2. On Terminology: Why Language Matters
On Terminology: Why Language Matters

Language is not a neutral medium that passes freely and easily into the private property of the speaker’s intentions; it is populated – overpopulated – with the intentions of others. Expropriating it, forcing it to submit to one’s own intentions and accents, is a difficult and complicated process.

Bakhtin 1983: 294

The notion of terms as something stable, fixed, technical or neutral, or in other words, as things whose significance in a given context may be simply declared, has been criticized extensively, and for good reason. Throughout the course of this book, however, this notion will be revisited numerous times. Terms, and words, exist in contextual relationships that determine their meaning, their connotations and denotations. Context is not limited to the composition of words in sentences and texts. It also includes social and cultural factors, such as the status of a speaker or author, and the setting in which the term is used. Consider the term “tradition”: it can point to valued practices developed over time and esteemed by a group of social actors. It can also be used in a negative manner or in contrast to “modern” and “better” practices. Then, “tradition” can have legal implications. When it is used in legal texts, what qualifies something as “traditional” must be defined, and such a definition differs from the two previous uses of the term. The perspectives on the term and on what it signifies are manifold. They range from appreciation to

12 For broad and basic critiques, see Adorno’s lectures on Philosophische Terminologie (Adorno 1997); Wittgenstein’s Tractatus Logico-philosophicus (Wittgenstein 1963), Bakhtin’s work on heteroglossia (Bakhtin 2007), Fabian’s “Taxonomy and Ideology” (Fabian 1977), or – for a more recent view from linguistic anthropology – Silverstein 2004.
critique, from its emotive to its definitional qualities. Taken out of context, it is difficult to infer the meaning of such a term only with reference to its definition in a dictionary. Neither is the syntactical relationship of such a term to other parts of an utterance sufficient for fully understanding its meaning. A broad range of factors, external to the immediate occurrence of a term, influences its meaning. This observation has been the starting point for a number of fields interested in understanding and analyzing the relationship between language and language use, and thus the relationship between linguistic systems and their social and cultural contexts. These fields include linguistic anthropology, linguistic pragmatics, and the ethnography of communication. Their specific orientations, theoretical and methodological starting-points, and relevance to the subject of this book will be discussed in greater detail in the course of this chapter.

The premise they all share, namely that language has to be viewed in its social and cultural context, leads to the observation that the (potential and actual) use and implications of terms need to be scrutinized. Tradition is one such term that, within scholarship and especially in the disciplines of folkloristics and anthropology, has been criticized extensively. Mainly the notions of tradition as something organic and authentic are viewed as problematic. Instead, scholars have pointed out the intentional use and construction of tradition for differing purposes. Tradition is thus not only a concept, but it can be a means to accomplish objectives and pursue interests. Do actors in international negotiations talking about traditional knowledge evoke the same critical concept of tradition as scholars? How can one distinguish everyday usage of the term from the heavily criticized and reflected-upon concept as used in folklore studies? Does the scholarly effort to clarify terms have an influence on how taxonomies are created and used within a group of social actors? More generally, how should one treat the everyday use of terms relative to the critical use of terms in scholarship? These questions are especially important when the object of study is embedded in everyday language use (Adorno 1997: 29): if the uses of tradition are intentional and strategic, the uses of the term are contingent on these intentions and strategies as well. Hence, the different uses of the term entail perspectives on what it signifies, and these perspectives are coupled with interests. Similar to the insight from anthropology and folkloristics that tradition is used intentionally, employing the term “tradition” is strategic as well. This is true for other terms, too: they are based on specific perspectives on their subject matter, and they are often used strategically. The analysis of terms must take this variability and bias into account.

One principle of talk is to come to an understanding of a matter, to share information and ideas about something:

Our talk can cause others to reach, with us, an intersubjective identification of things. [...] People can use language to construct collectively reached and collectively consequential knowledge, opinion, and belief about all manner of things. In principle descriptive language can be fashioned into a tool or instrument for constructing sharable knowledge in the very event of communication. (Silverstein 2003: 8–9)

Yet, there is another layer to talk aside from the construction of shared knowledge. While the identification of things is part of discourse, talk is also a way for people to frame a matter according to their intentions. When people talk about tradition and other terms, their goal is not only to share knowledge. In situations where actors hold divergent views on a matter, contestation is as central to talk as understanding. Language is used to pursue one’s interests and accomplish objectives. The descriptive quality of language is at times superceded by its pragmatic quality, and this is especially the case in international negotiations. It is important for a study on such negotiations to consider that terms are ambiguous, based on diverging perspectives, and used strategically.

By mapping the various uses of key terms, one can arrive at a more contextualized analysis, which is helpful in analyzing contingent terminology. One can in this manner establish how and in what (changing) contexts specific terms are used, and analyze the implications of the contextualized usages. Terminology might be interpreted in multiple ways or only one way, and terminology itself might be harnessed strategically or be used intentionally in specific interest constellations. In legal linguistics, this has been discussed in terms of the “vagueness” or “ambiguity” of terminology (Bhatia et al. 2005, Hutton 2009), with a focus on how to pragmatically deal with such uncertainties in legal interpretation (Münch 2002). Transcultural (Bhatia et al. 2008) and multilingual (Hilf 1973, Jansen 1999, Luttermann 1999, Triebel and Balthasar 2004) settings have been taken into account as well, but the emphasis is on questions of legal certainty and legal interpretation. However, the strategic and ideological14 implications of contingent (and thus ambiguous) terminology in differing sociocultural and political contexts have largely been neglected. Noteworthy exceptions, such as Alan Audi’s “A Semiotics of Cultural Property Argument” (2007) do not limit themselves to formal analysis but provide a re-contextualization of terms in linguistic and ideological systems, allowing for a

14 By ideological I refer to “belief systems” that are “fundamental or axiomatic”, “stable” and “socially shared by the members of a collectivity of social actors” (van Dijk 2006: 116). They are connected to perspectives on terminology without necessarily being strategically harnessed. Strategies, on the other hand, are directly or indirectly based on belief systems.
location and interpretation of terminology as it relates to its social and cultural embeddedness.

This chapter introduces the key analytical concepts employed in this study, setting the framework for the analysis of an intergovernmental committee that addresses questions of intellectual property (IP) and genetic resources (GR), traditional knowledge (TK) and traditional cultural expressions (TCEs). By looking at scholarly concepts and theories from a variety of fields whose interest is in language and society, the ethnography of communication, and linguistic pragmatics, one can construct a theoretical and methodological framework for analyzing the communicative events that take place during international deliberations on cultural property. Chapters 4 and 5 address questions concerning the function and ambivalence of terms used in everyday life as contrasted with the role language plays in negotiations about TK and TCEs.

**Linguistic Anthropology**

*Language is a universal and essential capacity of mankind; study of language sheds light on human nature as a whole, and study of languages is indispensable to an understanding of the concrete historical forms taken by human nature.*

Hymes 1975: 348

A starting point for the analysis of communicative events is the basic observation that people more often than not use language as a tool to communicate to each other how they see the world and how they want it to be. The prerequisite for this communicative processes is a shared language or a shared understanding of language. While anthropology is – according to a very broad and generalizing definition in numerous works and studies – the study of humankind, linguistic anthropology concerns itself with the role language plays in culture. The anthropological sub-field of linguistic anthropology emerged from the Boasian paradigm of cultural relativism. As cultures came increasingly to be seen from the view of their members, and not as developmental stages on an evolutionary ladder, the focus also shifted away from normative judgments to holistic and emic descriptions of social life and cultural practices. Part of this new paradigm was the attention paid to language and language use, including the relations between language and culture (see Boas’s 1911 Handbook of American Indian Languages). From this emerged
the study of language and culture or the view of “language as a cultural resource and speaking as a cultural practice” (Duranti 2002: 8899).15

Central to linguistic anthropology is thus the study of language in context, and a focus on the speakers of a given language or the participants in a speech community, and their communicative interactions. The focus of study came to be on the performative aspects of language use rather than on the competence to speak a language.16 This distinction draws on de Saussure’s notions of langue, the underlying linguistic structures and the arbitrary relation between signs in a semiotic system, and parole, the actual communicative events where speakers draw from langue to form utterances (Duranti 1997: 14). Duranti outlines three central theoretical concepts for linguistic anthropology that have been of lasting importance: performance, indexicality, and participation.

The first – performance – is an interest in how language is actually used, and thus the ‘things people do with words’ (Austin 1962). Not the grammatical structures of language and the rules for use and interpretation – what Chomsky terms “competence” –, but mainly the way people interact by use of language are central to the study of language in linguistic anthropology: “Competence in this case is the knowledge of a language that an ideal speaker has. Performance instead is the implementation of that knowledge in acts of speaking” (Duranti 1997: 14). In contrast to Austin’s use of the term, performance in linguistic anthropology is not limited to describe what can be achieved by the use of language. It includes the additional dimension of how language is used, and by what performative principles – such as aesthetic criteria or the appropriateness of an utterance – listeners evaluate what is being said (15). Then, there is an interest in linguistic anthropology in the creative aspects of performance, that is the ways in which speakers change, manipulate, or reproduce these evaluative principles (16).

The concept of indexicality concerns the social functions of language and the intentions speakers have when using it. For example, language can be used to point to objects, to signal the social status of its speaker or listener, or a speaker’s choice of words can hint at his political stance or intentions (18).

Participation – the last concept – is an interest in those who make, use, receive and interpret linguistic utterances (20). This concept points to the fact that taking part in communicative events also means being part of a social group with implica-

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15 Much attention has been paid to definitions of the field, with further differentiations made between the terms “linguistic anthropology”, “anthropological linguistics”, “ethnolinguistics” or sociolinguistics” (Duranti 2001, Salzmann 1993) and specific attention to the historical development of the discipline in different contexts (Duranti 2003, Gumperz and Cook-Gumperz 2008, Rampton 2007). Here it suffices to briefly outline the basic assumptions of the field.

16 Chomsky used this to differentiate between competence and performance (1965), though this was criticized by Dell Hymes, among others, who argued for a focus on performance and that the two could not be separated.
tions for the use of language. In short, the connectedness of participants underlines the social and political contexts of language use. In contrast to atomistic communicative models of ‘speaker’ and ‘hearer’, the concept of participation pays attention to social dynamics and other contextual variables influencing what is said, how and with which intentions it is said, and which evaluative principles apply to a communicative event.

These three aspects of performance, indexicality and participation are of central importance for this study, and are also part of the ethnography of communication.

The Ethnography of Communication

For the anthropological study of behavior there is another area of importance, one that seems general, central, and neglected. It can be called the ethnography of speaking.

Hymes 1962: 13

The ethnography of speaking and communication emerged in the late 1960s in the United States out of common interests in linguistic anthropology, sociolinguistics and folklore. It now has a permanent place in the cultural sciences there (Duranti 1999a, 2004, Keating 2002, Saville-Troike 2003). In developing a theory of language use by systematic ethnographic methods, Dell Hymes (1964) saw a means for analyzing the role of language in culture and society in a manner that went beyond the scope of a more theoretical linguistics.

Central to this is the speech community as the basic unit of analysis. It denotes a group sharing specific rules with regard to language use, and a shared understanding of communicative interaction and interpretation (Hymes 1986: 53–55). Beyond an interest in grammatical and vocabulary-centered topics, the ethnography of communication extended the analysis of “how to do things with words” (Austin 1962) to argue that the complex socio-cultural norms of speech communities, together with their speech genres, allow for inferences about other components that constitute culture (Hymes 1979). By recording and closely analyzing what are ultimately immaterial speech events and performances, poetic as well as political dimensions of culture can be identified, and profane insights, spiritual principles and ideological aspects be shown (for examples, see Gumperz and Hymes 1954, Bauman and Sherzer 1989, and Gumperz and Cook-Gumperz 2008).

Such studies go beyond the original focus on indigenous populations in the Americas, and extend the focus on verbal performance to written material and new media. Richard Bauman (1983) has applied the approach to the analysis of historical source material to illustrate the ideological principles of Quaker practices with respect to speech and silence. Charles Briggs (1996) used the approach to draw
attention to gender and age-related hierarchies and the contestation between Mexicans and other ethnicities in New Mexico (1996). Briggs also worked out a research manual, entitled “Learning How to Ask” (1986), that focuses on communicative competence and the need to be aware of communicative aspects while conducting fieldwork. He has extended this in analyses of the political and cultural effectiveness of language ideologies (Briggs and Mantini-Briggs 2003, Briggs 2005, 2007, Bauman and Briggs 2003). Susan Gal uses the approach to examine the relations between multiple language regimes and ideologies in the political arena (Gal and Woolard 2001, Irvine and Gal 2000, Gal 1998, 2008b). Bodies of knowledge are conveyed and transformed in communicating, with the specific mode signaling how the message is to be received. In the case of non-communicating, messages may be kept secret or forgotten. The ethnography of speaking has also been used for analyses of the role of speech in political events (Brenneis and Myers 1984, Gal 2008a) and conflicts (Brenneis 1988), as well as in the study of political representation and communicative performance (Yankah 1995, Gal 2008b).

Central to the ethnography of speaking is the SPEAKING-model (Hymes 1964). It consists of eight factors and sixteen components that provide a guide for ethnographically analyzing communicative events. These are briefly outlined here and taken up in the subsequent chapters, using WIPO’s IGC as an example.

The first factor is situation, its components the setting and the scene of linguistic interactions. While the setting denotes the material characteristics of a speech event, the scene signifies the “‘psychological setting’ or the cultural definition of an occasion as a certain type of scene” (Hymes 1986a:60). On the one hand, the scene refers to aspects such as locality, architecture, the design of rooms or the availability of microphones and speakers. On the other hand, the term also takes into account participants’ understanding of how the setting is defined in relation to other speech events. Within a given setting, the interaction may be redefined “as a changed type of scene, say, from formal to informal, serious to festive, or the like” (60).

The second factor is participants, whose components are speaker, addressee, hearer and addresser. The distinction derives from the insight that the speaker of an utterance is not necessarily the addressee in cases where actors speak on behalf of another entity. Similarly, the hearer or recipient of an utterance does not need to be the addressee in situations where multiple audiences are addressed (61).

The third factor – ends – consists of the outcomes and goals of speech acts. Here, “the conventionally expected or ascribed must be distinguished from the purely situational or personal, and from the latent and unintended” (61–62). What is taken into consideration are both the intentions and motivations of participants, as well as the unintended or unforeseeable consequences of a speech event.

The fourth factor Hymes describes is the act sequence, consisting of message form and message content. While the first of these two components denotes how
something is said, the second relates to what is said. Hymes gives the example: “He prayed, saying ‘…” which refers both to form and content, in contrast to “He prayed that he would get well”, which only reports message content (60).

The fifth factor, the key, denotes the “tone, manner, or spirit in which an act is done” (62) and finds its expression in verbal or non-verbal cues.

Hymes calls the sixth factor instrumentalities, and argues it consists of the components channels – as in the different modes of communication, such as speaking, writing or singing – and forms of speech – meaning dialects, language varieties, registers and code (63).

The seventh consists of norms, both of interaction and of interpretation. These point, in turn, to aspects of speech that regulate turn-taking or forms of address and to the contextual delineation of how an utterance can be interpreted by the various recipients (64).

Finally, the eighth factor, the genre of a speech event, denotes “categories such as poem, myth, tale, proverb, riddle, curse, prayer, oration, lecture, commercial, form letter, editorial, etc.” (65). Hymes thus includes the formal characteristics of speech, making it possible to recognize conventional forms of speech and to use and interpret them accordingly.

The ethnography of communication including these components is qualified for the research on the IGC which constitutes a dynamic communicative arena that remains fragile as to functional intercultural communication. At the same time, the IGC is a locally situated example for communicative patterns of experience in globally connected spaces. A significant part of the WIPO committee is the communication among members who do not share the same origins, language, material culture, or world-views. This communication utilizes face-to-face meetings as well as virtual and print communication to create a communicative community that means to include, if not necessarily represent, “the world” and hence to create ‘global’ guidelines for cultural property.
**Pragmatics & Metapragmatics**

*Pragmatics will have as its domain speakers' communicative intentions, the uses of language that require such intentions, and the strategies that hearers employ to determine what these intentions and acts are, so that they can understand what the speaker intends to communicate.*

Davis 1991: 11

*Metapragmatics, as it has grown out of the Jakobsonian paradigm, beginning ostensibly as a means of understanding the linguistic signal, has evolved from this purely linguistic modeling to include broader semiotic activity, now a means by which to conceptualize and explain the appropriate functioning of these signs in pragmatic usage.*

Pressman 1994: 482

Pragmatics is the branch of linguistic anthropology concerned with language use and its social and cultural functions. It can be described as the study of the meanings of linguistic signs relative to their communicative and social functions. However, it has been difficult to define the field of pragmatics in a precise way that does not leave anything out and that at the same time is not too broad.17 Probably the most important aspect in this field of study is the programmatic distinction in semiotics between syntactics, semantics and pragmatics.18 While *syntactics* studies the formal relationship between signs, *semantics* looks at the relationship between signs and the things they represent. *Pragmatics examines* the relationship between signs and the interpreters of signs. Semantics, the “study of meaning in linguistic signs” (Silverstein 1976: 190) is limited in its scope as it does not pay attention to language use and to the contexts of linguistic utterances. Levinson attempts to weigh the pros and cons of a number of definitions, one of which is that:

*Pragmatics is the study of the relations between language and context that are basic to an account of language understanding.* (Levinson 1983: 21)

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17 “Levinson’s extremely careful weighing of the pros and cons of various definitions does not lead much further than the vague notion of pragmatics as the study of meaning in context (given substance only by ostensibly defining it as the study of whatever phenomena Pragmatics discusses). Though such a definition may lead to the acceptability of the claim that semantics deals with truth-conditional aspects of meaning whereas pragmatics is concerned with aspects of meaning that cannot be accounted for in terms of truth conditions, it certainly does not support a boundary between pragmatics and sociolinguistics.” (Verschueren 1985: 460).

18 This distinction dates back to Morris’s “Foundations of the Theory of Signs” (1938) or Carnap’s “Foundations of Logic & Mathematics” (1951).
Central here is the notion of context, used as a means to separate linguistic semantics from linguistic pragmatics.

Indeed, this distinction – however problematic and inadequate may be – is crucial for grasping the scope of pragmatics. The subject of the field is the study of language use, involving not only the semantic message, one constructed according to grammatical and syntactical rules, but also all the other factors that Hymes lists in his SPEAKING-model: the situation, participants, ends, act sequence, key, instrumentalities, norms of interpretation and interaction and genre.

Hence, the scope of pragmatics extends to such aspects as the conditions for an understanding of language, not only with regard to semantics, but also in relation to the social and cultural context of language use. That may be characterized by factors such as the appropriateness or felicity of an utterance, the communicative competence to use and interpret utterances, or the exploitation of communicative forms for specific functions. It can also involve the use of honorifics to signal differences in social status or the existence of conversational implicature that communicates a second pragmatic message. More generally, pragmatics deals with the different functions speech can have (Jakobson 1960) in the various contexts of its use. Thus, it goes beyond the study of semantico-referential meaning, whose signs are “the aspect of meaning which describes events in the world that are independent of the circumstance they are uttered in” (Silverstein 1976: 14) as opposed to indexical meaning, the “meanings of linguistic signs relative to their communicative functions” (20) in a given context. Thus, both the ethnography of communication as outlined by Hymes as well as pragmatics are concerned with specific instances of language use, its functions and implications.

But are participants in communicative events aware of the communicative functions that are activated by utterances? Discussions of communicative competence (Hymes 1971) partly address this, as it relates to the requirements actors need to meet to communicate adequately.

Metapragmatics also addresses this question. Its study is of “referential event[s] in which pragmatic norms are the object of description” (Silverstein 1976: 48). As Charles Briggs puts it, “much can be gained by distinguishing the complexities of how signs circulate from the way that people represent signs and attempt to regulate their uses” (Briggs 2012: 97).

The distinction between social and discursive functions of utterances (pragmatics) and talk about these functions (metapragmatics) is especially vital to the analysis of discursive practices in zones of contestation. The intentional coding of events or strategically highlighting event features uses the multi-functionality and indeterminacy of utterances, as Charles Goodwin has shown in an exemplary

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19 The notion of “conversational implicature” refers to “something which is implied in conversation, that is, something which is left implicit in actual language use” (Mey 1993: 99). See also Carston 2004.
manner for courtroom argument (1994). Thus, by looking both at pragmatics as the social functions of utterances and at metapragmatics as the awareness of these functions and the competence to exploit them, the communicative strategies speakers use to reach their goals can be analyzed.

Context is of central importance here. On the one hand, the knowledge of context is essential for participants of a communicative event to choose how to mediate their perspective on a given subject (e.g. to convince a jury of the guilt or innocence of a defendant) or to choose a coding scheme for an utterance appropriate to audience and context. This knowledge of context is also vital in analyzing such speech events. To understand the perspectives taken or the coding schemes of participants in communicative events, it is both important to distinguish between semantics, pragmatics and metapragmatics (by way of linguistic analyses) and to focus on the context of an utterance. As Silverstein puts it, “the use of some particular word or expression at a moment in denotational text-time [...] comes differentially to invoke – to summon to the here-and-now – some specific cultural concept in a schema of such” (Silverstein 2004: 634). Thus, only analyzing text and talk would fail to account for contextual features that are linked to embedded cultural or ideological concepts. Pragmatics studies the meanings and functions of language use and utterances in relation to contexts, and metapragmatics allows for a reflection on the intentional or directed uses of such functions.

The approaches used in linguistic anthropology, the ethnography of communication, pragmatics and metapragmatics are very important for the analysis of pragmatic strategies, communicative patterns and the differential use of language, especially in, but not limited to, the context of WIPO. What one sees in this forum is a highly politicized use of words, and linguistic strategies or patterns that change over time, space and the context in which they are used. The context as well as the social and political functions of language play a central role in this committee, so the following chapters focus on them to gain an understanding of the communicative processes shaping negotiations on cultural property.