



Role of Translation in Concluding International Agreements and Preserving International Law: A Case Study of Translating International Law into Arabic

Aiman Musabah Al Owaisi

Adjunct Instructor, English Language and Literature Department, College of Arts and Social Sciences, MA in Translation Studies, MA Candidate in International Relations, Sultan Qaboos University, Oman
Email: a.owaisi@squ.edu.om

Article History

Received: 14 May, 2022

Revised: 16 July, 2022

Accepted: 18 August, 2022

Published: 25 August, 2022

Copyright © 2022 ARPG & Author

This work is licensed under the Creative Commons Attribution International

 CC BY: Creative Commons Attribution License 4.0

Abstract

This paper discusses international agreements as a source of international law and their relationship to the field of translation. It explores the way bilateral agreements and multilateral international agreements are drafted and how translation is involved in this process, with a focus on the English-Arabic drafting of agreements. It also examines how translation can affect the process of concluding these agreements, their interpretation after being signed, and their application. The paper also discusses the role translation plays in the consolidation of international law through international agreements. The study concludes by providing a number of recommendations to improve the practices of utilizing translation in the context of international agreements.

Keywords: International law; Bilateral international agreements; Multilateral international agreements; Translation; Drafting of agreements.

1. Introduction

International agreements have become a vital source of international law concluded by different states as a written evidence of their consent to a set of obligations. These agreements have been formalized by the issuance of [The Vienna Convention on Diplomatic Relations \(1961\)](#) and [Vienna Convention on the Law of Treaties \(1969\)](#). The validity of these treaties and agreements is based on the customary law, *pacta sunt servanda*, which means that “treaties must be observed” ([Gerhard and James, 2013](#)). These treaties and agreements go through several processes, before they are ratified by states, including negotiation, ratification, and interpretation. These three processes would not be achieved without the help of a translator. In the process of negotiations, states set together in order to draw up a treaty and authenticate its elements. They mostly use a lingua franca (shared language) or rely on a qualified translators and/or interpreters who would facilitate the process of negotiations between linguistically different interlocutors. When the treaty is ready to be ratified, translators clarify any ambiguity that may arise in this process.

The relation between international law and translation has been discussed by several scholars from different perspectives. For instance, [Prieto \(2014\)](#) attempts to identify the characteristics of legal translation and its role in the development of international and supranational law. He focuses on the practices of the United Nations, the World Trade Organization, the European Union and their adjudicative bodies. In other research, [Prieto \(2014\)](#) discusses how international organizations depend on translators to make the legal documents in many languages, as well as the role of translation in enforcing the international law. He considers the international law as a “network of translated texts”. I think that this description is valid as the international legal text is written in one language, then translated into several languages.

Similarly, [Fiocchi Malaspina et al. \(2014\)](#) explore the interaction between translation and international law from a historical perspective. Their paper discusses the role played by the translation in the consolidation of international law in Europe throughout history. The authors mainly discuss the process of legal reproduction of international agreements and treaties in the 19th century in Europe, while directly linking it to translation. The stage of interpreting is highly importance in the process of international law as any mistake in the interpretation will lead to critical consequences. This aspect was studied by [Farrokhi \(2019\)](#) who examines how the interpretation of the treaties is highly dependent on the process of translation. He sheds light on the practices of the International Court of Justice, World Trade Organization and the European Union regarding the process of legal translation. [Baajj \(2015\)](#) discusses the translation within the EU institutions. In this article, the author examines the linguistic diversity in the EU countries and how this diversity impacted the role of translation in the context of treaties and agreements among the EU member states.

Previous studies have focused on the role of translation in the process of drafting and interpreting international agreements and treaties with relation to western languages and states. This topic has rarely been discussed with relation to Arabic. Thus, the present paper examines the translation of treaties, particularly focusing on Arabic at the United Nations. It highlights the role of Arabic translation during three stages of treaties-making process: negotiation of the treaties, conclusion of the treaties and their interpretation. This will be followed by exploring the role of preserving international law through the translation of such international agreements. The study will follow a qualitative approach in which the relations and intersections will be thoroughly discussed, using the existing literature, as well as the researcher's own experience in the field of diplomatic translation. The study concludes with a number of recommendations to better optimize the process of international law translation into Arabic, given that Arabic is among the official languages of the UN.

2. International Law and Translation

International law is shared between nations from different parts of the world and from various cultural and linguistic backgrounds. The stakeholders of this international law network are diverse and multilingual. Therefore, the provision of the law in one language will be useless in this linguistically diverse globe as the legal document will be restricted by the linguistic barriers and will remain domestic. Even the lingua franca (shared language like English or French) would not serve the purpose intended by the law as the speakers of other languages need to read the materials in their mother tongue. However, because of this globalized world dominated by English, it is possible for some agreements and meetings to be conducted using English as a lingua franca as opposed to the use of French before the World War I.

Affirming the crucial role played by English, [Orts \(2017\)](#) states that drafting agreements between different nations "requires a common language for legal officials and scholars to understand one another, and such language is, undeniably, English," ([Orts, 2017](#)). The use of lingua franca, nevertheless, is not always applicable for different reasons. Firstly, diplomats tend to use their mother tongue as a way of taking pride in their languages and a sign of respect to their culture and nation. Secondly, it would be easier for them to understand the contents and the material if written in their language rather than reading it in a second language even if they speak it fluently. Thirdly, the use of the mother tongue ensures the delivery of the message properly as they are culturally and linguistically competent in their mother tongue. Therefore, translating and interpreting international law into the languages of the treaties' parties will ensure a smooth communication and dialogue among them. However, it is extraordinarily difficult for international institutions to provide the texts and interpret the meetings in all languages of the world. Some institutions overcome this challenge by selecting specific languages while others ignore the importance of multilingualism.

International and regional institutions like the UN opted for choosing specific languages as the main languages through which the texts will be provided to the member states, and from these languages the other states would translate individually using their own resources. Rule No.51 of the UN Rules of Procedure stipulates that "Arabic, Chinese, English, French, Russian and Spanish" shall be both the official and the working languages of the General Assembly, its committees, and its subcommittees", ([General Assembly Rules of Procedure, 2021](#)).

The process of editing the resolutions, agreements, treaties and other United Nations documents is carried out by the Editing Section, which is responsible for making these documents clear, precise, consistent, grammatically accurate, according to the United Nations editorial standards. This Section ensures that the documents are translatable into the other five official languages. Within 48 hours, the draft resolution should be edited, translated, formatted and proofread. The Department for General Assembly and Conference Management at the UN is shouldering the responsibility of the UN documentation process, including translation and language management through its various sections. This Department provides the General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council with the needed support including translation and interpretation ([Cao and Zhao, 2008](#)).

With the establishment of the six official languages of the United Nations, treaties and conventions started to be drafted in the six languages on an equal footing and simultaneously. All of the documents issued in the six languages are authentic and original. The other member states can select any of these languages to be the source text from which they translate to their mother tongue. This process can also be done through a cluster of states that speak the same language apart from the official languages, such as German in Austria, Belgium, Germany, Liechtenstein, Luxembourg and Switzerland.

This short overview shows us how interconnected and interrelated the field of translation and the field international law are. The international law-related documents highly depend on translation to facilitate their dissemination and communication to the member states. Without this process, those documents will be merely domestic and can only be applied in the states using the language of the document. The process of translating international law can be linked to the legal translation as an essential element in the process of law making, and implementation and interpretation of the legal documents of international nature. Thus, it is essential to have translators who are linguistically, legally and diplomatically competent to carry out this mission. We can call them the "Diplomatic Translators". Those translators should be provided with the skills to work as legal experts, translators, interpreters and international relations expert.

3. International Treaties and the Process of Translation

International agreements are one of the main sources of international law based on a principle of customary law called "pacta sunt servanda", or treaties must be observed. Article 2 of the [Vienna Convention on the Law of](#)

Treaties (1969) defines a treaty as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation,” (3). The need for translation in this process depend on the type of treaty.

If the treaty is bilateral between two states speaking a common language, there is no need for the provision of a translated text like the treaties concluded between two Arab States. However, if the treaty is between two states whose mother tongues are different, then the text of the treaty shall be provided in the two languages which shall be both deemed as authentic by the parties of the treaty.

In the case of drafting multilateral treaties, translation becomes an integral part in the drafting process as the text shall be provided in all the previously approved languages. As we discussed earlier, international and regional organizations identify their official languages in which the documents will be published. The choice of the languages depends on a number of geopolitical factors, as well as factors related to the size of the institution itself. The European Union, for example, has decided to adopt 24 official languages as the official language of all the EU related institutions which are Bulgarian, Czech, Croatian, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish, ([EU languages | European Union, 2021](#)). However, the United Nations could not do so because of the large number of Member States from various cultural and linguistic backgrounds. It has been easy, however, for other international organizations to provide all the languages of the Member States regardless of the large number because most of them come from the same background. A good example for this case is the Organisation of Islamic Cooperation (OIC) which consists of 57 Member States. The OIC provides the Member States with all the languages they speak which are Arabic, English, French. All of these languages are authentic when it comes to the application of the legal documents.

4. Translation of Treaties into Arabic

The use of Arabic in the drafting of treaties and agreements depends on the parties in the agreement whether they are monolingual, bilingual or multilingual. If the parties of the treaty are monolingual, it will be provided in one language. The Arab Ligue is a good example of a monolingual regional institution that adopts Arabic as the official language of the institutions where all documents, including treaties, are provided in Arabic. The same institution may use other languages when concluding treaties with foreign parties such as the European Union. But if the parties are bilingual or multilingual, the documents should be provided in their languages. We can see the case of bilingualism in the case of bilateral treaties between two States or two organizations from different parts of the world. For example, Oman has signed a number of political, economic and cultural treaties with the United States of America. The drafting of these treaties included both English and Arabic with equal authenticity and originality. As for the multilateral treaties, they are usually facilitated by regional and international institutions such as the United Nations, the European Union, Organization of Islamic Cooperation and others.

As an international practice, the process of establishing treaties goes through different stages in which translation is an integral part. Translation and interpretation are used in the preparation of multilingual and bilingual treaties, mainly treaties’ negotiation, treaties’ signature and treaties’ interpretation. This is because these three processes are done between parties who speak different languages and cannot communicate without the medium of translation. If the translator succeeds in conveying the proper meaning of the legal text during the drafting and negotiation step, the approval and interpretation of the legal document will be easy and smooth.

A good umbrella to discuss the three steps of preparing the treaties would be the United Nations which adopts Arabic as one of its official languages. Composed of 193 member states, the United Nations is keen to develop multilingualism as a way to enable communication among the Member States who come from different linguistic and cultural backgrounds in the meetings and sessions of the UN. This multilingualism also contributes to the inclusion of all Member States in the Organization’s discussions and meetings. The same goal of multilingualism has been stated by the European Union as [Prieto \(2017\)](#) said “The European Commission stated that one of the aims of the policy on multilingualism is to give citizens access to European Union legislation, procedures and information in their own languages,” ([Prieto, 2014](#)). However, we do not find this focus on multilingualism in some international organizations such as the World Trade Organization which produces the documents in English and French and asks the member states to provide the translation of the documents in their languages using their own resources. The International Court of Justice is another institution that provides the documents in English and French. Based on Article 39 of the International Court of Justice, the Court shall determine the authoritative language for each case presented before it. The parties of the case shall agree on the language to carry out the case. Then, the judgment will be delivered in that language, ([Prieto, 2014](#)). The Inter-Parliamentary Union provides the interpretation in the six languages of the United Nations, but provide the translation of only English and French.

English and the other five official languages in the UN are equally authentic and original. On 18 December 1973, The UN General Assembly resolution 3190 (XXVIII) stipulated the inclusion of Arabic as an official language and a working language of the General Assembly and its Main Committees. This important stage in the UN multilingualism history was followed by the establishment of the Arabic Language Translation and Text Processing Section (ATTS). The Section became responsible for the production of Arabic materials including translation and copywriting. As for interpreting, the Department for General Assembly and Conference Management takes care of providing the interpreting in the six languages of the UN by professional interpreters working at the UN.

After Arabic becomes one of the official languages in the UN, it has been highly contributing to the conclusion of treaties and the issuance of declarations and resolutions, as well as disseminating knowledge related to the work

of the UN in the Arab World. Despite the many activities carried out by the Arabic translators and interpreters in making the treaties, I will only focus on three steps: negotiation, signature and interpretation.

During the negotiation stage, the concerned parties meet to draw up and authenticate the legal text under discussion (treaties, declarations, resolutions...etc). This process is managed by the Secretariat of the UN, mainly the Department for General Assembly and Conference Management. The intersection between translation and international relations is very clear in this step in two ways. Firstly, in order for the concerned parties to understand the content of the legal document, the text should be provided in the languages of the participants. In the case of UN, as stated earlier, the texts are all provided in the six UN languages, while the translation of the other languages shall be provided by the participants through their respective governments. Secondly, when the parties concerned with the draft document are ready to provide their comments and insights, they will need for a linguistic facilitator, called the interpreter, to manage the communication between the linguistically diverse delegates. Again, the UN provides the interpreters in the six languages and the technical support for the other interpreters provided by the member states. Those comments and insights of the member states have to be in a written form in all languages of the concerned states, so again comes the importance of translation in communicating the comments to the UN Secretariate which will take note of these comment and negotiate them again with the concerned states.

After the legal document is thoroughly discussed by the concerned parties, the member states are requested to accept it through provisional acceptance firstly and then the final acceptance (ratification). In this process, the legal documents are taken by the States' Missions to the UN to their respective governments for discussion and ratification. For example, Oman recently ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This ratification comes after going through the process of negotiation by the Omani Mission to the UN which facilitating the communication between the Government of Oman and the UN. In this process, the Omani Mission provides the UN translated to the Omani government which in turn examines the documents and refer them to the concerned entities in the country such as Oman Council and concerned ministries to prepare the ground for the ratification. Then, the Mission sends it back to the UN in Arabic which is going to translate the document into the other five official languages. Once the comments and reservations are well received by the UN, the government signs the agreement or convention.

The last stage in the treaties' life cycle is the interpretation process. This is an important stage in which translation plays a vital role as any mistake in the translated Arabic text could lead to catastrophic consequences. Article 33 of the [Vienna Convention on the Law of Treaties \(1969\)](#) stipulates that "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,"(13). This article makes it clear that the authenticated translations of the text are authoritative and deemed as original. If any issue emerges because of translation errors, the parties should have already agreed on a certain language to prevail like English or French. As for the other languages apart from the UN languages, Article 33 also provides the guidelines for this situation stipulating that "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," (13). So, other languages can be deemed authentic if the treaty states this in its provisions. This article affirms the necessity to have "equal meanings" among the terms used in all the languages of the treaties. Therefore, the translation and editing team shoulder a heavy responsibly to ensure that all the translated versions carry the same meaning. The smallest details may impact the whole process. For example, the use of "shall" carries a different meaning from the use of "may". The first one is obligatory while the second one is optional. If the Arabic translator, for example, translate "shall" to "may", the parties responsible for the interpretation and application of the Arabic text will fail in applying the treaty properly. [Dörr and Schmalenbach \(2012\)](#), thoroughly discuss Article 33 and its implication on the interpretation process, concluding that it is essential to properly translate the texts to give equal meaning of the legal documents and facilitate the process of interpretation.

5. Role of Translation in Preserving International Law

Having discussed the intersection between international law and translation in the previous sections, it becomes clear how vital the role played by translation in this complex reality of a multilingual world is. As previously described by [Prieto \(2017\)](#), the international legal documents are merely "network of translated texts". This description reflects the affirmation of [Prieto \(2017\)](#) on the interdependence between translation and international law, as law cannot be international without the existence of translation as a tool of global communication. Regional and international institutions are in need for professional translators and interpreters to convey their news, declarations, discussions, resolutions, treaties and other materials to the member states in their respective languages. In this way, translation is highly contributing to the preservation and dissemination of international law. Consequently, each state will know its duties and rights and will contribute to the building of peace and stability.

It is known that the resolutions adopted by the General Assembly, the Security Council and the Economic and Social Council may in some case have some level of legal force. Therefore, professional translators and linguistic experts shall work on these resolutions to avoid any misinformation or mistranslation. To illustrate the importance of translation in the case of international resolutions, let's see what happened when the United Nations Security Council adopted Resolution No. 242 on November 22, 1967, after the Six-Day War. The translators missed the article "the" from the resolution where he translated it as "Withdrawal of Israeli armed forces from territories occupied in the recent conflict." This implies that the Israeli forces shall withdraw from "some territories occupied" not from all. The correct translation shall be "Withdrawal of Israeli armed forces from the territories occupied in the recent conflict."

A good exemplification of the impact of translation on the international relations and international law is the tension between the Israeli forces and the Palestinians at the beginning of May 2021. After 11 days of fighting between the Palestinians and Israeli forces, Egypt started mediating between the two parties to ease the tension and find a way to agree on a ceasefire from both sides. The mediators were working with the two parties speaking two different languages, Arabic and Hebrew. In this case, in addition to their political role, the mediators are playing the role of the diplomatic translators and interpreters between the two parties to confess them to agree on the ceasefire as soon as possible. These efforts succeeded in making the two parties cease the fire. If the mediators were linguistically unqualified in one language of the two parties, they would not have succeeded this way and saved hundreds of lives from this brutal war. Another example is the tens of agreements signed between states that have contributed to the preservation of peace and stability, as well as ensuring human rights, dignity and equality. All of these treaties have become international by virtue of translation that moves law from monolingualism to multilingualism. The human rights violations would not be reported internationally without translating them to the world and this is what international human rights organizations are doing like Human rights watch.

6. Conclusion and Recommendations

In conclusion, this study has examined the relations between translation and international law, looking at the intersection between the two disciplines. It provided insights on how these two fields are interrelated and interconnected. Then, it examined the translation of treaties, particularly focusing on Arabic at the level of the United Nations. It highlighted the role of Arabic translation during three stages of treaties process: negotiation of the treaties, conclusion of the treaties and their interpretation. Finally, the paper looked on how translation is impacting international law and it helps in communicating it to the whole world. The study argues that translation is a vital instrument in the consolidation and communication of international law. It also concludes that the use of translation depends on the type of institution intending to establish the legal document whether it is monolingual, bilingual or multilingual. However, we can see that the process of integrating translation in the international organization is not well established in some organizations. For example, The Inter-Parliamentary Union adopts the UN six languages in oral translation (interpretation) not in written translation. This made it difficult for the member parliaments to follow up the written texts of the Inter-Parliamentary Union.

This study recommends that the regional and international institutions should follow the practice of the UN by providing the translation and interpretation in the UN six languages to avoid such differences. It also proposes establishing an international organization for professional diplomatic translators and interpreters that will be responsible for the provision of translation and interpretation services for international organizations, which are not adopting multilingualism in their charters, to ensure the accuracy and quality of the translation and interpretation of international sensitive documents. Another recommendation for the Foreign Ministries is to establish a separate department for translation and interpretation in the key world languages that will support the Ministry and the embassies abroad in the process of translating international agreements and, hence, fostering the state's presence in the international law.

References

- Baaij, C. J. W. (2015). *Legal integration and language diversity: The case for source-oriented EU translation*. [Doctoral dissertation, University of Amsterdam], Digital Academic Repository. Available: <https://dare.uva.nl/search?identifier=b13cf10e-a68d-471c-b8e1-24295e03b54e>
- Cao, D. and Zhao, X. (2008). Translation at the united nations as specialised translation. *The Journal of Specialised Translation*, 9(1): 39-54.
- Dörr, O. and Schmalenbach, K. (2012). Article 33. Interpretation of treaties authenticated in two or more languages. EU languages | European Union (2021). Available: https://europa.eu/european-union/about-eu/eu-languages_en
- Farrokhi, M. (2019). The role of legal translation in the interpretation of international law documents. *Russian Law Journal*, 7(1): 55-86. Available: <https://doi.org/10.17589/2309-8678-2019-7-1-55-86>
- Fiocchi Malaspina, E., Malaspina, E. F. and Keller-Kemmerer, N. (2014). International law and translation in the 19th century. *Rechtsgeschichte - Legal History*, 2014(22): 214-26. Available: <https://doi.org/10.12946/RG22/214-226>
- General Assembly Rules of Procedure (2021). Available: <https://www.un.org/en/ga/about/ropga/lang.shtml>
- Gerhard, V. G. and James, L. T. (2013). *Law among nations: An introduction to public international law*. Pearson, NJ.
- Orts, M. (2017). Legal english as the lingua franca for international law. Traits and pitfalls for esp practitioners and legal translators.
- Prieto, R. F. (2014). International and supranational law in translation: from multilingual lawmaking to adjudication. *The Translator*, 20(3): 313-31.
- Prieto, R. F. (2017). Global law as translated text: Mapping institutional legal translation. *Tilburg Law Review*, 22(1-2): 185-214.
- The Vienna Convention on Diplomatic Relations (1961). Available: https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf
- Vienna Convention on the Law of Treaties (1969). Available: <https://www.treatylaw.org/vienna-convention-law-treaties-1969/>