



Aporias and Tensions in Environmental Justice Legislation: a Semiotic Analysis of the Aarhus Convention

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Abstract

The Aarhus Convention is the EU's main legal reference in the field of environmental law. However, conflicting interpretations and non-compliance violations made it necessary to amend the Regulation implementing the provisions of the Convention. The purpose of this paper is to highlight, through a semiotic analysis of the normative text, ambiguities and contradictions intrinsic to the text's structure, and how these contribute to failure to implement its intended provisions. The intersemiotic translations involved in the review process, which affect the actants and actors of the environment as well as its regimes of meaning and temporality, trace out a negotiable space available to environmental justice.

Keywords Environmental justice · Semiotics of law · Intersemiotic translation · Hybrids · Aarhus convention

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1 Introduction

Normativity is a fundamental dimension of law, which defines it as a set of rules and provisions governing the behavior of subjects within a legal order. Semiotically speaking, all communicative phenomena underlie a system of meaning that constitutes them as languages. In this sense, legal discourse is also a “discursive space” whose underlying constraints and rules governing its conditions of meaning ask to be described.

Greimas’s seminal work [11] defined a precise position for structural semiotics with regard to law. According to Greimas, “legal production” is governed by a double isotopy, the first represented by legislative discourse composed of performative and normative statements, the second by referential discourse proper to social plausibility. Legislative discourse takes and translates elements from natural language, where elements from different semantic universes coexist, to create its own language, governed by a grammar and semantic universe that are properly legal. Legal discourse in this sense is the result of an intersemiotic translation, since it takes elements from the natural world and reorganizes them in the normative text to construct its own meanings.

Jackson [16] also rejects the classical legal postulate of a unity of the legal system, and speaks of many different types of discourse concerning the legal mode of signification. In this respect, he adopts the Greimasian idea of semiotic groups “as groups sharing the same system of meaning” [ivi pp. 286], which implies taking into account the differences between collectives, each characterized by a certain type of legal competences and practices.

Landowski [18], for his part, considers law as a normative discourse among others, obviously with its own internal organization, but similarly to religious, political, moral or good manners discourses. He distinguishes two levels of norm existence: the more superficial level of legal language, culturally localized, and the deeper, more universal level of the norm as a purely relational rule. In summary, from the perspective of semiotics of law, legal discourse is the result of a translation of various discourses [4]. In this way, we can explore how more or less implicit forms of social and cultural normativity are translated and stabilized explicitly into law.

Environmental law seems to us an exemplary field for the coexistence of different norms and semiotic regimes. The diverse relationships between our societies and “naturalness”, and the meaningful practices through which we experience the environment, generate effects of nature and effects of culture that contribute to the layered semiotic construction of the environment.

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, known as the Aarhus Convention, is the EU’s main legal reference in the field of environmental law. However, conflicting interpretations and non-compliance violations made it necessary to amend the Regulation implementing the provisions of the Convention. The Aarhus Convention provides us with an exemplary case study for exploring the aporias and tensions between the plurality of isotopies that make up environmental law.

According to Greimas, legal discourse promotes the narrative organization of social action by structuring a series of mandatory and prohibited procedures. The nar-

rative logic underlying the legal discourse [11, 18], in this case the legal construction of the environment, organizes forms of subjectivity and their modal determinations, differentiating positions, roles, and competences for action. Recognizing a narrative logic allows us to trace the semantic paths that underlie the meaning of the law and the relationships that are established between actants and actors, in our case between subjects concerned with environmental justice. Furthermore, at the discursive level, it is possible to explore the processes of actorialization, spatialization and temporalization of the environment in order to verify semantic and syntactic conflicts between the normative text and public debate.

Our hypothesis is that socially and culturally accepted standards in environmental matters challenge the formalization operated by the norm in the politico-legal sense of the term, and opens up a space for translation in the semiotic and legal construction of the environment. The purpose of this paper is to highlight, through a semiotic analysis of the Aarhus Convention, how the ambiguities and contradictions intrinsic to the text's structure are the reason for the failure to implement its intended provisions.

2 Case Study: The Aarhus Convention

In the legal construction of the environment, great importance lies in its hybrid character, characteristic of the plurality of isotopies that make up ecology [8, 20, 29]. Similarly, the legal landscape “is disrupted by the intrusion of a multitude of ‘hybrid objects’” [30 pp. 111]. The boundaries between what we call Nature and what we consider Culture cannot be established unequivocally, because they are interdependent:

By emphasizing this division, we understand that the expression “belonging to nature” makes little sense, since nature is only one of the elements of a complex composed of at least *three terms*: the second – culture – acts as its counterpart, while the third distributes traits between the first two. In this sense, nature does not exist (as a domain), but only as *half of a pair defined by a single concept*. We must therefore consider the Nature/Culture opposition as the focus of our attention and, above all, as the *resource* that would allow us to overcome our difficulties [22 pp. 43].

This reminds us that any definition of the environment must take into account a differential, hybrid, and problematic identity, otherwise it risks being condemned to a lack of understanding of the threats and transformations underway:

This is a real crisis of objectivity, since the origin of objects becomes unassignable. The depletion of the ozone layer, acidification, deforestation, nuclear catastrophe, desertification, the reduction of biodiversity, even the economic crisis linked to environmental degradation... [27 pp. 225].

In other words, our natural habitat is also permeated by implicit cultural and social evaluations, and the environment we normally experience is the combination of human and non-human actors, and even more so their interdependence. This entails a plural and extended definition of collectives, which, at the legal level, also implies that “we must now strive to give voice to complex socio-technical systems” [28 pp. 15]. From our point of view, the cohabitation of different discursive norms and semiotic regimes requires an adequate intersemiotic translation of the environment.

This is the context for our case study. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was adopted in Aarhus (Denmark) in 1998 under the auspices of UNECE (United Nations Economic Commission for Europe), with the aim of combining environmental protection with the principles of participatory democracy. In force since 2001, it is based on three fundamental pillars, from a semiotic point of view three Narrative Programs: access to environmental information, public participation in decision-making, and access to justice in environmental matters. The European Union has transposed the provisions of the Convention into Regulation No. 1367/2006, which applies to EU institutions and bodies¹.

Described by former UN Secretary-General Kofi Annan as “the most ambitious initiative ever undertaken in the field of environmental democracy”, the degree of involvement of informed citizens in public decisions relating to the environment makes it “the most comprehensive form of codification of environmental law” [2 pp. 9]. In fact, the Aarhus Convention establishes a series of public environmental rights and obligations for the Parties, i.e. any Contracting Party to the Convention, in order to ensure its effectiveness². From the outset, the Convention aimed not only to guarantee citizens the right to be informed about environmental issues, but also to involve them actively in the decision-making process, holding authorities accountable through monitoring and review mechanisms³.

Despite its ambitions, its implementation has been widely criticized. The EU implementing Regulation has often been criticized for limiting both access to justice [7] and public participation in decision-making [1, 32]. The most significant revision was made by Regulation 2021/1767, which improved some shortcomings but left others unresolved [13]. For example, the EU’s internal audit process has been heavily criticized for its limited scope [10]. Furthermore, the effective implementation of the Convention and related regulations varies considerably across Europe, with obstacles to enforcement reported in Eastern and Southern Europe [23].

Conflicting interpretations and non-compliance violations therefore made it necessary to amend the regulatory text. To this end, the revision process consisted of two main channels: regular meetings of the Parties (MoPs) and public consultations.

2.1 Corpus and Method of Analysis

Our analysis focused on the text of the Convention and the Regulation. The semiotic analysis took into particular consideration discourse components such as actorialization, spatialization, and temporalization, as well as the actantial structure governing the law. We then organized the analysis around core concepts such as the notion of public, environment, waste, semantic multiple isotopies, and temporality.

¹ See <https://unece.org/environment-policy/public-participation/aarhus-convention/introduction>.

² For a detailed discussion of the legislative aspects of the Aarhus Convention and its place in the general framework of environmental justice, see [2, 25, 26].

³ To date, the Convention has 47 Parties, 38 Parties to the Protocol on Pollutant Release and Transfer Registers (PRTR) and 32 Parties to the amendment on public participation in decisions on the release of genetically modified organisms (GMOs).

To highlight the aporias and tensions of the normative texts, we verified how these tensions find space for discussion in the public debate. In particular, we considered two public consultations that provided citizens and stakeholders with an opportunity to contribute to the revision process of the Convention's Regulation. Public contributions were collected in the form of written comments submitted via "Have Your Say", the European Commission's online portal where citizens and businesses can express their views on new EU policies and existing legislation. The first consultation period ran from May 8, 2018 to June 5, 2018. The European Commission received 53 feedback, 60% of which came from NGOs, including 25% from environmental organizations. European citizens contributed 24.5%, while companies and trade associations accounted for 9.5% and 4% respectively. While the second consultation period ran from March 6, 2020 to April 3, 2020. On this occasion 175 feedback were collected. Participation by European citizens increased significantly (62), while the share of NGOs fell to 17%, of which only 8% were environmental organizations.

3 Semiotic Tensions and Translations

What underlying and implicit norms contribute to structure these normative texts? One of the criticisms raised by the Committee⁴ is that the review mechanism should be open not only to NGOs, but also to members of the public. On this point, the Convention (art. 9.3) provides no binding guidance on the introduction of remedies against violations of environmental law, and allows Parties to introduce specific legitimization criteria under their national law [14 pp. 63]. The Regulation, on the other hand, interpret this provision more restrictively (art. 10 and 11), granting access to review procedures only to NGOs that meet certain conditions that "seem to limit (rather than extend) the range of potential actors" [25].

Another problem is that the review should concern acts of general scope and not only acts of individual scope. Under European law, in order to bring an action for annulment against an act, a natural or legal person must prove that the act is addressed to him or her or concerns him or her *directly* and *individually*. However, "environmental issues often affect the community and, as the principle of sustainable development testifies, even future generations" [14 pp. 59]. Nevertheless, by virtue of the "Plaumann" formula, the European Court of Justice has always favored a restrictive interpretation of the notion of "direct and individual interest", even in environmental disputes [31].

In summary, case law attributes the impasse to the conflict either between the Convention and the Regulation – public and/or NGOs access – or between the Convention and Community law – common and shared acts or acts directly and individually attributable to the person concerned.

A structural semiotics perspective suggests exploring this double tension in two directions. On the one hand, the issue is subject to a double modal constraint [12],

⁴ At the first Meeting of the Parties (MoP), held in Lucca in 2002 (MoP-1), the essential role of the Compliance Committee as the main body to monitor the implementation of the obligations of the Convention was recognized.

which is precisely what the Committee is questioning: a “must-be (NGO)”, concerning the actorialization of the legal representative, and a “must-be (individually affected)”, concerning the actorialization of the target of environmental damage.

On the other hand, it seems particularly profitable the idea of law as “legal production” [11, 17], i.e. complex concatenations of statements that translate the legal asemanic universe – the contents that derive from the referential level of natural language where different semantic universes coexist – into legal statements that are well constructed from the point of view of legal grammar. This model opens up a space for analyzing intersemiotic translations of the relationships between asemanicity and legal semanticity of discourse components such as actorialization, spatialization, and temporalization.

3.1 The Environment

The preamble to the Convention refers to a definition of the environment already attested at international level, namely in the first principle of the 1972 Stockholm Declaration, in particular the link between environmental protection and fundamental human rights [3 pp. 21]. Art. 1 defines the three fundamental actors of the text: each Party, environmental information and the public:

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to environmental information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

Art. 2 presents the different actors of action in the discursive organization of the text. Let us look at how the environment is involved. Art. 2.3 defines “environmental information” as follows:

Any information available in written, visual, aural, electronic or any other material form on:

- (a). The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b). Factors such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programs, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;
- (c). The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.

In fact, no real definition of the environment is given in this long quotation. Paragraph (a) lists some of the actors who would constitute and qualify the environment as such. Who are they? Air, atmosphere, water, soil, but also land, landscape, natural

sites – in other words, so many environmental configurations that could in turn be observed in their combinations of constituent elements. The mereological status of elements as parts and of the environment as a totality is unclear.

The list of environmental elements also includes “biodiversity”, i.e. the variability of living organisms, “including genetically modified organisms”, i.e. subjects that cannot be attributed to “pure” naturalness: along with GMOs, the figurehead of the industrialization of agriculture [24], the question of hybrids arises when part of the non-human “population” is expressly marked by the cultural trait.

Paragraph (b) indicates that environmental information also covers “factors” such as substances, energy, noise and radiation. However, the relationship between factors and environmental elements is rather vague and generic. For example, which substances would affect a given ecosystem? In what sense does energy produce effects? For that matter, energy produced by whom or by what? Secondly, these unspecified but nonetheless observable factors in physical reality – noise, radiation, energy – are juxtaposed with “activities or measures” which, because of their anthropogenic nature, are the expression of an entirely different way of “impacting the elements”.

Paragraph (c) expresses an even different vision, stating that even “the state of human health and safety, conditions of human life” can be reduced to information about the environment, showing how the environment cannot be considered separately from human actors and vice versa. The link between “human health and the environment” is part of the militant discourse of the ecologist movement initiated by Rachel Carson a few years earlier with *Silent Spring* [6], in which she argued that pesticides have a lethal effect not only on animals, but also on humans.

Overall, such an article betrays the difficulty of delimiting the circulation of an object of value such as “environmental information” between “Party” and “public” actors, i.e. subjects traditionally endowed with legal personality. The article oscillates between vagueness and semantic saturation, resulting in a definition of the environment that is *contingent* and *heterogeneous* in relation to the “naturalist” norm [8, 20, 29] that identifies nature with the purely non-human. This list-like definition [9] of the environment translates, through its openness and arbitrariness, a specific socio-political point of view in the law of the time.

We can observe that this legal production, alongside an agglomeration of parts that correspond well to the naturalistic norm (the “natural elements”), brings together two “non-legal” elements – the ecologist link between human health and the environment, and the GMO debate – which form the encyclopedic social backdrop from which the legal discourse takes shape, making its “samplings” from a level that is “legally asemanitic” [11], but already well discursivized and normed elsewhere. The cultural norm of naturalism is thus both reaffirmed and contested in the same discourse, resulting in unstable definitions.

3.2 The Public

Let us now turn to the way in which the Convention attributes an identity and actantial roles to the human actor, as in art. 2, where the various domains are set out. What is most relevant to our analysis is that the addressee “everyone” (art. 1) is now divided into “public” and “public concerned”. The “public” is defined as follows

(art. 2.4): “one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups”; and the “public concerned” is defined as (art. 2.5): “the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest”. The fragmentation of “publics” reflects the heterogeneity of the enunciating domains involved in environmental legal discourse.

A first problem concerns the definitions of actants [12]. The multiplication of actors may appear to be a simple superimposition of names, but it actually represents a distribution of the listed actors’ capacities for action. The discursive actors mentioned are specified according to the *quantity* of rights they manifest. Only the public concerned participates in the decision-making process affecting the environment (art. 6.2), and only members of the public concerned with a sufficient interest to act has access to a review procedure before a court of law (art. 9.2).

This leads to a configuration in which the capacity for action is mainly in the hands of the Contracting Parties alone, while the public plays a passive role by receiving information, but following someone else’s decision as to whether they are the “public concerned” or not. This means that access to environmental information, initially defined as a universal right, takes the form of a concession from another actor, with the result that the public is constantly reacting rather than acting autonomously.

Such a configuration of actants calls into question the self-determination and agency of the “public”, by reducing the scope of the law from the all-encompassing sphere of initial objectives (“every person”) to a subdivided and heterodirected redefinition (“public”, “public concerned”). This comes from a division, set out in the preamble and repeated in art. 1, between the main Narrative Program expressing the universalist aspiration of the right (“in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being”) and the secondary Narrative Programs with the limitations of competence that condition their concrete realization (“each Party shall guarantee the rights of access to environmental information, public participation in decision-making, and access to justice in environmental matters”).

A second problem concerns the relationship between the actants and the environment. The difficulty we observed earlier in defining the environment independently of the human – and non-human – population arises again when it comes to isolating the public independently of the environment. According to the definition of the environment, what and who can be considered “public”? This is the problem of defining the actors that are inseparable from the space, precisely the scale of intervention: “The notion of ‘public’ – as opposed to that of ‘public concerned’ used in Article 9 (1) and (2) – is not defined in the Aarhus Convention, which leaves the States Parties (including the EU) a wide margin of appreciation in the implementation of Article 9 (3)” (F11843/2018, Antoine Bailleux, Université Saint-Louis – Brussels).

What’s more, in the case of the public concerned, his “interest in the environmental decision-making” derives precisely from the scale of the pollution or environmental damage, and therefore from spatial coordinates, i.e. the condition of a subject located in space. It follows that the definition of actors is inseparable from that of

the environment. Procedurally too, the Convention ignores the multi-scale nature of environmental policies, which have different effects in different places and at different times [5].

The more general problem of applying the Convention seems to be attributable to a dimensional isotopy. It's a problem that the syntax of Greimasian discourse can highlight, as two key elements generally considered independent are indistinguishable: actors can only be defined on the basis of the relevant space. Contrary to the Convention's approach, the environment cannot be understood as a framework separate from the subject, and even less as an objective background in which subjects with greater or lesser capacities act; rather, there are complex, dynamic and stratified assemblages between humans and non-humans, transformative relationships between subjects and objects, reciprocal influences between the system and its innumerable, heterogeneous constituents.

3.3 The Denial of the Environment

Paradoxically, the more abstract and generic the environment and its elements (air, atmosphere, water, soil, etc.), the more concrete, tangible and measurable its arch-enemy, the elements that cause damage to the environment and can have significant effects on it.

Art. 6, which regulates public participation in decisions relating to specific activities, refers to a long and detailed list of activities subject to authorization, contained in annex I. However, something surprising happens in the text of the annex, as there is an intrusion of the concrete in relation to the abstraction of legal norms. This passage moves away from the language of law to talk about ordinary, common-sense evidence. It describes in detail the relationship between humans and non-humans, focusing on the material world they share.

In this context, something very similar to what Latour noted in *La fabrique du droit* [21] occurs, i.e., in relation to the abstraction of the Convention there is a sudden "intrusion of the concrete", in which the environment is seen through the threats that can destroy it: "[the text] leaves the terrain of law and, passing onto that of fact, speaks no more than of ordinary, common-sense evidences [ivi pp. 55]". As in one of the cases highlighted by Latour, these are: "field data, because it is these which present a truly decisive interest since, escaping the written, formal and solemn procedure of the expression of law, they enable us to understand the ins and outs of reasoning [...] publicly drafted in the most lapidary manner possible" [ivi pp. 62]. The point here is to detail the relationship between humans and non-humans: "to penetrate the textual matter so characteristic of the world" [ivi pp. 40].

In fact, in the annex we read that activities are grouped into macro-areas: "energy sector", "production and processing of metals", "mineral industry", "chemical industry", "waste management" and so on for some twenty entries. Each of these macro-areas is so detailed that the lists and sub-lists are extremely specific. Let us take the case of the chemical industry, which is divided into several categories and sub-categories:

- (a). Chemical installations for the production of basic organic chemicals, such as : (i) Simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic); (ii) Oxygen-containing hydrocarbons such as alcohols, aldehydes, ketones, carboxylic acids, esters, acetates, ethers, peroxides, epoxy resins; (iii) Sulphurous hydrocarbons; (iv) Nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates; (v) Phosphorus-containing hydrocarbons; (vi) Halogenic hydrocarbons; (vii) Organometallic compounds; (viii) Basic plastics materials (polymers, synthetic fibers and cellulose-based fibers); (ix) Synthetic rubbers; (x) Dyes and pigments; (xi) Surface-active agents and surfactants;
- (b). Chemical installations for the production of basic inorganic chemicals, such as: (i) Gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride; (ii) Acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids; etc.

Significantly, the logic of the concrete imposes itself when we speak of damage, pollution or waste, i.e. of deviation from what is considered the legal norm, the positive and objective data⁵.

However, the activities listed in the annex are measured by numerical values that precisely define the threshold beyond which they may have a significant effect on the environment:

Installations for the intensity rearing of poultry or pigs with more than:

- (a). 40.000 places for poultry.
 (b). 2.000 places for production pigs (over 30 kg); or.
 (c). 750 places for sows.

The potential environmental damage is translated into extensive values. Below the threshold, these activities are not considered a risk to health and are therefore not of public interest. Objective measurements are an expression of a quantitative logic for controlling the flow of information in a regulated distribution system.

If the Convention expels figurativity from reality, relegating it to an appendix, i.e. to the periphery of the text, in public debate it regains relevance and centrality. And through figurativity, a collective takes place that can no longer be reduced to mere legal entities, but is made up of humans and non-humans beings linked by spatial and emotional relationships and situated in an environment restored in all its experiential density. Here are a few examples from feedback: “Despite optimal conditions on specially landscaped islands, our Canada and white-fronted geese prefer to nest in ponds further away from wind turbines [...] Turkeys and hens change perch according to wind direction” (F510698/2020, Jutta Reichardt and Marco Bernardi, citizens). “The negative effects of wind turbines are generally denied or even ignored [...]. The

⁵ The Kiev Protocol on Pollutant Release and Transfer Registers is another example of the extreme level of detail with which the legal standard defines environmental waste (Baiona 2011: 62–64).

physical nuisances of noise and vibration, which act like mechanical trauma [...] are marginalized in Germany” (F510696/2020, Holger Diedrich, citizen).

The feedback of 2020 are above all a heterogeneous but familiar collective of owls and bats, electric cars, migratory bird routes, wind farm planning, unknown viruses, sulfur mines, distances from residential buildings, hedges and trees, infrasound, nuclear reactors, ancient forests, bees and insects, parachutists and ultralights, market values, light emissions.

3.4 Regimes of Meaning

The Committee considers problematic also the fact that any administrative act “relating” to the environment should be challengeable, and not just those “under” environment law, and that even acts without legally binding effects should be subject to scrutiny. This is because the Convention and the Regulations are governed by a dominant legal isotopy, asserting “an individual right to the environment considered among fundamental human rights” [2 pp. 2]. Its protection is defined as a right-duty for every citizen, including future generations. This implies that every individual has the right to live in a healthy environment, and the duty to protect and improve it for the benefit of present and future generations. To assert and fulfill this right and duty, citizens must have access to information, be able to participate in decision-making processes and have access to justice in environmental matters.

However, art. 4.4 shows how access to environmental information is limited by the coexistence of other rights.

“A request for environmental information may be refused if the disclosure would adversely affect: (a) The confidentiality of the proceedings of public authorities [...]; (b) International relations, national defence or public security; (c) The course of justice [...]; (d) The confidentiality of commercial and industrial information [...]; (e) Intellectual property rights; etc.”.

Moreover, according to the public debate, environmental issues transcend legal isotopy alone, and encompass alternative and competing political, social and economic values. The notion of environment then suggests more nuanced linguistic values (the concept of “relatedness”) because they are better suited to its unstable and porous boundaries. Thus, in this respect, the position of WWF Greece (F11854/2018): “Environmental law is a heuristic concept without clearly defined boundaries. The environmental impacts of non-strictly-environmental law must be recognized: without this recognition, the concept of ‘integration’ of environmental protection requirements into the definition and implementation of the Union’s policies and activities [...] becomes meaningless. ‘Relatedness’ to the environment is a criterion which is more accurate, and amenable to administrative (and judicial) review”.

Moreover, the conflict between the costs of socio-economic development borne by companies (F11808, F11822, F11831, F11833, F11846, F11864) and the environmental rights defended by NGOs, which is reflected in opposing interpretations of the legal text (closure vs. expansion of access to justice), demonstrates that the environment is a terrain of political confrontation far beyond the legal field.

From this perspective, if living environments are the product of a plurality of regimes of meaning [22], we can interpret the inadequacy of the Convention as a failure of translation between legal isotopy and other concomitant discourses.

3.5 Temporality

A final aspect to consider concerns the treatment of time in environmental discourse. The structure of art. 3 of the Convention highlights the discursive genre of the text, that of the promise. The article lists a series of future actions that take the form of a series of oriented operations:

(1) Each Party shall take the necessary legislative, regulatory or other measures [...] (2) Each Party shall endeavour to ensure that [...] (3) Each Party shall promote [...] (4) Each Party shall provide for appropriate recognition [...] 7. Each Party shall promote [...] 8. Each Party shall ensure that [...].

The text, then, is an enumeration based on the rhetorical form of alliteration, emphasizing the equality of the Parties and the beginning of an action made up of many different processes. The subject of the action in the text – “Each Party” – is repeated six times, and each action is constantly oriented towards the future, representing its inchoateness that is the initial aspect of the action to be undertaken. Actions are supposed to take place in the future and follow a repetitive pattern, bringing the legal discourse closer to ritual formulas.

We have seen that annex I contains a long and detailed list of activities subject to authorization. Now, the authorization governing public participation refers to “proposed” activities (art. 6.1). Here too, the reference is to the future, without taking into account the past, unless “a public authority reconsiders or updates the operating conditions for an activity” (art. 6.10).

With a similar temporal value, the 2002 Lucca Declaration (MOP-1) begins by stressing that the Convention is the ultimate expression of environmental democracy, as well as a “new type of environmental agreement that recognizes our duties towards present and future generations”. Its temporality runs again from the present to the future, with no mention of the past.

In the feedback, most of the verbal tenses adopted concern the present, in which it is said, however, that urgent action is needed; there is no longer any tolerable time dilation, no longer any possibility of making promises. This is why there is no projection into the future: “Action is urgently needed, and parties from different sectors and sides have already agreed [...] We must proceed now” (F11817/2018, Justice and Environment, NGO). Temporality presents itself as a normative urgency, not only in the sense of reparation, but also as a call for an ethic of responsibility: “Any delay will set a bad example for the implementation of the Aarhus Convention in all signatory parties, both inside and outside the EU” (F11732/2018, Jan Haverkamp, citizen).

Where appropriate, the public debate adopt the past by tracing the number of errors attributable to the EU, as well as the actors who support the communication of these errors.

In the chain of textual translations, therefore, a different temporality is required: while the Convention and the Regulation abolish the time of the past in favor of a normative present projected into the future – prescriptiveness, rituality, inchoateness

–, feedback also use the present tense but with a different value, since past errors must be remedied without further time dilation – imperative form, punctuality, terminativeness – or even the past as a form of reappropriation of a historical process. It seems the difference between the time of innovation, full of promise without hindsight, and the time of repair [15], which reclaims the memorial dimension of the past.

4 Conclusions

A textual analysis of the Aarhus Convention, compared with public consultations, shows that there are implicit dimensions that environmental law does not reflect in its normative framework. From a semiotic point of view, the Convention encounters problems of application as it is affected by semantic and syntactic discrepancies between the different norms and semiotic regimes that coexist within it.

For example, there is a tension between the definition of environment, which is unstable and heterogeneous and oscillates between vagueness and semantic saturation, and that of waste and environmental damage, characterized by the intrusion of the concrete and a high level of figurativity.

Furthermore, the proliferation of public actors reveals an actantial imbalance, as it distributes the capacity for action asymmetrically among the actors.

Feedback and public debate testify to the existence of a space for translation in the semiotic and legal construction of the environment, thematizing the environment through different actantial, spatial, temporal, and symbolic configurations.

The temporal construction of the Convention, based on the discursive genre of the promise and the ritual formula, and the erasure of past time in favor of a normative present projected into the future, clashes with a social narrative of the environment that implies a memory of the past and imposes the urgency of the present time.

All of these aporias and tensions arising from intersemiotic translation processes between texts and practices challenge the environmental justice legislation. From the perspective of an expanded and participatory normativity, environmental democracy presents a reserve of untranslatability available for future translations.

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