

## MITIGATORS IN INTERNATIONAL LEGAL DISCOURSE

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**Abstract.** *The article focuses on the study of various types of mitigators in international legal discourse from linguistic and pragmatic perspectives. The objective of the article is to analyze hedges and bushes as key mitigators in international legal discourse by examining them as linguistic and pragmatic devices in their function in weakening the obligatory modality of documents. This objective is achieved through the use of research methods such as speech act analysis supplemented by explanatory tools from mitigation theory. The research reaches the following main conclusions: Hedges are associated with the illocutionary part of speech acts and are represented by verb groups with the modal “shall” or “must” in the passive voice, impersonal constructions, and predicates with the adjective “necessary” that are used in the illocutionary part of speech acts instead of the verb of obligation. All identified hedges significantly weaken the illocutionary force of directive and commissive acts and reduce the degree of obligative modality by “distancing” the states parties to the document from the prescribed actions. Through the use of hedges, a direct directive or commissive acts are transformed into the indirect ones with a distinct assertive illocutionary component. Hedges such as impersonal constructions and predicates with the adjective “necessary” state the necessity of performing the actions rather than prescribing obligations. De-intensifying the obligative modality, hedges reduce the legal force of document articles that contain mitigators. Bushes are present in the propositional part of speech acts and indirectly influence the degree of obligation by expanding the scope of alternative applications of the norm. Among the means performing this function are parenthetical constructions, adverbs, and adverbial constructions of manner, which establish a dependence between the degree of obligation of the norm and the circumstances of its application, and also project the execution of the norm into an indefinite future, thereby blurring the normative content of the article. The prospect for further research lies in analyzing mitigators in other institutional discourses, such as political and inaugural discourses.*

**Key words:** *international legal discourse, hedges, bushes, mitigators, speech acts.*

## МІТИГАТОРИ В МІЖНАРОДНО-ПРАВОВОМУ ДИСКУРСІ

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**Анотація.** *Стаття присвячена дослідженню різних видів мітигаторів у міжнародно-правовому дискурсі в лінгвістичному та прагматичному аспектах. Метою статті є аналіз хеджів і бушів як лінгвістичних і прагматичних девайсів-мітигаторів у міжнародно-правовому дискурсі з виявленням їх функцій у послабленні директивної й комісивної модальності документів. Мета реалізується за допомогою використання таких дослідницьких методів, як актомовленнєвий аналіз у поєднанні з пояснювальними інструментами теорії мітигації. Дослідження дійшло таких основних висновків: хеджі асо-*

ційовані з ілокутивною частиною мовних актів і представлені дієслівною групою з модальним *shall* або *must* у пасивній формі, безособовими конструкціями та предикатами з прикметником *necessary*, які використовуються в ілокутивній частині мовних актів замість дієслів зобов'язання. Усі виявлені хеджі значно послаблюють ілокутивну силу актів і знижують ступінь облігативної модальності як у директивних, так і в комісивних мовних актах, оскільки «дистанціюють» держави-учасниці документа від запропонованих до виконання дій. Завдяки хеджам прямий директивний або комісивний акт трансформується на непрямий із виразним асертивним ілокутивним компонентом. За допомогою таких хеджів, як безособові конструкції та предикати з прикметником *necessary*, замість припису зобов'язань констатується необхідність їх виконання. Це деінтенсифікує облігативну модальність, впливаючи на зниження юридичної сили статей документа, що містять мітигатори. Буші наявні в пропозиційній частині мовленнєвого акта й опосередковано впливають на ступінь обов'язковості, розширюючи обсяг альтернативного застосування норми. Серед засобів, що виконують таку функцію, виділено вставні конструкції, прислівники та прислівникові конструкції способу дії, які встановлюють залежність між ступенем обов'язковості норми й обставинами її застосування, а також проєктують виконання норми в невизначене майбутнє, розмиваючи нормативний зміст статті. Перспективою подальших досліджень є аналіз мітигаторів в інших інституційних дискурсах – політичному й інавгураційному.

**Ключові слова:** міжнародно-правовий дискурс, буші, хеджі, мітигатори, мовленнєві акти.

The study of mitigation as a category of communicative weakening in the context of international legal discourse deserves close attention. This is because linguistic means of mitigation are directly linked to the pragmatics of the document, affecting the intensity and degree of categoricalness of speech acts, and consequently influencing the legal force of the document. Given that international treaties are often signed by countries with diverse economic, political, and social conditions, linguistic tools and methods of mitigation allow for the adaptation of obligations to these differences, accommodating the interests and goals of various states parties. This ensures the realistic fulfillment of obligations and reduces the likelihood of disputes and conflicts between the parties.

Despite the importance of mitigators for interpreting a document in terms of its flexibility or, conversely, the rigidity of the obligations it contains, there are only a few studies focused [9; 10; 12; 13] on these means within international legal discourse. Most of these studies have been conducted predominantly within the field of translation studies [12; 13].

The term “mitigation” (from the Latin *mitigare*, meaning “to soften” or “to weaken”) was introduced into pragmatics by B. Fraser in 1980 [6]. He noted that the primary aim of mitigation is to reduce the likelihood of negative reactions from the addressee, which may occur when specific speech behavior has the potential to lead to conflict or communicative breakdown [6, p. 341]. Similarly, C. Caffi defines mitigation as an umbrella category encompassing a wide range of strategies by which

the speakers weakens or softens the interactional parameters of their speech to reduce potential communicative risks [1, p. 171]. From the perspective of speech act pragmatics, mitigation is defined as the reduction in the intensity of the illocutionary force of an utterance to ensure successful and effective communication. By weakening the illocutionary force, mitigators serve to fulfill two tasks directed at both the speaker and the addressee: they minimize the speaker's responsibility [7, p. 348] and “minimize the violation of the partner's territory” [8, p. 46], thereby maintaining communicative balance.

Caffi [2] introduces three types of mitigation devices – bushes, hedges, and shields – which are associated respectively with the propositional, illocutionary, and deictic aspects of utterances. Bushes are used to “conceal” the true meaning of an utterance, thereby affecting its propositional content. Hedges are mitigating devices that “stand” between the speaker and their message, indicating a lack of commitment to the truth of the proposition.

However, Caffi's classification is designed for conversational discourse and, as evident from the definitions, it pertains to epistemic modality and assertive speech acts to some extent. In contrast, in international legal discourse, due to its specific nature, mitigators are associated with the deontic modality of obligation and recommendation. Accordingly, these mitigators do not influence the degree of truthfulness of an utterance but rather the weakening of the illocutionary force of directive and commissive acts and their associated deontic modality.

In our article, we do not consider the group of shields, as deictic markers, especially the collective “we”, are conventionally used in international legal discourse not to avoid the speaker’s responsibility – thus, they are not considered mitigators – but to express the collective will of the states parties to the document.

The purpose of the article is to analyze hedges and bushes as key mitigators in international legal discourse from the perspective of their manifestation as linguistic and pragmatic devices and their function in weakening the directive and commissive modality of documents.

Materials and research methods involves speech act analysis added by explanatory tools of mitigation theory. When analyzing speech acts, we used the structural formula of directive and commissive speech acts [10, p. 1039–1047].

This formula includes, on the one hand, the performative / illocutionary part, which pertains to the intended function or force behind the utterance, such as commanding, requesting, or suggesting. Obligation or self-obligation in illocutionary part are introduced by means of using illocutionary verbs or their substitutes – the markers of the directive or commissive illocution. The second part of the structural formula is the propositional component, which involves the content or the specific information conveyed (e.g., the actions or states described).

The corpus of analyzed texts includes five international legal documents, which contains mitigation devices,

The analysis of international legal discourse has identified two main groups of mitigators. The first group includes indirect speech acts characterized by weakened illocutionary force (the intended action behind the utterance, such as giving an order or making a request). In such acts, the predicative core of the utterance, which denotes obligation or recommendation, is subjected to mitigation. For instance, instead of directly stating an obligation (“Countries must...”), the utterance may be phrased in a way that suggests obligation more gently or indirectly (“It is advised that countries should...”). This reduces the perceived strength of the directive or recommendation. The second group of mitigators is embedded in the propositional content of speech acts as specific formulations that can weaken obligations. Examples include phrases like “voluntary measures”, which suggest that compliance is optional rather than mandatory;

“to the maximum extent possible”, “subject to available resources”, “in the absence of serious obstacles”, which imply that obligations are contingent upon certain factors, making them less absolute; as well as conditions or stipulations in the form of extended parenthetical constructions structures, through which the obligations of the parties may be reduced or even nullified.

Let’s examine these two groups of mitigators in terms of their impact on the illocutionary force of international legal acts.

*With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights (...)* (Article 4 (2)) [3].

The provided passage includes a combination of two types of mitigators: a parenthetical construction “where needed” and an adverbial construction “to the maximum of its available resources”. Both mitigators fall into the category of bushes, as they do not form part of the predicative group that introduces obligation but rather belong to the propositional part, which formulates the normative content.

The key component in the adverbial structure is “available resources”, which generates the implicature of “conditions” for taking action. This phrase links the degree of obligation to the resources a state has at its disposal, implying that the state’s commitment is contingent upon its capabilities. In this case, the formulation slightly weakens the obligations of the parties by indirectly affecting the illocutionary force of the commissive act.

Similarly, the parenthetical construction “where needed” performs a mitigating function for obligations by allowing states to determine what is necessary on their own terms, introducing flexibility and thereby reducing the strictness of the obligations, thereby influencing the alternative application of the norm to some extent.

Finally, the third bush mitigator, “to achieving progressively”, acts as a modifier of the action – realization of the obligations established by the article concerning the adherence to human rights. The semantic element of “gradualness” in the adverb “progressively” implies a duration with an indefinite time framework, which projects the implementation of the norm into an uncertain future. Suggesting a gradual

approach to fulfilling obligations, without a definite timeframe, this mitigator blurs the normative content thereby diminishing the immediate illocutionary force of the commissive.

Mitigation can affect not only the propositional but also the illocutionary component of an utterance, or it can be present in both simultaneously. The typical examples of such mitigators are the verb groups with the modal “shall” or “must” in the passive voice.

*Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language* (article 14 (3)) [5].

*The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.* (Principle 3) [14].

These structures serve as a means of expressing obligation, aligning with the illocutionary component of the utterance. However, by using the passive voice, they “distance” the actor from the prescribed actions, thereby reducing the degree of obligative modality. Using “shall” or “must” with the passive voice expresses a strong obligation or requirement but does so without specifying who exactly must act. This creates a sense of obligation that is less direct and more detached. It allows for a less direct imposition of duties and can make the fulfillment of obligations seem less urgent or personal.

A similar function is performed by impersonal constructions, which create a certain “distance” between the obligation and the enforcing subjects.

*To ensure that present and future generations are able to meet their needs, it is urgent that all States and pertinent actors: (a) promote the implementation of the United Nations 2030 Agenda for Sustainable Development and its SDGs (...)* (Article 5) [4].

This impersonal construction is used instead of the verb of obligation and therefore pertains to the illocutionary component of the directive speech act. However, rather than urging action, they state the necessity of the immediate actions prescribed by the norm, effectively transforming a directive illocution into an assertive one. The reduction of the directive illocution, in turn, impacts the degree of obligatoriness of the norm. Impersonal constructions do not specify a subject performing the action. Instead, they present the action as a general requirement or neces-

sity. By avoiding direct reference to the enforcing subject, these constructions create a layer of abstraction or “distance” between the obligation and those responsible for fulfilling it. Shifting the focus from direct obligation to stating a general necessity or urgency shifts, in turn, the illocutionary force from being directive to assertive. By transforming a directive illocution (which explicitly instructs) into an assertive illocution (which merely states necessity), the sense of compulsion or immediacy in the obligation is reduced. This reduction in the directive illocution lessens the perceived binding nature of the norm. Parties may interpret the obligation as more flexible or advisory rather than as a strict command.

An indirect directive can also be indicated by a predicative group with the adjective “necessary”, which contains an implicit prompt to action. This aligns with the illocutionary component of the utterance but linguistically marks it as a statement, thus resembling an assertive.

*Strong political commitment is necessary to develop and support, at the national, regional, and international levels, comprehensive multi-sectoral measures and coordinated responses* (Article 4 (2)) [15].

A predicative group involving the adjective “necessary” inherently suggests that an action should be performed but does so in a way that is less forceful than direct directives. This type of statement implicitly encourages action, linking the necessity with the illocutionary intent of urging someone to act, but it does so through the guise of an assertion rather than a command.

Passive constructions, impersonal structures, and predicates with the adjective “necessary” serve as hedge mitigators because they influence the illocutionary scope of the utterances. They transform directives and commissives into indirect speech acts with a primary illocutionary component of assertion or declaration, thereby affecting the degree of obligatoriness of the norm. The statement’s form changes from a directive (commanding action) to an assertive (stating a necessity). This linguistic transformation reduces the directness and forcefulness of the command. Hedge mitigators, such as the use of “necessary”, passive voice, or impersonal constructions, impact the illocutionary scope by making the command less direct and more of an implied necessity, which affects how obligatory the norm appears to be.

In international legal discourse, hedges can be combined with bushes, significantly reducing the directive illocutionary force.

*In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities* (Principle 15) [14].

This passage contains a hedge *shall be widely applied* and two bushes. One of the bushes, “widely”, serves as an adverbial modifier of the verb “apply” and is included in the verb group with the modal “shall” in passive. This modifier broadens the scope for alternative applications of the norm, a flexibility further enhanced by another bush – the clause “according to their capabilities”. The phrase “widely applied” functions as a bush by broadening how the precautionary approach can be implemented, implying variability in application. “According to their capabilities” introduces flexibility based on each state's capacity, which can reduce the perceived obligation to a more achievable level. The combined use of “widely”, “according to their capabilities” and the modal “shall” in passive significantly mitigates the directive nature of the original command. Instead of a strict directive to apply the precautionary approach universally and uniformly, these mitigators allow states to adapt the implementation based on their individual capabilities and circumstances.

This combination of hedges and bushes effectively shifts the obligation from a strict, binding

directive (obligative modality) to a more permissive modality (implies that the action is allowed or permissible under certain conditions), or dynamic modality – “the execution of an action under certain circumstances” [10, p. 1043], implying that it may not be uniformly required or enforceable. It scales down the strength of the directive illocutionary force.

Analysis of mitigators in international legal discourse has shown that hedge and bush constructions are characteristic in this type of institutional communication. Hedges are associated with the illocutionary part of speech acts – verbs and their substitutes expressing obligation. Substituting such illocutionary markers with passive constructions, impersonal structures, or other forms lacking active verbs of obligation affects the intensity of the illocutionary force of directives, transforming them into indirect speech acts that de-intensify obligative modality. Bush constructions appear in the propositional part of statements and indirectly influence the degree of obligation, broadening the scope of alternative application of norms.

By incorporating mitigators, international legal texts can provide guidelines that are less rigid and more adaptable to the diverse circumstances of the parties involved. This approach acknowledges the practicalities of different states' abilities to comply and enforces a more realistic and inclusive interpretation of international norms.

## BIBLIOGRAPHY

1. Caffi C. Mitigation. K. Brown (Ed.). *Encyclopedia of language and linguistics*. Oxford : Elsevier, 2006. P. 171–175.
2. Caffi C. On mitigation. *Journal of Pragmatics*. 1999. № 31 (7). P. 881–909.
3. Convention on the Rights of Persons with Disabilities. 2006. URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> (date of appeal: 09.06.2024).
4. Declaration of Ethical Principles in relation to Climate Change. 2017. URL: <https://www.unesco.org/en/legal-affairs/declaration-ethical-principles-relation-climate-change?hub=66535> (date of appeal: 03.06.2024).
5. Framework Convention for the Protection of National Minorities. Council of Europe. 1995. URL: <https://rm.coe.int/16800c10cf> (date of appeal: 01.06.2024).
6. Fraser B. Conversational mitigation. *Journal of Pragmatics*. 1980. № 4 (4). P. 341–350.
7. Holmes J. Modifying illocutionary force. *Journal of Pragmatics*. 1984. № 8. P. 345–365.
8. Langer M. Zur kommunikativen Funktion von Abschwachungen: pragma- und sociolinguistische anderssuchungen. Munter : Nodus-Pabl, 1994.
9. Kravchenko N., Pozhar A. Directive Acts in International Legal Discourse: Scale of Illocutionary Force Intensity. *International journal of philology*. 2023. № 14 (2). P. 13–22.
10. Commissive Modality of International Legal Discourse: An Implicit Mitigation of the Bindingness / N. Kravchenko, O. Chaika, I. Kryknitska et al. *Theory and Practice in Language Studies*. 2022. № 12 (6). P. 1039–1047.
11. Kravchenko N., Vilenskij S., Yudenko O. Deictic mitigation vs. Commissive acts in political interview (based on the modern European discourse of aid to Ukraine). *Bulletin of Alfred Nobel University. Series “Philological Sciences”*. 2022. № 2 (44). P. 193–200.

12. Illocutionary Pragmatic Adaptation Challenge: Ukrainian Translations of English-language Soft Law Texts / N. Kravchenko, M. Prokopchuk, A. Pozhar et al. *Amazonia Investiga*. 2022. № 11 (49). P. 267–276.
13. Markova Ju. Peripheral Means of Translation Adaptation of Modality in Ukrainian Translations of English-Based International Legal Texts. *International journal of philology*. 2022. № 13 (1). P. 50–58.
14. Rio Declaration on Environment and Development. 1992. URL: [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf) (date of appeal: 01.06.2024).
15. WHO Framework Convention on Tobacco Control. 2003. URL: <http://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf?sequence=1>– (date of appeal: 04.06.2024).

## REFERENCES

1. Caffi, C. (2006). Mitigation. In K. Brown (Ed.). *Encyclopedia of language and linguistics* (pp. 171–175). Oxford: Elsevier.
2. Caffi, C. (1999). On mitigation. *Journal of Pragmatics*, № 31 (7), pp. 881–909.
3. Convention on the Rights of Persons with Disabilities (2006). Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> (date of appeal: 09.06.2024).
4. Declaration of Ethical Principles in relation to Climate Change (2017). Retrieved from: <https://www.unesco.org/en/legal-affairs/declaration-ethical-principles-relation-climate-change?hub=66535> (date of appeal: 03.06.2024).
5. Framework Convention for the Protection of National Minorities (1995). Council of Europe. Retrieved from: <https://rm.coe.int/16800c10cf> (date of appeal: 01.06.2024).
6. Fraser, B. (1980). Conversational mitigation. *Journal of Pragmatics*, № 4 (4), pp. 341–350.
7. Holmes, J. (1984). Modifying illocutionary force / J. Holmes. *Journal of Pragmatics*, № 8, pp. 345–365.
8. Langer, M. (1994). *Zur kommunikativen Funktion von Abschwachungen: pragma- und sociolinguistische andersuchungen*. Munter: Nodus-Pabl.
9. Kravchenko, N., & Pozhar, A. (2023). Directive Acts in International Legal Discourse: Scale of Illocutionary Force Intensity. *International journal of philology*. № 14 (2), pp. 13–22.
10. Kravchenko, N., Chaika, O., Kryknitska, I., Letunovska, I., & Yudenko, O. (2022). Commissive Modality of International Legal Discourse: An Implicit Mitigation of the Bindingness. *Theory and Practice in Language Studies*, № 12 (6), pp. 1039–1047.
11. Kravchenko, N., Vilenskij, S., & Yudenko, O. (2022). Deictic mitigation vs. Commissive acts in political interview (based on the modern European discourse of aid to Ukraine). *Bulletin of Alfred Nobel University. Series “Philological Sciences”*, № 2 (44), pp. 193–200.
12. Kravchenko, N., Prokopchuk, M., Pozhar, A., Kozyarevych-Zozulya, L., Rozhkov, Ju. et al. (2022). Illocutionary Pragmatic Adaptation Challenge: Ukrainian Translations of English-language Soft Law Texts. *Amazonia Investiga*, № 11 (49), pp. 267–276.
13. Markova, Ju. (2022). Peripheral Means of Translation Adaptation of Modality in Ukrainian Translations of English-Based International Legal Texts. *International journal of philology*. № 13 (1), pp. 50–58.
14. Rio Declaration on Environment and Development (1992). Retrieved from: [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf) (date of appeal: 01.06.2024).
15. WHO Framework Convention on Tobacco Control (2003). Retrieved from: <http://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf?sequence=1>– (date of appeal: 04.06.2024).