

Approaching Ambiguity in International Treaties: Translators between Interpretation, Drafting and Risk Management

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Abstract:

The present paper addresses a chimerism, a legal ambiguity occurring in a diplomatic context. It discusses the nature of ambiguity in international treaties, which is often intentional and constructive, and the challenge it poses in translation. Indeed, translators of international legal instruments are confronted with a myriad of linguistic considerations when interpreting treaties - which often contain ambiguities, challenged by the intertextual and interdiscursive nature of treaty texts in their endeavor of producing equally authentic texts in other languages, and bound to a meticulous risk-management approach when addressing ambiguities in the source language for translation purposes. The paper concludes that translators are not expected to explicit ambiguities in the source but to transfer such ambiguities into the target text, conveying, thus, the risk they bear.

Keywords: ambiguity; international legal instruments; legal translation; risk management; presuppositions; implicature.

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. INTRODUCTION

"The law is a profession of words" (Mellinkoff 1963). Indeed, words for law are the building blocks of a performative discourse that enacts and enforces rights and obligations, nationally and internationally. Nevertheless, the language of law, while being a genre where accuracy is the Holy Grail giving the implications of any legal instrument, is replete with ambiguities in many instances. Ambiguity, occurring at all levels of any language, is omnipresent in all genres and is possibly an inherent feature of language.

Paradoxically, ambiguity has more than one definition with various interpretations each. For instance, Ronald Munson (1979, 74) asserted that "an expression is ambiguous when it has more than one meaning and it is used in a situation or context in which it can be understood in at least two different ways." This definition aligns with Aristotle's account of ambiguity, which suggests that the number of items that constitute the vocabulary of any language is much smaller than the number of realities that such vocabular items are supposed to depict (Wardy 1996, 130–132). The Greek philosopher highlights the fact that language, while having endless possible uses, might have limitations; ambiguity dwells in such limitations. Though Aristotle's account of ambiguity might have solid merits, it is a relatively crud and limited view of a complex linguistic phenomenon with various pragmatic and semiotic implications.

From philosophy to practicality, the present paper sheds light on an ambiguity that is situated in a crossroad between two disciplines with distinct respective discourses, international law and diplomacy. It focuses on translating ambiguity that occur in international legal instruments, namely international treaties. This type of ambiguity is both intertextual and interdiscursive. Therefore, the paper tackles translating treaty ambiguities rather than treaty translation ambiguities. In other words, it addresses the way translators approach ambiguities in the source text as an inherent feature of legal language and overlooks ambiguities incurred from translation, which can be due to translation deficiency, difficulty or impossibility.

2. Ambiguity in International Law and Treaties

Ambiguity, as an inherent feature of diplomatic discourse, would inevitably affect the law governing diplomacy and international relations, public international law. Though the debate on diplomatic ambiguity involves political and strategic considerations conveyed via a language that encompasses pragmatics and semiology, the language of international law, including treaties, follows suit maintaining the same ambiguity for genuine pragmatic purposes (Doonan and Foster 2001, 119–120).

Moreover, history is full of treaties and agreements that contained constructive ambiguities. A list that encompasses diplomatic instruments where ambiguous formulae were adopted to bridge the parties' differences and help diplomacy prevail may include Athenian Constitution, Homoousia and the First Nicean Council, W. Wilson's "14 Points", Yalta Declaration, UN SC Resolution 242, 6-Point Agreement, Shanghai Communiqué, Dayton Peace Accords, "Good Friday" Agreement (Pehar 2001)

While the nature of diplomatic discourse mostly contributes to its ambiguity, international treaties deem ambiguity a versatile tool to successful drafting and serene treaty conclusion for many established reasons. Such ambiguity occurs in various forms that operates at different, yet overlapping, levels.

3. Forms of Ambiguity in Treaties

Ambiguity mainly occurs as of the stage of negotiation in any treaty making. Treaty negotiators are deemed masters of ambiguity. An ideal negotiator should have a high tolerance for ambiguity as well as the willingness and readiness to test his own assumptions against the other party's intentions (Jönsson 1990, 63). Therefore, ambiguity, mainly constructive ambiguity, is a tool to be harnessed for pragmatic purposes that range from trying to pass one party's forethought provisions to unveil the other party's playing cards in negotiations.

Likewise, constructive ambiguity is a performative means justified by a pragmatic finality. Richard Bilder (1962) explained in this matter: "Often agreement on a particular matter will only be possible through the adoption of very broad language in the text, which in effect leaves the problem for later resolution." In addition, while ambiguity seems to be a solution at the

stage of negotiation, it is a problem at interpretation, whether by a jurist or a linguist. In other words, ambiguity, whether constructive or destructive, is always a postponed problem that has to be dealt with subsequently.

Cao (2007, 23) stresses the fact that a minimum commitment to the possibility of intrinsic or unintended ambiguity has to be observed in the language of law as “the English legal language is full of imprecise and ambiguous expressions which are not necessarily intended.”

As per ambiguity in treaties, and without any distinction between intrinsic and intended ambiguities, there often occurs three overlapping types of ambiguity, semantic ambiguity, syntactic ambiguity and contextual ambiguity.

3.1 Semantic Ambiguity

Often referred to as lexical ambiguity, semantic ambiguity operates at the level of words and expressions. It occurs when a word or expression may bear more one specific meaning while the context is relatively deficient in delimiting the scope on the intended meaning. Examples may include words such as *duly*, *diligent*, *reasonable*, *relevant*, *appropriate* etc. Such words, despite their notorious ambiguity, are very recurrent in international treaties (Houbert 2005, 33).

Moreover, taking the word “*reasonable*” or “*appropriate*” in various collocative instances in treaties would shed light on how vague and volatile such qualifiers might be. Both qualifiers require a “*point of reference*” according to which they would make sense. In other words – that might bring about more ambiguity on the definition rather than clarification, the point of reference represents the extent to which something is deemed “*reasonable*” or “*appropriate*”.

Another case of semantic ambiguity in treaties is the extensive use of archaic language, pertaining mainly to Latinate legal register and tautologies.

Though continuous efforts to use plain English in legal drafting (Butt and Castle 2006, 112–126), the archaic and Latinate registers of international treaties may cast a problematic ambiguity that will tremendously complicate the task of treaty interpretation. While many

frequent Latinate expressions such as *as mutatis mutandis*, *ad hoc*, *inter alia*, *pro rata*, etc. represent no issue in interpretation, the majority of terms and expressions that stem from Latinate register are semantically synonym to vagueness and imprecision (Mellinkoff 1992).

In addition to Latinate words and expressions, tautologies, also known as legal pairs, are abundant in international treaties. Tautologies are list of synonyms that do not significantly contribute to elucidating meaning rather than obscuring it. Tautologies come in pairs and triples including *terms and conditions* - *null and void* - *rules and regulations* - *final and conclusive* - *goods and chattels* - *amend, vary and modify* - *costs, charges and expenses* (Doonan and Foster 2001, 119–122).

Tautologies date back to the Middle Ages when drafters used to couple the English term with its French or Latin counterpart with the supposition of clarifying its meaning.

That being said, while tautologies are an old tradition of legal drafting, they are used frequently in texts of treaties for one or more of three common reasons. First, it is upholding a long-preserved tradition of legal drafting, therefore, their use is aesthetic. Second, pairing synonyms is often deemed a guarantee that a tautology will cover a broad scope of meaning in a pragmatic strategy that favours maximum meaning over minimum. The third possible reason goes further in legal pragmatism and, thus, linguistic pragmatics. It is a way to reconcile differences between parties where either/each party's suggestions can be accounted for and adopted, and this in the form of tautologies.

While the aforementioned cases are prime examples of ambiguity manifestation in international treaties, such ambiguity is further rooted in the legal sentence and treaty syntax.

3.2 Syntactic Ambiguity

Syntactic ambiguity is mainly caused by the complex structure and composition of legislative statements, sentences. Indeed, legislative sentences, particularly treaty sentences, are overloaded with a complex myriad of phrases and subordinate clauses. To further complicate matters, the organization of the detail plethora contained in the legal sentence relies

on a scarce use of punctuation marks that is as blurred as the use of pronouns and cohesive devices. All of these would often generate interruptions in syntax, which will eventually give rise to syntactic ambiguity (Houbert 2005, 33–49). In addition, another cause of syntactic ambiguity is the way words are arranged and ordered within the legislative sentence.

To have a grasp of such syntax complexity, it is quite instrumental to understand the legislative sentence structure and the way words are arranged within. The legislative sentence is made up of a legal subject, legal action, and the *Case*.

On the one hand, the legal subject represents “the person on whom an obligation is imposed or on whom a power, a privilege or a right is conferred.” On the other hand, the legal action, that equals the predicate in the grammatical sentence, contains the enacting verb and states what is expected from the legal subject. As per the *Case*, it constitutes all the circumstances and conditions that add details to the “*legal subj. + action*” combination in any given legislative sentence. The *Case* encompasses a variety of modifying and qualifying words, phrases and clauses; these may be conditional, descriptive, referential, technical, etc. (Crabbe 1993, I:73–75).

While the legal subject and legal action of the legislative sentence are common syntactical components as they respectively equal subject and predicate in the grammatical sentence, the *Case*, with all its abundant circumstances and conditions, is the major cause of syntactic ambiguity (Doonan and Foster 2001, 161). Moreover, not only their abundance is challenging but also is their excessively rigid placement in an attempt from drafters to achieve maximum precision and clearer reference in the sentence. The drafter’s maximum commitment to precision is paradoxically the major cause for the cumbersome and unnatural legislative sentence turns. This rigid and inflexible word placement contributes further to the ambiguous nature of legal syntax.

Another manifestation of syntactic ambiguity in treaties are pronominal adverbs. Pronominal adverbs are cohesive devices such as

“*hereto*”, “*thereby*”, “*whereof*”. They are formed by combining an adverb and a proposition to substitute a phrase made of a preposition and a pronoun (Osminkin 2020). Such adverbs are supposed to contribute to legal cohesion and precision. Nonetheless, whereas Halliday & Hasan (1976, 4) noted that cohesion not only connects but also unveils the interdependency of the textual elements, legal cohesion might be confusing at times and lead to ambiguity (Geng 2018).

Legal cohesion, like grammatical cohesion, operates on the surface of the text and refers to a broader and deeper concept that is concerned with contextual and situational relations underlying the text. While cohesion, being objective, is automatically recognized by textual and grammatical connectors, coherence, being subject to the reader’s knowledge of the world, is perceived through the conceptual and sematic extratextual references that vary from a reader to reader. By leveraging coherence, the reader can access the implicatures of the text, the unsaid. Therefore, the reader gives the text its coherence (Baker 2018).

Failure to inferring implicatures in a text is mostly due to “*incoherent*” interpretation where the reader has a lack of knowledge and experience. The reader may, hence, experience such incoherence as contextual ambiguity.

3.3 Contextual Ambiguity

While syntactic ambiguity is concerned with sentence structure and cohesion, occurring, thus, at the level of text micro-structures, contextual ambiguity stems from a difficult-to-track coherence at the level of the text macro-structure.

Furthermore, there exists two types of contextual ambiguities that are expressed in terms of inconsistencies. One is internal inconsistencies, which are cases where a provision contradicts another in the same treaty and it is not clear which one shall prevail. The other is external inconsistencies where a provision contradicts the presuppositions involved in the interpretation of the treaty (Crabbe 1993, I:46).

Presuppositions represent a central concept in pragmatics. They constitute the bulk of “information that are associated with certain lexical

items or syntactic constructions” (Geurts 2008, 1). In this regard, presuppositions are meant not to be logical presuppositions but situational or pragmatic presuppositions. They are information that might be “pre-supposed”, by the speaker/writer to be known by the receiver/reader, though not verbalized (Nord 1991, 105).

By this token, the presuppositions involved in the interpretation of the treaty surpasses the textual context to include the context of text. In international treaties, this may encompass the broader context of the treaty making, departing from its preparatory work to its signature and adoption.

Likewise, any text meaning revolves around receivers’ background knowledge, i.e., pre-information about the subject or experience of “intertextuality.” Intertextuality, departing from the assertion that any text cannot enjoy independent meaning, is that feature of any text being dependent in terms of meaning on other texts to which it relates or refers, or being the intertext (Allen 2000, 1).

Therefore, any inconsistency – or lack of coherence – with presuppositions, which entails a breach in the intertextual network, would breed contextual ambiguity. By this token, intertextuality seems to be the problem and the solution at the same time. On the one hand, it can be a problem if the text interpretation fails in reconstructing its conceptual network, i.e., failing to grasp the intertext. On the other hand, it is the solution as it is a versatile tool of disambiguation via providing the needed contextual keys to solving the mystery of meaning.

4. Interpreting Treaties: Translation as Legal Interpretation

Intentional ambiguity promotes international cooperation and provides flexibility when the conclusion of a treaty is sought. However, this ambiguity proves fatal when seeking productive and consistent interpretation (Connolly 2007).

International legal instruments come with a heavy load of ambiguity that takes its origin from the negotiation stage. This is likely due to the nature of diplomatic discourse, which is characterized by intentional ambiguity allowing an adaptation to potential changes in circumstances and context (Villar 2005, 47). Indeed, drafters of legal instruments cannot in

any way anticipate all the facts and predict all the variables that will occur after the treaty enters into force; and if they could, they would have formulated such instruments with extensive detail and clarity with which there will be no interpretation required.

Therefore, ambiguity gives the treaty its comprehensiveness and flexibility, this is on the one hand. On the other hand, ambiguity is a means to reconcile opposing opinions and bridge divergent positions at the negotiation stage, which entails producing a text with ambiguities that requires interpretation (Aust 2007, 13).

As far as translation is concerned, translators are the producers of the equally authentic texts of the treaty in the languages that are provided for in the said treaty. For this purpose, they have inevitably to play the role of treaty interpreters. They should strive to produce a parallel text that conveys the same meaning intended in the original/negotiated text of the treaty with the aim of achieving a “fidelity to the single instrument”, to which the notion of fidelity seems to lose ground (Sarcevic 2000). By this, translators are vetted, willingly or unwillingly, by the power of an “interpreter” and are compelled to observe the interpretation provisions set by the Vienna Convention on the Law of Treaties (VCLT), regardless of them being jurists or pure linguists (United Nations 2005).

The VCLT is the internationally recognized instrument that set a legal framework for interpreting treaties and contains articles that are deemed compulsory rules of interpretation.

Although treaty interpretation is of the domain of law, an analysis by translators of the interpretation rules provided for in the VCLT is necessary. This would allow to dissect the intersect between law and language and help match the linguistic concepts with their respective equivalents in international law.

Article 31 of the VCLT comprehends the primary rules of interpretation which emphasize the text and context. The text of the treaty “shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context” (United Nations 2005), i.e., the meaning that is internationally recognized by law scholars

and practitioners. Moreover, the text shall be interpreted “in light of its [treaty] object and purpose” (United Nations 2005), in consolidation of the principle that the interpretation has to be productive not neglective. This means that if the interpretation is ambiguous, senseless or contrary to the object and purpose of the treaty, the interpretation must seek another meaning that is productive, since it is not reasonable that the parties agreed on provisions by which they did not mean anything or meant something that counters their intentions.

In addition to the text, including its preamble and annexes, the interpreter takes the context in which the terms of the treaty were used, as any part of the text cannot be considered independently but rather within the broader context of the treaty. For instance, the term "ship" means the passenger ship in maritime transport agreements, cargo ship in commercial navigation agreements, and warship in military agreements (Aust 2007, 187–188).

The broader context may encompass anterior instruments concluded between the parties with regard to the conclusion, interpretation or application of the treaty. Similar subsequent instruments and practices regarding the interpretation of the treaty are taken into account as well (United Nations 2005).

Article 32 provides supplementary means for interpretation. It provides that it is permissible to resort to such means if the general rule from art. 31 does not allow the interpretation and the meaning remains ambiguous, obscure, absurd or unreasonable (United Nations 2005). The preparatory works are the most important supplementary means. These are defined as the introductory instruments that precede the drafting of the treaty and include discussions and opinions on the conclusion of the treaty, diplomatic correspondence, negotiations, preliminary drafts, and proposed formulae for the texts of the treaty.

According to art. 31 and 32, the interpreter of the treaty has to be aware of several crucial elements that are incurred from a long process of treaty making and conclusion. Such elements depart from the text and its context and reach the broader context and purpose. Complementary

instruments are to be considered if need be. This logical sequence does not represent a gradation in the legal weight of interpretation rules and means, but rather a natural procedural sequence, as the interpreter moves from the text to an initial context (the context and purpose of the treaty) and then, if necessary, moves to a broader context (the context of making, concluding and implementing the treaty).

Art. 33 provides for rules pertaining to interpreting authenticated parallel texts of the treaty in the other languages. Since such texts are produced by translation, such rules are not of great relevance for translators during the translation though they should be aware of as a part of their extralinguistic competence. Nonetheless, they are relevant in case of divergence between the treaty parallel versions.

Whereas the aforementioned rules are established rules of international law and are extremely important for treaty translators since they must delve into the text with a legal lens, these rules are also manifestations of linguistics and pragmatics in law. Translators, as treaty interpreters, can rely on their linguist competence and leverage a variety of linguistic concepts to carry out the task of interpretation. They can derive meaning based on the presupposition pool as well as the elements of the subject and content. On the other hand, presuppositions enable access to implied and ambiguous meanings, i.e., what is not explicitly said or written. The presupposition pool of a treaty goes beyond the textual context to include the circumstances in which the text was produced. As per treaties, presuppositions involve the general context of the treaty, i.e., the circumstances that surrounded its making and affected its conclusion. They include also any agreement related to that treaty made between its parties as well as any document related to that treaty. By this token, it is essential to refer here to the systematic analysis of the text, starting with literal interpretation and resorting to additional means such as precedent instruments and preparatory work as established in the VCLT. All of these elements form a presupposition pool on which the interpreter can rely on to derive the meanings intended by the parties to the treaty. Hence, the concept of presuppositions is crucial to treaty interpretation.

In light of interpretation rules, translators find themselves invested in an intense decision-making process, magnified by a large pool of presuppositions. The challenging role of translators as interpreters is inevitable in translating international treaties. This challenge is further complicated when it comes to resolving ambiguities in the treaty text, especially since the success of an authenticated translation relies on its interpretation (Sarcevic 2000). Accordingly, translators of international treaties, while being interpreters, are expected to produce a parallel legal text that equals the source in all aspect, resorting to legal drafting skills. Translators, at this stage, become drafters.

5. Translating Treaties: Translation as Drafting

Translation remains the predominant tool to producing multilingual international legal instruments. Treaties are negotiated in a lingua franca and then translated to the other authentic languages (European Commission/DGT 2012). Translators are bound to produce translations that are “*equally authentic*” to the source. By virtue of the principle of equal authenticity, translators are expected to produce an “*authoritative translation*” that are not only equal in meaning but also equal in effect (Emmanuel Didier 1990, 221).

By this token, translators are not supposed to be treaty drafters to the truest sense but have to be aware of drafters’ work and the rules that govern producing an authentic legal instrument. They have to possess a legal competence that enables them not only to analyse legal texts but also to acquire drafting skills in a spirit of comparative law (Cao 2007, 38).

From linguists’ stance, translators’ task at this stage can be well informed by translation theories, mainly functionalist and communicative approaches. Christiane Nord (1991, 80) provides a well-structured view of translation that is quite compatible with legal text typology and functionality. Nord, with regard to text function and while making marginal reference to House’s overt and covert translations, distinguishes between two types of translation: documentary and instrumental. Legal equal authenticity concurs with Nord’s equifunctional instrumental translation,

i.e., an “independent message-transmitting instrument ... [that] can fulfil the same function(s) as the source text” (Nord 1991, 81).

Besides, every text is an intertext (Kristeva, 1980). Hence, the treaty source text is produced based on a complex intertextual network. Giving the fact that a treaty pertains to both realms of international law and diplomacy, the text is then both intertextual and interdiscursive.

From the perspective of translation, the task is colossal; equal authenticity is the norm in producing multilingual legal instruments, which means, linguistically, that not only textual equivalence is sought but also pragmatic and semiotic equivalence (Mona Baker 2018).

To achieve all of those levels of equivalence, translators are expected to recreate the intertextual and interdiscursive networks of the source by leveraging the presupposition-bound coherence and inferring implicatures. Any breach in such networks would cause meaning distortion with “risky” legal implications. A failure to infer the meaning in the source, may yield ambiguity on many levels in the text, an ambiguity that has to be addressed from a risk management perspective.

6. Approaching Ambiguity: Translation as Risk Management

Any ambiguity in an international legal instrument breeds the risk of litigation, which has always uncertain repercussions for diplomacy in general and potential parties in a dispute’ interests in particular. Moreover, preventing ambiguity translates to preventing litigation from arising over the meaning of the treaty terms and provisions (Neumann Jr. and Entrikin 2018). Even if the original draft, the version in which the treaty was negotiated, will prevail in case of differences due to ambiguity, diplomacy and mutual understanding remain always at stake if translations are inaccurate.

As far as translation is concerned, translators, from an ambiguity perspective, are keen to explicitation. Even more, explicitation, framed withing the ‘explicitation hypothesis’ is increasingly deemed in translation studies an intrinsic feature of translation (Pym 2005). Hence, according to the explicitation hypothesis, approaching ambiguity is bound to an explicitation process. However, whereas the reader of the translation has to

be made aware of the text presupposition pool, explicitation of the implicit is risky and is very susceptible to greatly amend the effect that the text has on its receivers (Nord 1991, 106). Such risk increases when approaching the implicit in international treaties, which is often intentional and pragmatic.

At this stage, translators find themselves once again managing risks incurred from ambiguity. Not only they were challenged by the interpretation of the treaty and producing an equifunctional instrumental translation, while enduring all kinds of ambiguities, but also are bound to assessing the odds of approaching such ambiguities in light of countless linguistic and legal implications.

Risks, whether low or high, in the general context of translation refer to undesirable outcomes (Pym 2005). In the context of treaties, undesirable outcome would lead to the parties' litigation at the level of international courts and organizations and would impact future cooperation between states, crippling, consequently, international mutual understanding and world diplomacy.

Approaching ambiguity when translating international treaties, from a risk management perspective, involves two main components, information-gathering and decision-making. According to Pym (2015), the first component is concerned with harnessing cognitive capabilities to recognize the problem (the recognition of ambiguity and its type as well as its legal implications in and beyond the treaty) while the second deals with deciding about (not necessary finding) a solution to the problem (the actual decisions about approach any given ambiguity when translating international treaties).

As per ambiguity-related decision making, studies suggested that novice translators are more likely inclined to resolving ambiguities and, wrongfully, resorting to much linguistic transformations while professional translators have more risk tolerance and tend to swiftly deal with ambiguities without being too much invested in the process (Künzli 2004).

By this token, seasoned translators working on treaties, who have often acquired robust expertise in international law and are intuitively tempted to apply the VCLT interpretation rules while translating, are to adhere to an approach that might not only be counterproductive but also can

prove quite risky. Indeed, they might explicit the implicit that has always granted the treaty its flexibility, if not its feasibility and applicability.

Therefore, risk management in terms of approaching ambiguities might follow three distinct tendencies, risk aversion, risk transfer and risk acceptance (Hu and Pym 2019). These tendencies, applied to ambiguity occurring international treaties, may represent a case of robust empirical study and research.

On the one hand, risk aversion entails to avoid taking risks when approaching ambiguities and being accountable for any unwanted (mis)explicitation, and this by means of translation shifts such as omission, generalization, attenuation or even adopting a literalist approach (Pym 2015). On the other hand, risk acceptance is a very ‘*risky*’ risk management approach, especially when dealing with diplomatic constructive ambiguity, which is inherent in international treaties. Attempting to explicit a treaty ambiguity is a deconstructionist approach to translation and might bring about very unwanted outcomes that might reach the stage of crippling diplomacy.

In fact, risk acceptance might be only acceptable in case where translators are involved in the treaty making and are well aware of the presupposition pool and all subsequent intertextual considerations accumulated along the process or, at least, are constantly consulting, during the translation, with a jurist who has been involved in the treaty making and conclusion. However, although being dependent on a jurist to interpret the treaty is cumbersome and counterproductive as meaning might get “*lost in [intralingual] translation*”, translators are seldom involved in treaty making only in cases of co-drafting.

Co-drafting is based on drafting all versions of the treaty in all authenticated languages simultaneously, carried out by either translators with legal experience or jurists with linguistic and translation expertise (Sarcevic 2000, 98). This approach is an exception to producing multilingual legal instruments by translation. One prime example is the making of the 1982 United Nations Convention on the Law of the Sea when linguists were involved in the treaty preparatory works. The treaty making

lasted ten years (European Commission/DGT 2012, 33) and the dogma of English as a source text and the other languages as translation to be verified accordingly was unescapable (Treves 1981, 275). This would take translators back to a position where they have to approach ambiguity in the original and take decisions with regard to its translation.

Accordingly, while risk aversion may be considered a non-translation act, risk acceptance is likely to turn constructive ambiguity into destructive explicitation. The irrelevance of both risk aversion and risk acceptance suggests risk transfer as the optimum technique to translating ambiguity in international treaties.

If the text of the treaty explicitly provides for rights and obligations agreed upon by the parties, it is also an implicit scene for conflicting interests and propositions. Ambiguity is a means of reconciling between the parties and a special feature of diplomatic discourse. Hence, since the interpretation of ambiguity from the perspective of international law is the rightful task of jurists, and the settlement of disputes arising between the parties with regard to the treaty interpretation lies within the jurisdiction of international courts, translators must maintain ambiguity wherever and however it occurs and not explain and explicit so that they do not bear any responsibility for the distortion of the intended meaning (Cao 2007, 153).

Risk transfer is the best solution to approaching ambiguity in international treaties. Any attempt to explicit the implicit, i.e., clauses that have been intentionally left ambiguous by the parties is to undermine the treaty. Translators of treaties should not run the risk of disturbing the painstakingly achieved consensus by adhering to an explicitation approach to treaty ambiguity (Sarcevic 2000).

While the VCLT, judicial precedents and assistance from jurists may help explicit ambiguities, translators must not unilaterally interfere with ambiguity and have to maintain it to the extent possible in the target text (Prieto Ramos 2014).

Therefore, translating international treaties is, from the perspective of ambiguity, a challenging mission that includes a risk management task. Such a task suggests that translators venture beyond the translation-

enclosed hermeneutics into legal interpretation. However, they would face difficulties in accounting fully for all the presuppositions and ensuing intertextual and interdiscursive references involved in the source text.

Translating treaties tend to occur within their text-bound context rather than the broader context that encompasses all the pragmatic and extratextual variables. Unless translators are involved in the treaty making, from preparatory works to signature and conclusion, they will not be able to duly apply the rules of interpretation enshrined in the VCLT and solve ambiguity-related problems. Such problems are twofold as ambiguity is problematic at interpretation and risky at translation even when adopting a risk transfer approach. Risk transfer is not synonym to a literalist approach but is a very elaborate and creative approach where the translation of ambiguity is as equifunctional as the translation of the text itself. This approach requires in no doubt making intense and colossal effort with the view of minimizing risk-incurred ambiguity in the most delicate international legal instruments.

7. Discussion

In discussion whereof, legal translators working on international treaties are expected to possess interpretation, drafting and risk management skills. Nonetheless, such model translators cannot easily exist (Sarcevic 2000). A combination of law and linguistics have been recursively presented as a possible answer for this dilemma. Accordingly, an ideal translator to translate international treaties would be a translator who has been trained as a linguist that can swiftly resolve translation problems, with robust expertise in international law as well as institutional translation (Monzó-Nebot and Moreno-Rivero 2020).

Regardless of the profile required to translating international treaties-though the translation competence is out of debate, variables involved in such task are ought to be discussed. First, ambiguity is an inherent feature in diplomatic discourse that is sometimes leveraged constructively for pragmatic purposes. This ambiguity, magnified by the nature of legal language, is conferred to international legal instruments in many forms that operate on many levels.

Indeed, semantic and syntactic ambiguities may correspond to legal patent ambiguity, which is an ambiguity that is apparent on the face of the written instrument. In the same way, contextual ambiguity equals latent ambiguity, which is an ambiguity that contradicts coherence; it is an ambiguity that is present but not appearing on the four corners of the treaty as it involves the setting in which the parties negotiated the treaty, i.e., treaty presuppositions (Graves 1915). While translation hermeneutics are more than sufficient to tackle patent ambiguity, interpretation expertise is needed to approach latent ambiguity.

That being said, translators are challenged with ambiguity in international treaties. The mighty task consists of preserving the constructiveness of ambiguity in international treaties. To duly carry out this task, they have to play many complicated roles that require legal interpretation, drafting and risk management.

Treaty translators are bound to minimize risks incurred from ambiguity. They are expected to adopt a risk-transfer approach and refrain from adhering to explicating an ambiguity that has allowed “*agreeing to disagree*”, thus, concluding the treaty. The main reason behind the relevance of risk transfer is purely a matter of pragmatics. The number of presuppositions that have accumulated as of the preparatory works and through the long process of negotiation is colossal and cannot be accounted for by translators in any way possible. Therefore, venturing beyond the direct context of the treaty is risky and susceptible of undermining the treaty itself. Moreover, since treaty negotiators and drafters postponed ambiguity resolution to a later date and a competent entity, translators have to do the same via a risk transfer approach.

8. CONCLUSION

Pragmatics is at the core of translating international treaties and tackling ambiguities therein. Though international law has exhaustively addressed the topic of ambiguity, this has never been able to escape pragmatic approaches (Graves 1915; Jönsson 1990; Didier 1990; Crabbe 1993; Pehar 2001; Doonan and Foster 2001; Villar 2005; Aust 2007; Neumann Jr. and Entrikin 2018; Byers 2021).

Law books and legal studies are replete with linguistic concepts and paradigms in a way that linguistics can easily tackle the most problematic legal issues; international treaties are no exception. As per the topic of ambiguity, further study and research, ideally empirical, are needed to really apprehend the patterns of ambiguity in legal instruments and comprehend its motives, types and implications. While a promising research pathway in this regard could revolve around the concepts of intertextuality and interdiscursivity in law, studying and mapping presuppositions could provide interesting insights into the ways translators, as competent readers, interact with texts and infer meanings thereof and, thus, may establish models or strategies to help them as done by the prominent scholar in the field of legal translation Prieto Ramos (2011; 2014; 2020; 2021). The findings would also contribute to sharpen their training and help bridge the gap between specialized translation study and practice. Further research may address the ways language pragmatics and mechanics are adapting to the new digital era where legal instruments might be candidates for machine pre-editing, translation and post-editing, which undermine fundamental discursive concepts such as context, presuppositions, intertextuality, coherence, etc. due to machine text segmentation process. This research pathway can also address how machine is approaching ambiguity which is deemed its Achilles heel. Indeed, pragmatics has been and is always a fertile field of study with practical applications and remains a constant in the fast and drastically changing landscape of translation.

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