adapted to new circumstances and other smaller narratives. What we succeed in meaning is: binding force in international law, created from a narrative shared by the Great Powers. In a word, without the elements that we are studying, international law, us we know it, would not exist today.

4.2. Construction of *jus cogens* norms: a case study

Not diminishing the copious doctrinal discussion that this topic usually generates, but quite certain that this is not the intended angle of this investigation, we have decided to be guided by the conclusions presented – under the terms of the Report of the United Nations Commission on International Law – in Geneva, in the year 2019. Indeed, peremptory norms of general international law are those that are accepted and recognized by the international community of states as a whole and whose derogation is only permitted by subsequent norms of the same character. They reflect and protect fundamental values of the international community and are hierarchically superior to others, as well as universally applicable. Customary law is the most common basis for their creation – law whose widespread practice is accepted as law. But not only this. General principles and treaty provisions may also serve as a basis for their creation [Report of the International Law Commission (A/74/10) 2019, 142-144].

What is especially interesting is that its identification as such requires the acceptance and recognition of a large majority of states, and to that extent depends entirely on states, but considers the overall comprehensive context: "other actors may be relevant in providing context and for assessing acceptance and recognition by the International community of States" [Report of the International Law Commission (A/74/10) 2019, 142-144].The reason why this is, is because of the need to establish the narrative. To borrow Peter Brooks' acquiescence, "law makes its own narrative constructs" (Axt 2020, 326).

Let us demonstrate what we have been arguing through a concrete case.

To do so, we must begin by putting forward the forms of proof that exist to identify acceptance and recognition of peremptory norms of international law: they are multiple. Although there is no exhaustive list, we can list some of them: public statements by representatives of States; doctrinal pronouncements; diplomatic correspondence; resolutions adopted by international organizations. Around these, a narrative is institutionally concretized.

As an example: the right of self-determination of peoples. We can trace the beginning of this narrative back to the ideas that were at the origin of the English, American and French revolutions, present – for example – in the works of John Locke (2020) and Jean Jacques Rousseau (1999) (we refer to the works *Two Treatises on Civil Government* and *The Social Contract*, respectively); legally materialized – for example – in the *American Declaration of Independence of 1776* (National Archives, 2022) and in the *Déclaration des Droits de l'Homme et du Citoyen* (Conseil Constitutionnel, 2022).

The defense of popular sovereignty, as proposed by those authors, would become 19th century nationalism (especially present – for example – in the ideas of Fustel de Coulanges – the defense that a people should only belong to a State by its free will – and Mancini – architect of the principle of nationalities: each nation with its own characteristics would have the natural right to become an independent State) (Tesón 2016, 210).

At the beginning of the 20th century, US President Woodrow Wilson and Soviet leader Vladimir Lenin would irreversibly introduce self-determination of peoples in their speeches as a political principle – very strategically marking the agenda of the century (Lopes 1999, 235-238; Lenin 1977, 143-156). Consequently, formal recognition of the political principle by the Council of the League of Nations would not be long in coming, paradigmatically in the case of the Aaland Islands [Report "Of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands questions" (October 1920)].

At the end of World War II, on October 24, 1945, the United Nations Charter came into force and, in its scope as a multilateral treaty with a universal character, created doubts about the existence or not of a right to self-determination of peoples. The doctrine said no – although it recognized the existence of a legal principle (Pereira 2018, 92). Nevertheless, due to the strategic ambiguity of the language used, it was determined that the United Nations Charter was open to the eventual recognition of a right.

In fact, this is what happened, the increase in international pressure in this direction determined the *de jure* recognition as a result of the adoption of crucial General Assembly Resolutions [Declaration on the Granting of Independence to Colonial Countries and Peoples (14 December 1960); Declaration of Principles of International Law on Friendly Relations and Cooperation among States (24 October 1970)]; the support demonstrated by the International Court of Justice [Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (1971); Advisory Opinion on Western Sahara (1975)]; the content of the first article of the two 1966 United Nations Human Rights Conventions [International Covenant on Civil and Political Rights (16 December 1996); International Covenant on Economic, Social and Cultural Rights (16 December 1996)] and statements made by government representatives on the occasion of their respective adoptions (Cassese 1986, 133-134; Hannum 1993, 31).

Therefore, it seems clear to us the contribution of the narrative of liberation of peoples, as assumed by the United States and the Soviet Union and disseminated by the Liberation Movements, to the recognition of the right of self-determination of peoples – and its construction as a *jus cogens* norm – under the terms of article 53 of the Vienna Convention on the Law of Treaties, signed on May 23, 1969 (Pereira 2018, 41). In the same way, the language that was used in the different legal materials proved to be extremely important as an institutional opening to temporality contingencies.

5. A Demand for Narrative Rationality?

5.1. Reflection on the case study

Considering the example mentioned, the importance of narrative and language in the creation of law and, more specifically, the importance of narrative and language in the creation of binding force of *jus cogens* norms, it is necessary to refer again to the methodological problem we face. The problem, in its simplicity, is this: what relevance should be given to a narrative rationality?

As for the importance of narrative rationality in the field of law, we will say that it is particularly from events and actions that the problem is posed, but not

with events and actions that it is justified, *ad exemplum*, in the concrete creation of *jus cogens* norms. The fact is that in the concrete realization of law we convoke values, principles, and rights. This is the comprehensive and grounding framework of the decision-making process, and the coherence that will be sought to be established will always be normative Let us say, following Castanheira Neves: "the two universes are different, and so are the two discourses" (Neves 2003, 410).

Notwithstanding, it is necessary to concretize the matters through specific examples, and, continuing with the case study, if we check the reasoning used by the International Commission of Jurists entrusted by the Council of the League of Nations with the task of providing an advisory opinion on the legal aspects of the Aaland Islands case, we can see the diplomatic way in which they refer to the principle of self-determination of peoples as a political principle, not part of the Covenant of the League of Nations [Report "Of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands questions" (October 1920)]. In other words, the rationality informing the decisional judgment is indisputably normative.

However, despite the impossibility of confusing narrative coherence "in its own rationality or its specific noetics and intentionality" (Neves 2003, 401) with the ultimate sense of validity of legal decisions, the latter determined by a "normative axiological sense of juricidity" (Neves 2003, 401), it is necessary to recognize narrative argumentation in the determination of the facts of the case in question (Neves 2003): "In order to answer this question, the principal historical facts marking the development of the political and legal position of Finland and of the Islands must be examined" [Report "Of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands questions" (October 1920), 3] – reads the opinion, precisely before the narration of the facts begins, from the Finnish Constitution of 1809 to the plebiscite of 1919.

Therefore, the ultimate meaning-basis of validity of legal decisions is axiologically normative and juridical, and the coherence that is constituted is normative. However, let us note an essential point. If the legal opinion we have used as an example denies the existence of a legal principle of self-determination of peoples, it recognizes the importance of the political principle in the thought of the time – "although the principle of self-determination of peoples plays an important part in modern political thought" [Report

"Of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands questions" (October 1920), 3]. Moreover, for the first time, the possibility of self-determination of peoples in cases where alternative measures were ineffective was considered – "Under such circumstances, the principle of self-determination of peoples may be called into play" [Report "Of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands questions" (October 1920), 4]. One notes, therefore, a poietic opening of the law to contingencies, in which – while not abdicating normative coherence, provided by the discourse and by the materials convened – the importance of narrative and language is clear, just as it would be clear later in the "construction" of the right of self-determination of peoples as a *jus cogens* norm.

Still another example is the text of the United Nations Charter, whose linguistic ambiguity, as identified by Hans Kelsen and Rosalyn Higgins (Kelsen 2008, 52-53; Higgins 1994, 111-112), although not determining the *de jure* recognition of a right of self-determination of peoples, would pave the way for that to happen. So much so that the legal materials that followed, such as the opinions of the International Court of Justice that we have highlighted, did not fail to mention the United Nations Charter as a foundational text for the judgment woven [I.C.J. Reports, 1975, 23 (54); I.C.J. Reports, 1971, 19 (52)].

Thus, it is precisely because law is a field of knowledge that carries out from place to place, and because its maestro-language is a standardization of community commitments that are assumed as structural-narratives, that we should do our best to glimpse that prior which precedes legal crystallizations in its fundamental aspects. In other words, it is necessary to contemplate the narratives that precede this certain and determined narrative and accompany the open and systematic evolution that legal materials provide.

The use of the term "narrative" in this framework relates to how one might understand law, as we shall see, not to the defense that the realization of law constitutes a narrative realization.

5.2. The Relevance of Narrative Rationality

We have seen that there is no methodological requirement for narrative rationality. However, we have also seen the role of narrative and language

in the creation of law. We can then question to what extent the importance of those realizing elements, which has already been demonstrated, should be considered.

It seems to us that historical or fictional narrative must be understood as part of the world of life, as a characteristic and autonomous domain of reconstitution or creation of coherent plots. Since it is part of this world, it is not alien to law, as we have partly verified. However, as we have also verified through the case study, and as Castanheira Neves clarifies, if it is possible to speak of the "world of narrative" it is no less possible to speak of the "world of law" (Neves 2003, 402). When it comes to decision-making, it is this universe, in its specific legal-axiological-normative dimension, that is (and should be) methodologically considered, also as part of the world of life. Thus, the world of law touches reality, certainly touching the narratives through which reality is woven (is being woven...), but this does not mean that its concrete and rationalized realization does not constitute a self-declared subsistent autonomy.

Finally, when we wrote Law as Literature in International Law, we essentially intended to demonstrate the closeness of the domains, constituted, and reconstituted by being part of the world of life, "in the same way" (Neves 2003, 402) constituting and reconstituting reality. But also, to dilucidate, through a concrete example, the exact importance of narrative and language in decision-making, reflecting on the possibility of a "narrativization of normativity" (Neves 2003, 402). The conclusion we reach is that the fact that we can narratively/coherently structure the judgment-decisions, thus understanding them, does not imply a juridical-methodological "narrativization of normativity" (Neves 2003, 402), but a possible and specific understanding outside the "legal as legal" (Neves 2003, 402).

It then remains for us to answer one last question, which is to know whether the way in which we can effectively structure the judgments-decisions narratively/coherently might not lead us to believe in an internal narrative rationality of the judgment-decision, albeit subconscious. It doesn't. We inevitably return to the problem of the ultimate intentionality that informs the coherence-foundation of the judgment-decision. In any case, since it is not difficult to confuse the importance of narrative and language in the creation of law with a certain "narrative monism and reductivism", it is necessary to end this investigation by objectively dilapidating Castanheira Neves' critical opposition to what it was proposed by Bernard Jackson.

Bernard Jackson, inspired by Greimas' work, began by writing *Semiotics and Legal Theory* (1985), in which he proposed the application of the Greimasian method to legal texts. In 1988, he went on to study specifically "the adjudication of fact and law in court, and thereby shifting away from the semantics of the legal texts towards the pragmatics of decision-making" (Jackson 1990, 81). It is the book that results from this study, paradigmatically *Law, Fact and Narrative Coherence* (Jackson 1988), the one that especially concerns us.

However, the reference to Greimas is important, because it is from Greimasian semiotics that the distinction between "deep level of signification" (Jackson 1990, 82) and "surface level of manifestation" (Jackson 1990, 82) is drawn. It is proposed, in this difference, the existence of elementary structures of universal signification underlying all particular discourses. In effect, the "deep level of discourse" (Jackson 1990, 82) consists of the interaction between the syntagmatic axis, in its horizontality, and the paradigmatic axis, in its verticality – Greimasian semiotics is concerned with the identification of the "deep level" (Jackson 1990, 82) structures of signification that underlie the "surface level of manifestation" (Jackson 1990, 82). Thus, in those axes the semiotic-narrative level underlying any human action is affirmed: a basic narrative sequence consisting of goal-setting and recognition of performance or non-performance, where choices must be made within semiotic constraints of what can be substituted for something else. Starting from this Greimasian proposal, Jackson precisely argues that in the moments of practical legal decision-making "there would manifest not only a narrative structure, but also a rationality of narrative coherence" (Neves 2003, 405) – a proposal that Castanheira Neves (2003) critically opposes.

For Jackson (1988), inevitably, underlying the judgment-decision would be narrative models, determined, *ad exemplum*, in the pragmatics of courtroom interaction. Moreover, he admits the importance of "outside adjudication" discourses in the choice of "within adjudication" narrative paradigms (Jackson 1990, 95).

Methodologically, and considering the case study, this author's proposal is extremely pertinent. Moreover, it should be noted that narrative models are subconsciously found in the rules and in the facts, which are discursively constructed. Hence, the judgment-decision would inevitably have in "its rationality an implicit narrative coherence" (Neves 2003, 405).

Particularly on this issue, Castanheira Neves is clear: "the deliberate abandonment of the normative intentionality, of the axiological normativity

that differentiates law as law, condemns that intention to root failure in its attempt at narrative reduction" (Neves 2003, 406). In fact, as we have already mentioned, although he does not exclude narrative argumentation in the determination of facts, he teaches us that it is neither possible nor conceivable to replace the "normative" with the "descriptive", since before any "form of organization of human behavior" there are "normatively specific problems that presuppose an axiological-normative validity" (Neves 2003, 408). In sum, since law is methodologically rooted in problems[1], these require a rationality that can only be found in the domain specifically at issue, in its declared and subsisting autonomy.

6. Conclusion

It should be said that we have resignedly absorbed the space of normative coherence in law. When we analyzed legal materials, we saw the reduced role of narrative in the meaning-basis of the text, with a privileged place for the description of events, or rather, in the argumentative establishment of facts. Nevertheless, law is not an isolated domain. Because it is not, the before that precedes it, as well as the after that follows it, is indispensable. In fact, the narratives that are created in communities gain or lose momentum in the wake of legal materials. It is in this sense that we ponder the power of law as a creator of inevitably narrative constructions. It does not mean that legal instruments or concrete decisions are presented with narrative coherence – although we do not dismiss the importance of an interdisciplinary approach, for example in exegesis, as a complement to the jurist's training, and eventual richness of interpretation (after all, even if it would be of no use to law, in this confrontation there is the essential firming of legal thought which, in dynamic problematization, only grows stronger) –, what we intend to say is that, due to the ontological identification mentioned above between being and language and, symptomatically, due to the expression of the creator-self through narrative, it is in this narrative way that legal materials are absorbed. Indeed, to say "law makes its own narrative constructs" is to recognize the

[1] As mentioned by Pinto Bronze, in doctoral seminar, referring to Karl Popper and, very specifically, to the meeting between this philosopher and Ludwig Wittgenstein in Cambridge, portrayed in *The Wittgenstein Stirrer* (2001).

importance of narrative and language for the individual, for society, and thus – very much so – for law. In international law, and focusing on the importance of *jus cogens* norms, we can see them as holders or confirmers of the structural narratives, insofar as it is from convincing narratives – one might say, shared by most states – that they acquire binding force.

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