

ON AMBIGUITY AND INCONGRUITY OF TERMS IN TRANSLATIONS OF INTERNATIONAL TREATIES

ARNAUD PARENT

*Faculty of History
Vilnius University
Lithuania
arnaudparent@ymail.com*

The aim of this article is to study the ambiguity and incongruity of terms in translation of international treaties, how they may present themselves and their impact on international relations.

INTRODUCTION

Misleading translations in international relations are as old as history and international relations themselves. For instance, we may remember the case of the *Russian Primary Chronicle* (*Повесть временных лет*), covering the 9th–12th centuries, which relates to the beginning of the Kievan Rus'. According to this chronicle, three Varangian¹ brothers decided to sail with their clan to what is now Russia: Riurik, the eldest one, settled in Novgorod; the second, Sineus, in Beloozero, and the third, Truvor, in Izborsk.

The chronicler, who most likely had no clue about the older Norse languages, must have been confused. It seems he had misunderstood what the nouns associated with the name of Riurik were, and he believed those were the names of some of Riurik's brothers. *Sineus*, for instance, stands for *Sine hus* (Old East Norse *his house, his family*). As for *Truvor*, that is *thru voring*, it must be understood as *the loyal brothers in arms* of Riurik². Thus it was concluded and recorded that Riurik was, in fact, a Varangian leader travelling with his family and a group of armed men.

The example given above had no serious historical or diplomatic consequences. Nevertheless the diplomatic history of the last centuries presents examples of misleading translations of special significance for nations through international

¹ In the Middle Ages, Norsemen heading to Eastern Europe.

² Kondratieva T. 1996. *Que sais-je? La Russie ancienne*. Presses universitaires de France, 20.

treaties, instruments *par excellence* of international relations. Indeed some misleading translations may cause commercial prejudice, but some of higher gravity may be the cause of wars being carried on, or of countries losing their independence. That is to say, a misleading translation, whether voluntary or not, may have effects on the destiny of millions. In this article we will center our study of misleading translation in international treaties on ambiguity (I), incongruity of terms (II) and the way to deal with ambiguity and incongruity (III).

AMBIGUITY

For the purposes of this article, the concept of ambiguity is central. In the following sections we are going to consider what ambiguity is and how it can manifest itself in international treaties. The issues addressed will be analysed as case studies.

A. Definition of ambiguity

Ambiguity may be defined as: 'An uncertainty of meaning or intention, as in a contractual term or statutory provision'³. For instance, in a sales contract a provision may mention a *buyer* and a *seller* but in another part of the text the term *purchaser* may be used thus making the terms ambiguous⁴.

Ambiguity can also result from the contradiction between two ideas in the same text. Pehar (2001) observes: 'For instance, a chapter in a peace treaty may begin with a precise enumeration of the powers that one entity, for example, a central federal authority, may exercise. But at the end of the chapter an open-ended provision is inserted, which may, for instance, state that *'the central federal authority may exercise some other duties as well.'*'⁵

It must be noted that ambiguity may occur inadvertently or be deliberate. Drafters may choose to use ambiguity as a way to avoid offending the other party⁶. Ambiguity in a legal document may also allow a party to escape the fulfillment of a provision. Indeed it is easier to hold a party to an agreement to

³ *Black's Law Dictionary*. 1999. Minn.: ST. Paul.

⁴ Houbert F. 2005. *Guide pratique de la traduction juridique*. Paris: La maison du dictionnaire, 35.

⁵ Dražen P. 2001. Use of Ambiguities in Peace Agreements. *Language and Diplomacy*. Malta: DiploProjects. // <http://www.diplomacy.edu>.

⁶ Norman S. 2001. Ambiguity versus Precision: The Changing Role of Terminology in Conference Diplomacy. *Language and Diplomacy*. Malta: DiploProjects, 4. // <http://www.diplomacy.edu>.

a specific commitment than to a vague or ambiguous one. For this reason, the party that has something to give up has an interest in the ambiguity, and that which hopes for some gain seeks clarity and precision⁷.

B. Examples of ambiguity in a treaty

Ambiguity in a treaty may be lexical, syntactic or contextual.

1. Lexical ambiguity: The 17 December 1885 Peace Agreement between France and Madagascar

The 17 December 1885 Peace Agreement between France and Madagascar featured lexical ambiguities in translation that had political significance⁸.

This agreement was to define the relationship between France and the island of Madagascar and make the Island a French protectorate.

Article 1 of the Treaty states:

‘Le gouvernement de la République [française] *représentera* Madagascar dans toutes ses relations extérieures.’

(It can be translated into English as follows: ‘The government of the [French] Republic *will represent* Madagascar for all its external relationships.’)

Article 2 of the Treaty states:

‘[...] un Résident *représentera* le gouvernement de la République aux relations extérieures de Madagascar.’

(It can be translated into English as follows: ‘[...] A Resident *will represent* the government of the Republic for the external relationships of Madagascar.’)

But in the Malagasy version, the term *hitandrina* (English: ‘to watch, to take care’; French: ‘*surveiller, prendre soin*’), according to similar Malagasy translations, does not mean *représentation* (English: ‘representation’).

The French term *représentation* means here that the Malagasy will delegate to the government the duty to ensure the external relationships of Madagascar. That is to say, the French Republic will decide for the Malagasy foreign policy. But according to the Malagasy translation the Republic will only take care of the Malagasy foreign policy. The term *hitandrina* appears as a euphemism for *représentation* and alters the meaning given to the essential articles of the treaty, resulting in its different interpretation. An interpretation is all the more difficult to

⁷ Norman S. *Op. cit.*

⁸ Rajaspera R. 1998. La traduction en malgache des conventions internationales. *Meta* vol. 43, n. 3, 380–392.

give since it was decided in the Treaty that both versions, French and Malagasy, will have the same force. Ultimately Madagascar became a French protectorate.

2. Syntactic ambiguity

a) The United Nations Security Council Resolution 242

After the Six Day War in 1967 and the Israeli victory over the Arab forces, the United Nations Security Council adopted Resolution 242.

The provision of the Resolution which appeared ambiguous was the one following the preamble:

‘establishment of just and lasting peace in the Middle East should include the application of both the following principles:

- withdrawal of Israeli armed forces from territories occupied in recent conflict;
- termination of all claims or states of belligerency and respect for [...] territorial integrity [...] of every State in the area and their right to live in peace within secure and recognized boundaries.’

It appears that the noun *territories* was not preceded by the article *the*. Thus the question was: should Israel withdraw from *all* the territories occupied in the war, or only withdraw from *some* of them?

The confusion was even bigger, when the English version of the resolution was compared to the French one. The latter stated: ‘Retrait [...] des territoires occupés lors du récent conflit’. This version clearly mentions that Israel has to withdraw from territories it occupied during the Six Day War (*lors du récent conflit*, i.e. the Six Day War). This version was to the satisfaction of Arab countries.

It seems that Lord Caradon, the framer of the English version, purposefully used a construction that could be read as uncertain, though he had stressed that the second part of the first provision clarified the first one. Nevertheless, this second part may be seen to be ambiguous too as it says that ‘[...] every state in the area [...] [has] the right to live in peace within secure and recognized boundaries [...]’. In fact the states’ boundaries between the belligerents before the war were neither secure nor recognized. In the end, Israel did not withdraw to its pre-Six Day War borders⁹.

b) The 2008 August 12 Cease-fire Agreement between Russia and Georgia

An example of a misleading translation in an international treaty resulting from a syntactic error may be found in the Agreement drafted to end the war between Russia and Georgia which took place in the summer of 2008.

⁹ Pechar D. *Op. cit.*

In August 2008 a war broke out between the Russian Federation and Georgia. At the time, France was enjoying the presidency of the European Union, and the President of France Nicolas Sarkozy brought forth its mediation between the two belligerents. As a result, on August 12, Russia and Georgia agreed on a Six-point Cease-fire Agreement. According to Bernard Kouchner, the French Foreign Minister, the original of the agreement was in French, which was thereafter translated into Russian and English.¹⁰ The dispute was provoked by Article 6 of the Agreement.

Article 6 provided (the French version):

Ouverture de discussions internationales sur les modalités de sécurité et de stabilité en Abkhazie et en Ossétie du Sud.

This sentence can be translated into English as follows:

The opening of international talks on the modalities of the security and stability in Abkhazia and South Ossetia.

The Russian official version of the sentence was as follows:

Начало международного обсуждения вопросов будущего статуса Южной Осетии и Абхазии и путей обеспечения их прочной безопасности.

On the website of the President of Russia, this sentence is translated into English as follows:

An international debate on the future status of South Ossetia and Abkhazia and ways to ensure their lasting security will take place.

Comment:

The disagreement about the interpretation of the text of the Cease-fire agreement stemmed from the fact that where the French version dealt with security *in* Abkhazia and *in* South Ossetia (*en Abkhazie et en Ossétie du Sud*), the Russian one dealt with the security *for* Abkhazia and *for* South Ossetia (*Южной Осетии и Абхазии*).

The Washington Times (September 7, 2008) emphasized that ‘The main linguistic glitch was in a passage in the Russian version that spoke of security ‘for¹¹

¹⁰ Cease-fire Contains a ‘Translation Problem’, as Russia Uses Miscue to Keep Troop ‘Buffer Zones’. *The Washington Times*, Sunday, September 7, 2008. ‘M. Kouchner also added that the problem in the implementation of the agreement came from the translation *as Always*.’ For the interview in French see: <http://www.ambafrance-uk.org/Conference-de-presse-de-M-Bernard>.

¹¹ It is to be noted that *The Washington Times* quotes this sentence with the preposition ‘for’, while in the English version (which is a translation from French) given on the official website of the President of Russia, the preposition ‘of’ is used.

South Ossetia and Abkhazia', whereas the English version spoke of security 'in' the two areas...' The replacement of the preposition 'for' with 'in' results in a syntactic ambiguity of the text thus provoking further disputes as to the transparency of the Cease-fire Agreement.

The difference between the two translations is crucial because, according to the Russian version, the international talks deal with the situation for Abkhazia and for South Ossetia (each of them being parts of Georgia and, at the same time, occupied by Russian troops) but the terms *for* Abkhazia and *for* South Ossetia tend to mean that their international situation could differ from that of the other regions of Georgia.

This dispute was made worse by the terms 'future status' (*будущего статуса*) and 'lasting' (*прочной*), present in the Russian version (and now appearing on the Kremlin's website). These terms were used in the first draft of the convention but, according to an Agence France-Presse dispatch quoting Mr Sarkozy, were removed at Georgia's request with the agreement of Russia.¹²

This issue is particularly sensitive because while both Abkhazia and South Ossetia are part of the Georgian state, Russia assists them in becoming independent from Tbilisi. Talking about *future status* sounds like *international status* and hence the subordination of Abkhazia and South Ossetia to Georgia may be doubtful.

Regarding the disagreements between the translations, the Russian Foreign Minister Sergei Lavrov declared: 'This is a direct forgery, and that is how we regard it [...]. The authentic text is the one approved by the two presidents in the Kremlin on August 12'.¹³

The difference between the two translations made it difficult to determine the 'buffer zones' created by Russian forces in Georgia.¹⁴

3. Contextual ambiguity: The Uruguay Round (1986–1994)

The eleven years of the Uruguay Round show how crucial ambiguity may be in an international agreement. In 1999, thirty countries, dissatisfied with the state

¹² A previous French draft of the Agreement stated: '*l'ouverture de discussions internationales sur le statut futur et les modalités de sécurité durable en Abkhazie et en Ossétie du sud*'. (In English: 'an international debate on the future status for South Ossetia and Abkhazia and ways to ensure their lasting security will take place'.) Agence France-Presse dispatch, 08/09/2008. It is worth noting, however, that this particular version of the events mentioned above was provided by Agence France-Presse.

¹³ *The Washington Times*. *Op. cit.*

¹⁴ *The Washington Times*. *Op. cit.*

of the Uruguay Round negotiation on rules, issued a statement insisting on the necessity of a concerted additional effort toward 'clearer and more precise rules' to obtain the legal basis meant to become the 'cornerstone of the multilateral trading system'. It took two and a half years to achieve the Final Act.

Developing countries asked for lighter commitments and longer periods to adapt to the new rules. These concessions were called 'special and differential treatment' or S.D.T. Nevertheless 'special and differential treatment' is too vague a term to represent any firm obligation on the part of developed countries, though they are often used by developing countries as a reminder to developed countries that developing countries must benefit from advantages in commercial policy. On the contrary, whenever developed countries are *demandeurs*, they endeavour to obtain precise concessions from vaguely formulated provisions in the Final Act.

THE INCONGRUITY OF TERM

When translating the text of an international agreement, the translator has to deal with the problem of conceptual incongruity.

A. Definition of the incongruity of term

A legal concept may exist in a national law system, but not in another one. It is often the case between Civil and Common law systems. It may also result from cultural differences.

B. Examples of the incongruity of term in a treaty

Here we will consider the 1929 Warsaw Convention and the 1840 Waitangi Treaty.

1. The incongruity of term due to two different legal systems:

The 1929 Warsaw Convention

A good example of this is given by the Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air of 1929.¹⁵ This Convention aimed at protecting international carriers by placing universally accepted caps on compensation claims.

Article 25 (1) of the Convention, defining the conditions under which the carrier's liability shall apply, was the cause of conflicting decisions. The problem

¹⁵ Šarčević S. 1997. *New Approach to Legal Translation*. Kluwer Law International, 149–150.

stemmed from the translation into English of the French legal term *dol*¹⁶, which means any deliberate action made to deceive somebody.

The French version:

Statement of law:

Le transporteur n'aura pas le droit de se prévaloir des dispositions de la présente convention qui excluent ou limitent sa responsabilité.

Fact-situation:

Si le dommage provient de son dol ou d'une autre faute qui, d'après la loi du tribunal saisi, est considérée comme équivalente au dol.

The English version:

Statement of law:

The carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability.

Fact-situation:

If the damage is caused by his willful misconduct or by such default on his part, in accordance with the law of the Court seized of the case, is considered to be equivalent to willful misconduct.

Comment:

The Common Law term *Willful misconduct*¹⁷ was chosen to translate the French term *dol*, though the English delegate pointed out that willful misconduct refers not only to intentionally performed acts but also to acts performed carelessly and without regard for the consequences.

These differences in the translations were the cause of conflicting court decisions. To put it in a nutshell, in cases where a civil law court would retain the limited liability of the carrier, a common law court would retain its unlimited liability. That is to say that, according to a common law interpretation of the Convention, the carrier is responsible for voluntary and inadvertent acts, whereas according to a civil law interpretation of the Convention, the carrier is responsible only for voluntary acts.

¹⁶ Dol: « Comportement malhonnête, le plus souvent d'un contractant envers l'autre, sous forme de manœuvres, mensonges, feintes, collusion ». Dans la formation du contrat: « toute tromperie par laquelle l'un des contractants provoque chez l'autre une erreur qui le détermine à contracter » [...]. Dans l'exécution du contrat: « faute du débiteur qui se soustrait sciemment à ses obligations ». Cornu G. 1987. *Vocabulaire juridique*. Presses universitaires de France.

¹⁷ Willful misconduct: 'misconduct committed voluntarily and intentionally'. *Black's Law Dictionary*. *Op. cit.*

As amended by Article 13 of the Hague Protocol¹⁸, paragraphs 1 and 2 of Article 25 were deleted and replaced by the following:

‘The limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment’.¹⁹

2. The incongruity of term due to misunderstanding of cultural context:

The 1840 Waitangi Treaty

The Treaty of Waitangi²⁰ is the New Zealand’s founding document. It was signed on 6 February 1840. The Treaty is an agreement made between the British Crown and about 540 Maori chiefs. It was drafted in the English and Maori languages. The English version was translated into Maori overnight on 4 February 1840. It has three articles. The Treaty was mainly a diplomatic instrument to acknowledge an agreement between the Crown of England and Maori to create a nation state.

A comparison of the two versions:

THE PREAMBLE:

The English version of the Treaty:

The preamble of the English version shows the will of Great Britain to protect the rights and property of New Zealand tribes and to secure them the enjoyment of peace and Good Order. As well as the will of Great Britain to establish authority over the New Zealand islands and set up there a form of Civil Government.

The English translation of the Maori version of the Treaty:

As for the Maori text, it suggests that the Queen of England was to provide a government to New Zealand while securing tribal *rangatiratanga* (that is to say, in Maori language: *chiefly autonomy* or *authority* over their own tribal area) and Maori land ownership as long as they would like to retain it.

¹⁸ Protocol to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air, Signed at Warsaw on 12 October 1929, done at The Hague on 28 September 1955 (The Hague Protocol to the Warsaw Convention 1955).

¹⁹ In French: *‘les alinéas 1 et 2 sont supprimés et remplacés par la disposition suivante: « Les limites de responsabilité prévues à l'article 22 ne s'appliquent pas s'il est prouvé que le dommage résulte d'un acte ou d'une omission du transporteur ou de ses préposés fait, soit avec l'intention de provoquer un dommage, soit témérement et avec conscience qu'un dommage en résultera probablement, pour autant que, dans le cas d'un acte ou d'une omission de préposés, la preuve soit également apportée que ceux-ci ont agi dans l'exercice de leur fonctions. »’*

²⁰ Both the English version of the Treaty and the English translation of the Maori version of the Treaty are taken from the webpage of the New Zealand Ministry for Culture and Heritage, www.nzhistory.net.nz/politics/treaty/the-treaty-in-brief.

ARTICLE 1:

The English version of the Treaty:

Maori chiefs gave the Queen of England ‘all the rights and powers of sovereignty’ over their land.

The English translation of the Maori version of the Treaty:

Maori chiefs gave the Queen *te kawanatanga katoa*, that is to say ‘the complete government’ over their land.

Comment:

The problem is that the English word ‘sovereignty’ has no satisfactory counterpart in the Maori language as the New Zealand islands had never been exposed to any form of centralized government.

The translators used the Maori word *kawanatanga*, a transliteration of the English word ‘governance’. It has to be pointed out that Maoris knew this word from studying the Bible, translated into Maori, and because the governor of New South Wales (who was then in charge of the British settlement in New Zealand) was known to them as *kawana*.²¹

As a result, Maori leaders thought they had ceded the right of governance to Great Britain to get its protection, while keeping their own authority to manage their affairs as well as their independence.

The use, or misuse, of the terms *kawanatanga* and (*tino*) *rangatiratanga*, gave way to divergences of interpretation on how much authority would be granted to the chiefs and to the British Governor. The Maori chiefs seemed to be expecting a partnership with Great Britain, rather than an abandonment of sovereignty.

ARTICLE 2:

The English version of the Treaty:

Maori leaders and people were confirmed and guaranteed ‘exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties’. Besides, Maori agreed to the Crown’s exclusive right to purchase their land.

The English translation of the Maori version of the Treaty:

The Treaty ensured the Maori *te tino rangatiratanga* or the unqualified exercise of their chieftainship over their lands, villages and all their goods. Maori also acknowledged the right for the Crown of England to buy their land provided they wished to do so.

²¹ The then governor of New South Wales, Australia, was also in charge of British settlement in New Zealand.

Comment:

Later on, some Maori and even the British stated that they understood this statement as an opportunity for the Crown to have a priority right rather than an exclusive right to buy. It is uncertain if the Maori text clearly conveyed the implications of the exclusive Crown purchase. Today, the Waitangi Treaty still arouses the suspicion of the Maori.

WAYS TO HANDLE AMBIGUITY AND
INCONGRUITY OF TERM

The ways of dealing with the ambiguity and incongruity of a term in international treaties differ for the lawyer and the translator. Whereas the lawyer has to find ways to solve the translation problem so as to interpret the treaty, the translator has to be able to understand ambiguity and convey it properly in another language while avoiding incongruity.

A. The Lawyer

Article 33 (*Interpretation of treaties authenticated in two or more languages*) of the Vienna Convention on the Law of Treaties, done in Vienna on 23 May 1969, is designed to solve problems of interpretation occurring in international treaties. Paragraph 4 states:

‘Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of Articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.’

As we can see, the convention is far from a definitive guide for the translator. It does not specify precisely which methods should be used to resolve issues. As a consequence, this task is surrendered to national courts.²²

Furthermore, international conventions tend to borrow terms from different law systems. For instance Unidroit (Institut international pour l’unification du droit privé (in English: International Institute for the Unification of Private Law) uses terms such as *force majeure* (‘event or effect that can be neither anticipated nor controlled’²³), a civil law term, and *hardship* (with the meaning of ‘privation

²² Šarčević S. *Op. cit.*

²³ *Black’s Law Dictionary. Op. cit.*

suffering or adversity²⁴), a common law term. As a consequence, national courts sometimes have to apply foreign concepts.

B. The Translator

As the ambiguity of a legal text may be deliberate, it must also be reflected in translation. The translator himself cannot try to guess the intention of the drafter.

Greenstein writes with regard to ambiguity: 'If the original is ambiguous, if the style is twisted and convoluted, the translator must choose a term as ambiguous, a style as convoluted in the target language. The translator must not clarify. The role of the translator is not to interpret, but he has to warn, using footnotes, about the problems of the original text.'²⁵

Hence for instance it is wiser, in a legal translation, to repeat the nouns, rather than pronominalizing them for stylistic reasons, because this can create undesirable ambiguity.

As for the incongruity of a term, the success of an international agreement may depend on the translator's ability to compensate for conceptual incongruity.²⁶ With this in mind, the legal translator has to avoid the use of system-bound terms that have no satisfactory equivalent in another legal system. The meaning of the legal term may be usefully conveyed by a descriptive paraphrase to define the meaning of a term associated with another law system.

²⁴ *Black's Law Dictionary. Op. cit.*

²⁵ « Si l'original est ambigu, si le style est tordu et alambiqué, le traducteur doit choisir un terme aussi ambigu, un style aussi alambiqué dans la langue cible. Il ne faut jamais clarifier. Le rôle du traducteur n'est pas d'interpréter, mais il doit signaler par des notes les ambiguïtés et problèmes du texte d'origine ». Greenstein R. Sur la traduction juridique. *Traduire* n. 171. Quoted in Houbert F. *Op. cit.*, 35.

²⁶ Šarčević S. *Op. cit.*

The 2008 August 12 Cease-fire Agreement between Russia and Georgia

French version²⁷:

1. Ne pas recourir à la force.
2. Cesser les hostilités de façon définitive.
3. Donner libre accès à l'aide humanitaire.
4. Les forces militaires géorgiennes devront se retirer dans leurs lieux habituels de cantonnement.
5. Les forces militaires russes devront se retirer sur les lignes antérieures au déclenchement des hostilités. Dans l'attente d'un mécanisme international, les forces de paix russes mettront en oeuvre des mesures additionnelles de sécurité.
6. Ouverture de discussions internationales sur les modalités de sécurité et de stabilité en Abkhazie et en Ossétie du Sud.

Russian version²⁸:

1. Не прибегать к использованию силы.
2. Окончательно прекратить все военные действия.
3. Свободный доступ к гуманитарной помощи.
4. Вооружённые силы Грузии возвращаются в места их постоянной дислокации.
5. Вооружённые Силы Российской Федерации выводятся на линию, предшествующую началу боевых действий. До создания международных механизмов российские миротворческие силы принимают дополнительные меры безопасности.
6. Начало международного обсуждения вопросов будущего статуса Южной Осетии и Абхазии и путей обеспечения их прочной безопасности.

English version (as it appears on the Kremlin's website)²⁹:

1. Do not resort to the use of force.
2. The absolute cessation of all hostilities.
3. Free access to humanitarian assistance.

²⁷ http://www.diplomatie.gouv.fr/fr/IMG/pdf/accord_6_points_signe_PR.pdf.

²⁸ Website of the President of Russia, Russian version: 'Заявления для прессы и ответы на вопросы журналистов по итогам переговоров с Президентом Франции Николя Саркози, 12 августа 2008 года, Москва, Кремль.' <http://archive.kremlin.ru/appears/2008/08/12/2004>.

²⁹ Website of the President of Russia. *Press Statement following Negotiations with French President Nicolas Sarkozy*. August 12, 2008. <http://eng.kremlin.ru/speeches/2008/08/12/>.

4. The Armed Forces of Georgia must withdraw to their permanent positions.
5. The Armed Forces of the Russian Federation must withdraw to the line where they were stationed prior to the beginning of hostilities. Prior to the establishment of international mechanisms the Russian peacekeeping forces will take additional security measures.
6. An international debate on the future status of South Ossetia and Abkhazia and ways to ensure their lasting security will take place.

The Waitangi Treaty, signed on 6 February 1840³⁰

English version:

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands – Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant-Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

ARTICLE THE FIRST

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

³⁰ New Zealand Ministry for Culture and Heritage, <http://www.nzhistory.net.nz/politics/treaty/the-treaty-in-brief>.

ARTICLE THE SECOND

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

ARTICLE THE THIRD

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

/signed/ William Hobson, Lieutenant-Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord one thousand eight hundred and forty.

Maori version:

KO WIKITORIA te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira – hei kai wakarite ki nga Tangata maori o Nu Tirani – kia wakaetia e nga Rangatira Maori te Kawanatanga o te Kuini ki nga wahikatoa o te wenua nei me nga motu – na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane amua atu ki te Kuini, e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

KO TE TUATAHI

Ko nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu – te Kawanatanga katoa o o ratou wenua.

KO TE TUARUA

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangitira ki nga hapu – ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua – ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

KO TE TUATORU

Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini – Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

/signed/ William Hobson, Consul and Lieutenant-Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

The 1969 Vienna Convention on the Law of Treaties, Article 33

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty are presumed to have the same meaning in each authentic text.
4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

REFERENCES

- Greenstein R. 1997. Sur la traduction juridique. *Traduire* n°171.
- Houbert F. 2005. *Guide pratique de la traduction juridique*. Paris: La maison du dictionnaire, 35.
- Russian Primary Chronicle (Russian: Повесть временных лет; Old Church Slavonic: Повесть времяньныхъ летъ). 1996. Kondratieva T. *La Russie ancienne*, Collection *Que sais-je?* Presses universitaires de France, 20.
- Peħar D. 2001. Use of Ambiguities in Peace Agreements. *Language and Diplomacy*. Malta: DiploProjects.
- Scott N. 2001. Ambiguity versus Precision: The Changing Role of Terminology in Conference Diplomacy. *Language and Diplomacy*. Malta: DiploProjects.
- Šarčević S. 1997. *New Approach to Legal Translation*. Kluwer Law International, 149–150.
- Rajaspera R. 1998. La traduction en malgache des conventions internationales. *Meta* vol. 43, n° 3, 380–392.

DICTIONARIES

- Cornu Gérard. 1987. *Vocabulaire juridique*. PUF.
- Black's Law Dictionary*. 1999. Minnesota, U.S.A.: ST.Paul.

SOURCES

Newspaper article

- Cease-fire Has 'Translation Problem', Russia Uses Miscue to Keep Troop 'Buffer Zones'. *The Washington Times*, Sunday, September 7, 2008.

News agency dispatch

- Agence France-Presse dispatch, 08/09/2008.

Treaties

- Waitangi Treaty (February 6, 1840).
- Traité de paix entre la France et Madagascar (December 17, 1885).
- Convention for the Unification of Certain Rules relating to International Carriage by Air, (signed at Warsaw on 12 October 1929).
- Protocol to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw on 12 October 1929, done at The Hague on 28 September 1955 (The Hague Protocol to the Warsaw Convention 1955).
- United Nations Security Council's Resolution 242 (November 22, 1967).
- Uruguay Round (1986–1994) Final Act.
- Cease-fire Agreement between Russia and Georgia (August 12, 2009).

Official websites

- http://www.diplomatie.gouv.fr/fr/IMG/pdf/accord_6_points_signe_PR.pdf.

<http://www.ambafrance-uk.org/Conference-de-presse-de-M-Bernard>.

Website of the President of Russia. English version. *Press Statement following Negotiations with French President Nicolas Sarkozy*. August 12, 2008, <http://eng.kremlin.ru/speeches/2008/08/12/>.

Website of the President of Russia. Russian version. Заявления для прессы и ответы на вопросы журналистов по итогам переговоров с Президентом Франции Николя Саркози, 12 августа 2008 года, Москва, Кремль, <http://archive.kremlin.ru/appears/2008/08/12/2004>.

New Zealand Ministry for Culture and Heritage, www.nzhistory.net.nz/politics/treaty/the-treaty-in-brief.

Unidroit (www.unidroit.org).

TERMINŲ DVIPRASMIŠKUMAS IR NESUDERINAMUMAS TARPTAUTINĖSE SUTARTYSE

ARNAUD PARENT

S a n t r a u k a

Teisinių terminų stabilumas, nors ir įtvirtintas daugybe norminių aktų, verčiant gali tapti pažeidžiamas. Autorius straipsnyje parodo, kad tai atsitinka dėl esminių teisės sąvokų skirtumų, pavyzdžiui, maorių ir anglų žemės nuosavybės teisės ir žemės valdymo principų skirtingumo, ar dėl teisės sistemų skirtumų – tai akivaizdžiai iliustruoja pavyzdžiai iš bendrosios ir civilinės teisės vertimų. Net toje pačioje teisės sistemoje pasitaiko nesuderinamų vertimo atvejų, atsirandančių dėl leksinių, sintaksinių ar kontekstinių verčiamo teksto interpretacijų. Autorius nurodo, jog tokie atvejai yra aptarti tarptautinėse konvencijose (Tarptautinių sutarčių teisės Vienos konvencija 1969): jose teigiama, kad pasitaikius dviprasmybei teisininkai privalo pasirinkti artimiausią originalo sąvokai terminą, o vertėjai turėtų laikytis dvejetainės strategijos. Pagal šios srities autoritetą R. Greensteiną (Greenstein 1997), terminų dviprasmiškumo atveju vertėjas turėtų rasti ir vartoti dviprasmišką terminą, o nesuderinamumo atveju turėtų atsisakyti ekvivalentinio vertimo principo ir versti aprašomuoju būdu, išaiškindamas sąvokas.