

The Positioning of If-clause in Legal Provisions of CISG and Its Semantic Iconicity

Wenjun Wang

School of Foreign Languages
Kunming University
Kunming, China

Abstract—Semantic iconicity indicates that syntactic structure reflects the empirical structure in some ways. This has been widely observed and proved to be true in ordinary language phenomenon. For if-clause, because condition is essential for result, if-clause generally is positioned prior to its main clause. But legal provision is different from ordinary language. The 129 if-clauses in United Nations Convention on Contracts for the International Sale of Goods show that, if the main clauses involve authoritative norm, prohibitive norm, mandatory norm and definition norm, the main clauses will be the starting point of the clause. The special positioning of if-clause can be well explained by semantic iconicity for all the emphases of law are nothing but rights and obligations as well as legal certainty. Thus, different from general iconicity, if-clauses have to be positioned after the main clause when rights, obligations and legal certainty are concerned.

Keywords—if-clause; legal norm; semantic iconicity; syntax

I. INTRODUCTION

Semantic iconicity means that syntactic structure reflects the empirical structure in some ways [1]. This theory has been proved to be true in ordinary language phenomenon. But legal syntax is different from other syntax in its focuses, special requirements for accuracy, consistency, refinement, gravitas and linguistic normalization. This paper takes United Nations Convention on Contracts for the International Sale of Goods (1980) (“CISG” for short) as corpus to examine the iconicity rule of the positioning of if-clause in legal provisions.

II. SEMANTIC ICONICITY AND SYNTACTIC STRUCTURE

Dissel thinks the adverbial word order can be reasoned by semantic iconicity [2]. He points out that iconicity has deep impact on the positioning of temporal adverbial clause: under most circumstances, if the event of subordinate clause happens earlier than that of the main clause, the subordinate sentence will be positioned before the main clause and vice versa [3]. Haiman also explains the reason of word order (including adverbial) in a clause from the perspective of iconicity. He studies linguistic distance and conceptual distance, and he believes that language distance is actually the reflection of conceptual distance [4]. For if-clause, he especially points out that if-clause is generally positioned prior to main clause because it is conditions that lead to

results [5]. Based on the deep and wide observation of syntax, some syntactic researchers express semantic iconicity by the following 3 basic rules for the positioning of words: first, the old information will be expressed prior to the new one; second, the closely-related concepts will tend to be positioned together; third, the information occurred in the speaker’s mind earlier will come out also earlier [6]. Chinese scholar Huang Guowen also suggests the sense of iconicity but in another way. According to his saying, the word order of an adverbial, under many circumstances, is never flexible [7]. Some scholars, by studying the relationship between the adverbial and the words modified by it, sum up some rules related to iconicity [8].

III. THE POSITIONING OF IF-CLAUSE IN CISG

Foremost among the international conventions is the United Nations Convention on Contracts for the International Sale of Goods (1980). CISG came into effect on January 1, 1988. It is now the principal international law regulating the sale of goods between parties in different countries. Up to June 2014, 81 countries have authorized and participated in this convention.

CISG has 101 articles with 129 if-clauses, among which 82 if-clauses are positioned prior to main clause while 46 are positioned after the main clauses and one is positioned in the middle. The above statistics conveys that 63.6% of the if-clauses follow general semantic iconicity way (therefore called “general if-clause” hereinafter), that is, the condition led in by “if” is positioned prior to the result while 35.7% are thus called “non-general if-clause” for if-clauses are positioned after main clauses.

The 46 non-general if-clauses in CISG can be sorted into the following 9 syntactic patterns.

A. A Is N./Adj. If... (or a Verb Which Suggests the Meaning “Is”)

This syntactic pattern could be seen in Articles 14(1), 18(2), 21(1), 25 and 26, for example:

Article 14(1): A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or

implicitly fixes or makes provision for determining the quantity and the price.

B. A May V. If...

This syntactic pattern could be found in Article 15(2), 16(1), 22, 23, 34, 44, 46(2), 48(1), 49, 51(2), 64, 71(1), 73(3), 87 and 88, for example:

Article 46(2): If the goods do not conform to the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

C. A Can Not V. If...

This syntactic pattern could be observed in Article 16(2), for example:

Article 16(2) (a) and (b): However, an offer cannot be revoked: (a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or (b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

D. A Must V. If...

This pattern is shown by Article 33, 42, 71(3) and 84(2) (a) and (b), for example:

Article 71(3): A party suspending a performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue the performance if the other party provides adequate assurance of his performance.

E. A Is/Is Not Liable for...If...

Article 35(3) and 79(1) are in this pattern, for example:

Article 79(1): (1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

F. A Loses the Right to V. If...

This pattern could be seen in Article 39(1), 39(2), 43(1) and 82(1), for example:

Article 82(1): The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.

G. A Is/Is Not Entitled V. If...

Article 40 and 43(2) are in this pattern. Example:

Article 43(2): The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

H. A Do (Does) Not Apply If...

Article 72(3), 82(2) and 86(2) show this pattern, for example:

Article 86(2): This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination.

I. A Is (Would Be) Exempt (from Liability) If...

In Article 79(2) is this pattern used, for example:

Article 79(2): If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:

- He is exempt under the preceding paragraph; and
- The person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

IV. THE SEMANTIC ICONICITY OF NON-GENERAL IF-CLAUSE IN CISG

A. The Further Classification of the 9 Non-general If-clause Syntactic Patterns

If one takes the 9 non-general if-clause syntactic patterns into an overall consideration, it will not be hard to find out that those main clauses of the 9 non-general if-clause syntactic patterns can be further classified as follows:

- Authoritative norm: "may", "is entitled to" and "is (would be) exempt (from)";
- Prohibitive norm: "can not", "is not liable for", "lose the right to", "is not entitled to", "do not apply";
- Mandatory norm: "must", "is liable for";
- Definition norm: "is n/adj." and "is not n/adj."

The authoritative norm, prohibitive norm and mandatory norm actually suggest the behavior patterns of a legal subject.

- In authoritative norm, the legal subject is authorized to take certain actions or enjoy certain rights;
- In prohibitive norm, the legal subject is not allowed to do something; and
- In mandatory norm, the legal subject is required to take certain actions.

While the above three norms indicate a legal subject's behavior patterns, definition norm actually explicitly defines "what is X" or the features of X.

B. The Structure of Legal Norms of the 9 Non-general If-clause Syntactic Patterns

As for the structure of legal norms, Chinese jurists have long followed the “three elements” theory of traditional Soviet jurisprudence, that is, condition to which a legal norm applies, right or obligation and sanction. [9] This view is still adopted by most law textbooks and dictionaries and accepted and insisted by many people although, in recent years, some researchers have reflected on and questioned the traditional theory of “three elements”, which has led to several new viewpoints in the structure theory of legal norms.

As far as the 9 non-general if-clause syntactic patterns are concerned, instead of three elements, only 2 elements are included: namely condition and right/obligation are involved while sanction is omitted, or definition and condition are explicitly given while sanction is also omitted.

C. The Semantic Iconicity of Non-general If-clause

From the perspective of semantic iconicity, it will not be hard for us to explain the reason of the legal norm structure of the 9 non-general if-clause syntactic patterns.

It has been long believed that, without the use of “rights”, “obligations” or some synonyms, it is impossible to talk about law. A common saying is that the purpose of law is to create, define and protect rights, and to define and enforce obligations.[10] Therefore, right and/or obligation are the very essential elements occurring to one's minds before everything else, which makes these elements indispensable in legal norms when the condition is satisfied.

Authoritative norm, prohibitive norm and mandatory norm are three legal norms classified according the legal subject's behavior patterns, which suggest that, when certain conditions are met, the legal subject has the right or obligations to or not to take specific actions. It is understandable that, compared to the condition, a legal subject cares about his rights and obligations more than about conditions, therefore, these 3 norms frequently come to his mind prior to the condition, and this semantic iconicity makes the main clauses expressing authoritative norm, prohibitive norm and mandatory norm go before their if-clauses.

In addition to authoritative norm and prohibitive norm, definition norm follows non-general if-clause syntactic pattern as well. Although rights and obligations are the top elements law focuses on, legal certainty is another value law always pursues. Legal certainty is the classical topic of law, and it is concerned about whether there is a single right answer to a legal question. People always want the law to have certainty, which is consistent with the human characteristic of seeking security. What is more important is that, to some extent, to argue for legal certainty is to stick to the law. It is due to the pursuing of legal certainty that, in the definition norm, main clauses suggesting the legal certainty go before their conditions.

V. CONCLUSION

From the above analysis, it is apparent that, from the perspective of iconicity, the positioning of if-clause in CISG could be divided into two ways: general if-clause and non-general if-clause.

A majority of the if-clauses follows the general if-clause way by being positioned prior to their main clauses because a condition goes before a result.

Meanwhile some if-clauses clearly follow different iconicity way, namely, the non-general if-clause way, by positioning if-clause after its main clause. The phenomenon can be well explained by the following semantic iconicity:

- In authoritative norm, prohibitive norm and mandatory norm, where a legal subject's rights and obligations are concerned, the main clauses which indicate rights and obligations go before if-clause for, compared to the condition, the legal subject definitely cares more about his rights and obligations.
- In definition norm, where legal certainty is involved, the main clauses which suggest legal certainty have to be positioned prior to their conditions for legal certainty is not only what a legal subject wants to acquire from law but also what law intends to convey.

Semantic iconicity is closely related to natural laws and instinct of people's cognition. It answers why a certain syntactic structure is and should be positioned in one way rather than in another way. The research and application of semantic iconicity in legal provision will benefit not only the legislators to express their legal ideas consistent with their original thoughts but also the judges, lawyers and the parties concerned to understand the provisions consistent with the original thoughts of the legislators. By doing so, the rights and obligations of a legal subjects together with the legal certainty will be promised.

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