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ONE WORD, TWO LANGUAGES, TWO INTERPRETATIONS: THE POLISH-LITHUANIAN TREATY OF 1994 AND HOW IT WAS (MIS)UNDERSTOOD

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Abstract: The article studies the impact of the differences in the meaning of the word *brzmienie* in the *Treaty on Friendly Relations and Good Neighbourly Cooperation of the Republic of Lithuania and Republic of Poland* of April 26, 1994. The Polish word in question is ambiguous and has two potential meanings, whereas its equivalent used in the Lithuanian language version is unequivocal. Interestingly, the treaty was prepared only in Polish and Lithuanian, without the mutually accepted English version. Therefore the two (published by government-endorsed periodicals) translations into English of the text of the treaty that exist – one made by Poles and one by Lithuanians – have only unofficial status. The difference between these two English translations highlights best the divergence in how the two contracting parties obviously perceive their rights and obligations as circumscribed by the treaty. This divergence has figured heavily on the attitude of the media, and in due course influenced the public opinion in both states.
Key words: translation of treaties, translation ambiguity, Polish-Lithuanian relations, given names, surnames

JEDNO SŁOWO, DWA JĘZYKI, DWIE INTERPRETACJE: POLSKO-LITEWSKI TRAKTAT Z ROKU 1994 I JEGO (NIE)ZROZUMIENIE

Abstrakt: Artykuł analizuje wpływ, jaki miała różnica w znaczeniu słowa *brzmienie* użytego w *Traktacie między Rzecząpospolitą Polską a Republiką Litewską o przyjaznych stosunkach I dobrosąsiedzkiej współpracy* z dn. 26 kwietnia 1994. Polskie słowo jest dwuznaczne, podczas gdy jego użyty w litewskim tekście odpowiednik – jednoznaczny. Co ciekawe, tekst traktatu sporządzono tylko w wersji językowej polskiej i litewskiej, bez uzgodnionej wspólnie wersji angielskiej. Zatem obie istniejące (i opublikowane w periodykach związanych ze stroną rządową obu państw) wersje angielskie tekstu – jedna sporządzona przez Polaków, druga przez Litwinów – mają status nieoficjalny. Różnica między nimi najlepiej uwypukla rozbieżność, jaka istnieje między układającymi się stronami w kwestii postrzegania obowiązków i praw definiowanych przez traktat. Rozbieżność ta znacząco zaważyła na podejściu mediów, a co za tym idzie – wywarła wpływ na opinię publiczną w obu państwach.
Słowa kluczowe: tłumaczenie traktatów, niejednoznaczność w tłumaczeniu, stosunki polsko-litewskie, imiona, nazwiska

Introduction

The dramatic systemic changes that took place in Poland after the fall of Communism in 1989 resulted in the sharp increase in the demand for legal translation at both private and – especially – state level. Among others, the state which broke with its Communist past needed to redefine its relations with the neighbours. Consequently, in the first half of the

1990s, bilateral treaties, whose titles typically referred to friendship and good neighbourly cooperation, were signed by the Republic of Poland with Germany (1991), the Czech and Slovak Federal Republic[1] (1991), Ukraine (1992), the Russian Federation (1992), the Republic of Belarus (1992), and finally with the Republic of Lithuania (1994). It was no coincidence that among Poland's neighbours, the relationships with Lithuania took the longest to establish. The bones of contention were many: Polish-language education for the children from the Polish minority in Lithuania; the issues of the restitution of property left behind by former Polish inhabitants of Vilnius and the Vilnius region; the controversies connected with the way Polish given names and surnames were spelt in official Lithuanian documents; and the existence or non-existence of bilateral street signs. In the following decade, the conflict about the oil refinery in Mažeikiai (Możejki) was to add to the list of mutual grievances.

Unfortunately, as Matulewska and Nowak (2006, 31) bitterly yet poignantly noted, "[i]t has suddenly turned out that Poland fails to translate legal documents reliably and professionally" (or maybe to proofread the Lithuanian version?). The present article is a case study which purports to prove how a single mistake in Polish-Lithuanian translation of the aforementioned 1994 treaty led to grave consequences and contributed to the increase in tension between the two states. In the opinion of Weisgerber,

> [i]t is generally accepted that the translation of a literary work of art can at best approximate to the original but can never hope to exhaust its meaning. The loss in such a case is only one of artistic effect, but *when the wording of a treaty is translated more or less imperfectly there is a direct impact upon the lives of all those affected by the document*. Every deflection from the line of expression of the original is a starting-point for active forces determining the everyday existences of those people (1961, 1-2, emphasis in the original).

One might invoke in support the case described by Weisgerber – the mistranslations in the so-called Paris Treaty between Italy and Austria (eventually incorporated into the Peace Treaty of 1947), which determined the status of German-speaking South Tirol that in the aftermath of WW2 became part of Italy. Another famous example involved the Treaty of Waitangi, signed in 1840 between the British government and Maori chiefs in New Zealand, which in the translation into Maori purportedly gave the natives a right of governance in return for protection, whereas its English-language version deprived Maoris of all sovereignty[2].

[1] Short-lived by that name, the state was soon to dissolve into the Czech Republic and the Slovak Republic. Nevertheless, as of 2013, the treaty remains in force.

[2] Cf. http://www.justice.govt.nz/tribunals/waitangi-tribunal/, accessed Jan. 5, 2014.

The Polish-Lithuanian Treaty of 1994

The *Agreement on Friendly Relations and Good Neighbourly Co-operation between the Republic of Lithuania and the Republic of Poland* [3] (in Polish: Traktat między Rzecząpospolitą Polską a Republiką Litewską o przyjaznych stosunkach i dobrosąsiedzkiej współpracy, in Lithuanian: Lietuvos Respublikos ir Lenkijos Respublikos draugiškų santykių ir gero kaimyninio bendradarbiavimo sutartis) was signed in Warsaw on April 26, 1994, by Polish and Lithuanian presidents: Lech Wałęsa and Algirdas Brazauskas. It was ratified by the parliaments of both states a few months afterwards and came into force on November 26, 1994.

The contested clause, whose observance (or non-observance) led to so many heated debates, concerned the right of the members of national minorities to use their given names and surnames in their native (i.e. minority) language. The following example illustrates the difference.

Example 1. The regulation concerning minority names.

> (i) Układające się Strony oświadczają, że osoby wymienione w artykule 13 ustęp 2 mają w szczególności prawo do… używania swych imion i nazwisk **w brzmieniu**[4] języka mniejszości narodowej [official Polish language version[5]].
> (ii) Susitariančiosios Šalys pareiškia, kad asmenys, išvardinti 13 straipsnio 2 punkte, taip pat turi teisę… vartoti savo vardus ir pavardes **pagal** tautinės mažumos kalbos **skambesį** [official Lithuanian language version[6]].
> (iii) The Contracting Parties declare that the persons referred to in Article 13, paragraph 2 have in particular the right to… use their names and surnames **in the version** used in the language of the national minority [English translation from the Polish version made by Andrzej Misztal[7]].
> (iv) The Contracting Parties declare that the persons, named in Article 13 paragraph 2, also have the right… to use their names and surnames **according to the sound** of the national minority language [English translation from the Lithuanian version[8]].

One more proof that the Lithuanian side understands the version of names to be *phonetic only* can be found in the text of the Report on the Implementation of the FCNM in the Republic of Lithuania:

> Article 14 of the Agreement on Friendly Relations and Good Neighbourly Co-operation between the Republic of Lithuania and the Republic of Poland, which

[3] There being no official English name of the treaty, the English translation of its name has been quoted after the CoE documents reporting the monitoring of implementing the Framework Convention for the Protection of National Minorities.
[4] The emphasis in all the quotes has been added by the present author.
[5] *Dziennik Ustaw* 1995 nr 15 poz. 71. Retrieved Aug. 19, 2013 from http://isap.sejm.gov.pl/DetailsServlet?id=WDU19950150071.
[6] Retrieved Aug. 19, 2013 from http://www.kpd.lt/lt/node/157
[7] *Zbiór Dokumentów* 1994/L, X-XII 1994. Warszawa: Polski Instytut Spraw Międzynarodowych, p. 29.
[8] *Lithuanian Foreign Policy Review* 1998/2, retrieved Sept. 4, 2013 from http://www.lfpr.lt/uploads/File/1998-2/Treaty%20on%20Friendly%20Relations.pdf.

> was ratified by the Seimas of the Republic of Lithuania on 10 October 1994, provides that persons belonging to the Lithuanian national minority in the Republic of Poland and persons belonging to the Polish national minority in the Republic of Lithuania have the right "to use their names and surnames **as it is pronounced** in the language of the national minority"[9] (2001: 60, emphasis added).

There is an outstanding difference between options (iii) and (iv) in terms of the consequences for the Polish minority in Lithuania. Admitting option (iii) would mean that the names remain intact; admitting its rival version (iv) would amount to the distortion, sometimes rather severe, of their written form, as the following examples illustrate:

Example 2. Selected Polish versus Lithuanised given and family names.

(i) Polish: *Krzysztof Szuszczewicz, Lech Wałęsa, Anna Okuszko, Andrzej Rekść, Józef Bączek, Róża Mackiewicz*

(ii) Lithuanised: *Kšyštof Šuščevič, Lech Valensa, Ana Okuško (Okuškienė, Okuškaitė), Andžej Rekst, Juzef Bonček, Ruža Mackevič (Mackevičienė, Mackevičiūtė)*

The reason why the two English versions diverge so visibly is to be found in the dictionary meanings of the respective phrases in Polish and in Lithuanian. Zgółkowa and Walczak (1994-2005)[10] give the following four meanings of the word *brzmienie*:

Example 3. Dictionary meanings of the Polish word *brzmienie.*

(i) the appearance as sound, voice; the making, producing of sound, voice

(ii) a particular wording, particular content, thought

(iii) the total of an acoustic phenomenon or sound impression; the sum of the characteritic features of a sound, voice; colloquially: timbre

(iv) *rare* a speech sound

A Lithuanian dictionary (Keinys et al. 1993) gives two meanings of the word *skambesys* which was used in the Lithuanian language version of the treaty:

Example 4. Dictionary meanings of the Lithuanian noun *skambesys.*

(i) ringing sound (of a key, of metal)

(ii) the height of sound, the total of [its] intensity and timbre

The above definitions indicate that while Polish allows both literal and figurative meaning of the word, its Lithuanian counterpart is only literal. This observation is corroborated by evidence in the form of multilingual versions of the European Union law[11]. In no instance has the Lithuanian noun *skambesys* been used in the sense of

[9] *Report Submitted by Lithuania Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities*. Oct. 31, 2001. Retrieved Aug. 20, 2013, from http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Lithuania_en.pdf.

[10] The largest dictionary of contemporary Polish (fifty volumes). This and all further translations into English are by the present author.

[11] http://eur-lex.europa.eu.

'version, wording, content'. Similarly the analysis of all multilingual EU documents in whose Lithuanian version the word *skambesys* (in the nominative or other grammatical cases) yields no documents in which it would be translated into Polish as *brzmienie* in the sense of 'version, wording, content'.

It is noteworthy that the same or similar clauses appear in the Polish language versions of five other treaties about friendship and cooperation between Poland and its neighbours or other states. The relevant quotes are presented chronologically below.

Example 5. Clauses in other bilateral treaties.

(i) prawa do … używania swych imion i nazwisk **w brzmieniu** języka ojczystego (Art. 15 (2) of the 1991 treaty with Germany)
(ii) prawo używania … imion i nazwisk **w brzmieniu i pisowni** języka ojczystego (1992 declaration signed with Lithuania)
(iii) prawa do … używania imion i nazwisk **w brzmieniu przyjętym** dla języka ojczystego (Art. 11 (1) of the 1992 treaty with Ukraine)
(iv) prawo... do... używania swych imion i nazwisk **w brzmieniu przyjętym** dla języka ojczystego (Art. 15 of the 1992 treaty with Belarus)
(v) prawa do... używania imion i nazwisk **w brzmieniu i pisowni** języka ojczystego (Art. 15 (2) of the 1992 treaty with Latvia)

The above shows that in only two cases – (ii) and (v) – is the phrasing unambiguous since it refers explicitly to *both the spelling and the pronunciation*. However, no problems or controversies over the interpretation arise in the case of the other three treaties. It is so for two reasons. In the case of (i), the German language version of the treaty helps resolve the potential ambiguity*: Ihre Vor- und Familiennamen in der Form der Muttersprache zu führen*. In the case of (iii) and (iv), on the other hand, the obvious difference between the writing systems of Polish and Ukrainian (or Belarusian, respectively) leads to the literal interpretation of *brzmienie* as 'sound, pronunciation' as the only imaginable understanding of the phrase. This is why only the Polish-Lithuanian treaty became a source of tension.

The Consequences

The uncertainty surrounding the question of what exactly has been safeguarded by the treaty (and what has not), in some cases coupled perhaps with a good measure of ill will, led to the situation wherein the politicians and media in Poland and Lithuania are still holding conflicting views on the issue. This is readily visible in quotes from Polish media:

> The original form of the spelling of surnames of Poles in Lithuania and Lithuanians in Poland is guaranteed by the treaty signed by both states in 1994. Vilnius does not comply with this law to this day (Filipiak 2010).

> In 1994 presidents of Poland and Lithuania of the time, Lech Wałęsa and Algirdas Brazauskas, signed the Treaty […] in which both parties promised to enable Poles in Lithuania and Lithuanians in Poland to write in documents their names according to the original spelling (PAP 2012).

> The Polish-Lithuanian treaty of 1994 provides for the introduction of the spelling of Polish surnames in Lithuania and of Lithuanian surnames in Poland with the use of all diacritical marks (Litewska komisja... 2012).

Even the Polish president Bronisław Komorowski, speaking for the Polish state radio on February 17, 2011, voiced his concern over the friction between Poland and Lithuania, which in his opinion was ”fuelled by as yet unimplemented agreement signed in 1994, securing civic rights for the Polish community, including [...] the right to use surnames and names in their native form.”[12]

Lithuanian media, on the other hand, hold that the treaty allowed phonetic transcription of surnames:

> In the agreement between Lithuania and Poland regarding friendly relations and good neighborly cooperation, both countries agreed to allow ethnic minorities to “use their names and surnames in the minority language sounds” (Lithuania Tribune 2012).

In a similar vein, on 5 April 2012 the Lithuanian ambassador to the UK, Oskaras Jusys, stated in a letter to ”The Economist” that ”Lithuania fully adheres to the provisions of the Lithuanian-Polish treaty of 1994, which gives Lithuanian Poles the right to spell their names according to how the Polish language sounds.”[13]

The Legal Point of View

As has aptly been noted, ”[w]e live in the age of treaties [...] New technology and growing international exchange have established the need for an ever more precise and flexible international law – a need not satisfactorily met by customary law [...] Considering [...] that the number of states capable of drafting and concluding treaties seems to be growing, it is not surprising that treaties are concluded far more frequently than ever before” (Linderfalk 2007, 1).

According to the Vienna Convention of 1969, a treaty is ”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”[14] (article 2(1a)). It may go by different names, such as declaration, protocol, administrative agreement, convention and many others. On the basis of the number of contracting parties, treaties are divided into bilateral (signed by two states) and multilateral (with three or more parties involved). Regarding the language(s) in which they are drawn, there may be monolingual (a rare option), bilingual or plurilingual treaties, of which the last type is often the result of the wish to negotiate the treaty in a third language which will prevail in the case of a difference (Aust 2010, 250-255; cf. also Cao 2007, 138-140 and 143-153).

[12] http://www2.polskieradio.pl/eo/print.aspx?iid=149518, retrieved Aug. 22, 2013.
[13] http://www.economist.com/node/21552171, retrieved Aug. 22, 2013.
[14] Vienna Convention on the Law of Treaties. United Nations, *Treaty Series*, vol. 1155, p. 331. Retrieved Aug. 19, 2013, from http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

As Matulewska and Nowak (2006) have pointed out, no-one seems to know who the translators responsible for the erroneous legal translations of important state documents are; it is similarly difficult to establish in which language the negotiations that led to the signing of the treaty under consideration had been conducted. This is deplorable insofar as that information might shed some light upon the causes of potential mistranslations. Aust (2010, 251) notes that bilateral negotiations are often held in the language of only one of the states, or in a third language common to both; the choice of the language of negotiations is then in turn reflected in the choice of the language used to draw up the resulting treaty, as well as of the language text to prevail in case of divergence. The aforementioned bilateral treaties between the Republic of Poland and all its neighbours were all bilingual: Polish and respectively German, Ukrainian, Russian, Lithuanian, with both used languages declared equally authentic. Incidentally, the same held for analogous treaties between Poland and non-neighbouring countries (Hungary, Latvia, Estonia, Georgia, Moldova, Bulgaria, Romania, France, Italy, Spain) – these were all prepared in Polish and the titular language of the other respective contracting party. Only in the case of the treaty with the Czech and Slovak Federal Republic, the languages of the treaty were the equally authentic Polish and Czech, without the use of the Slovak language. However, in the case of the 1993 treaty with Turkey or the 1996 treaty with Greece, there were three languages – Polish, Turkish (or Greek respectively) and English – with the English text prevailing in case of divergence. Similarly the 1995 treaty with Uzbekistan was prepared in three equally authentic languages: Polish, Uzbek and Russian, with the Russian text prevailing.

It is known that the negotiations that led to the signing of the Polish-Lithuanian treaty of 1994 were long and arduous, as reported on September 8, 1994 in the Polish parliament by Iwo Byczewski, Poland's deputy foreign minister at the time. Referring to the article of interest here, he revealed:

> Finally the issue that aroused the most controversy and interest during negotiations, that is the issue of safeguarding minority rights in both states. […] Note that similar solutions, although not as detailed, have been adopted in other treaties, signed by Poland with Russia, Ukraine, Belarus and the Federal Republic of Germany. We are talking here of articles 14 and 15. Article 14 contains a detailed catalogue of minority rights. I wish to draw the attention of the Committee to the provision concerning the use of given names and surnames in the version ['w brzmieniu'] of the minority languages. Hammering it out took us a lot of time. The aim of this provision is to protect the given names and surnames of the members of Polish minority […], which were often deformed in the past by transcription.[15]

Byczewski's words would seem to indicate that the discrepancy between the Polish and Lithuanian language version is due to a mistranslation from Polish into Lithuanian. On the other hand, given the specific and delicate nature of the negotiations whose outcome is the drafting of a treaty, it is not easy at times to delineate translator turf from politician turf. Pisarska and Tomaszkiewicz emphasise:

[15] Dyskusja w Sejmie RP nad rządowym projektem ustawy o ratyfikacji Traktatu między Rzecząpospolitą Polską a Republiką Litewską o przyjaznych stosunkach i dobrosąsiedzkiej współpracy. Retrieved Jan. 5, 2014, from http://www.pogon.lt/docs/LT_ratyfikacja.pdf.

> And one more delicate function of the translator on exactly the level of international treaties. The preparation of each language version of a legal text, which in consequence would be legally binding for all the member states of some international organisation, takes place under intense political pressure. Either some of the states wish to preserve their national specificity and to emphasise their independence, or the texts contain certain intended ambiguities that leave a margin of freedom in interpreting (1996, 190-191).

The above observation is further confirmed by Cao, who reminds that

> in international diplomacy, negotiators frequently resort to a compromise that glosses over their differences with vague, obscure or ambiguous wording, sacrificing clarity for the sake of obtaining consensus in treaties and conventions […] Sometimes a provision is delicately left vague (known in French as *flou artistique*) to paper over a failure to reach full agreement (2007, 153).

The Point of View of Translation Theories

While the existence of two (or more) language versions of a treaty must have resulted from translation, its directionality is neither obvious nor easy to determine. What is clear, though, is the fact that in the translation into English the Polish side evidently takes the word in question to carry figurative meaning – Example 3 (ii) – whereas the Lithuanian side opts for the literal meaning – as in Example 4 (ii) and Example 5 (i). Thus only reference to a third language helps reveal the hidden divergence in Polish between the meaning of the phrase in legal language and its meaning in colloquial language. That kind of divergence has been listed as one of the potential pitfalls for legal translators by Matulewska (2008, 61). Moreover, as Pieńkos noted,

> [i]t is particularly dangerous to translate from a (closely) related language, i.e. when one assumes as a semantic equivalent the word that corresponds morphologically to the word to be translated, but does not have the same meaning or is an accurate translation in some meanings only […] Most legal terms are legal words that preserve their colloquial meaning – alongside their technical meaning, which differs more or less from the national language and which is frequently treacherously ambiguous (1999, 179-180).

In history there have been numerous theories of translation. Certain ideas are today discarded – many, however, are still supported; a discussion of their relative merits and of the criticism that they occasioned would be far beyond the scope of this article (on the topic, cf. e.g. Snell-Hornby 2006, Munday 2012, and Pym 2010). How applicable are they to the actual job of a translator – and, notably, a legal translator?

"There can be few professions with such a yawning gap between theory and practice [as that of a translator]" (Chesterman and Wagner 2002, 1), which statement is relevant to the present topic insofar as Wagner herself is a practising translator of UE documents (which include treaties). More specific reservations are voiced with reference

to legal texts within the functionalist theoretical framework by Garzone (2000, 3[16]), who observes that "legal writing is typically ritualistic and archaic, being subject to very strict stylistic conventions in terms of register and diction as well as highly codified genre structures"; therefore "the legal translator has to cope with problems that are different from those encountered in other sectors". Consequently, "a general translation theory, albeit conceived for comprehensiveness and extensive application, seems to be somehow inadequate".

Moreover, the very status of a theory of translation is differently understood by different scholars: should it merely describe the observed phenomena (possibly predicting future developments), or should it (also) offer explicit advice and guidance to translators? In other words, should it be merely descriptive or downright prescriptive[17] (possibly including description as its point of departure)? If one assumes that description is all that a theory of translation can aspire to, with even the explanation for the observed phenomena going perhaps too far[18], then the present article should be limited to merely describing the observed mistake in translation: to this end, older theories that focus on equivalence should be sufficient. For example Kade (1968, 202) observed that "die Intention eines Senders niemals völlig mit dem Effekt bei seinem Empfänger übereinstimmt." In Kade's classification, the case under consideration would likely be understood as the case of *Eins-zu-Teil-Äquivalenz*, where of the two potential meanings of the phrase in SL only one TL meaning (and perhaps the wrong one, too) has been chosen by the translator(s).

However, if a deeper explanation of how the mistake came about is needed, theories that take *purpose* as their focus might be more appropriate, though at the risk that "linguistics will not be of much help" and that one will engage instead in "applied sociology, marketing, the ethics of communication, and a gamut of theoretical considerations that are only loosely held under the term 'cultural studies' " (Pym 2010, 49). Of these, Skopos theory appears especially promising. Within the framework of this theory, Vermeer gives an example of a business contract, which in his opinion does not have to be translated "literally" but should be "adapted to target-culture conventions" and "worded in such a way that the legal implications of the project are clear and there will be no unexpected complications in the future". However, then Vermeer adds: "Unless complications are part of the 'game' [skopos][19] as is often the case in diplomatic negotiations" (1996, 32-33). This disclaimer is reminiscent of the previous observations by Pisarska and Tomaszkiewicz 1996 and by Cao 2007.

Finally, the present discussion could aim at offering advice on how the mistake in question may have been avoided – for instance Gouadec 2010 describes in detail the twelve steps to be taken in the translating assignment and includes among them

[16] Pagination given after the electronic text retrieved Jan. 4, 2014, from http://www.academia.edu/771698/Legal_Translation_and_Functionalist_Approaches_A_Contradiction_in_Terms.

[17] E.g. discussing Skopos theory, Pym (2010, 59) refers to its "strong pedagogical purpose beneath a thin veil of descriptivism."

[18] Pym (2010, 68) is of the opinion that if "theories about the posssible causes (personal, institutional, historical) explaining why people translate differently" are termed descriptive, this is a misnomer.

[19] The gloss in square bracket is by Vermeer.

consulting "other documents produced for the same work provider or in prior […] translation" (p. 18), a postulate that in this particular case was accidentally or intentionally neglected.

Thus, due to the uncertainly about the exact nature of the potential insight that translation theories might offer in the analysed case, it has been decided, in a manner that could possibly be described as eclectic, to limit the present discussion only to some (elements of) theories that might (it is argued regardless of Wagner's doubts) contribute some theoretical support to the analysis of the faulty translation of the Polish-Lithuanian treaty under consideration[20]. As Garre noted in reference to translating documents relating to human rights, "many translation theories and practices set out to establish one overall approach to as many text types, translation situations and purposes as possible. But the problem is whether existing translation theories are in fact applicable in the translation of international human rights texts" (1999, 3). One needs merely to replace "human rights texts" with "treaties" to obtain an equally applicable proposition.

Certainly the dichotomy between formal vs. dynamic equivalence (the latter understood as having equivalent effect) might be of use (cf. e.g. Nida 1964, 159ff): indeed the Lithuanian version reveals formal but certainly not dynamic equivalence to the Polish phrase. If one substitutes *equivalence* with a more up-to-date sounding notion of *matching* or *correspondence*,[21] the nature of the problem will not change much. One may also take a broader perspective (from analysing sentences or their elements to analysing the whole text), much as Translation Studies have, in the wording of Snell-Hornby, "taken the pragmatic turn", as embodied e.g. in the emergence of text linguistics. The notion of function, so important for the Skopos theory (cf. e.g. Vermeer 1996), is also to be drawn upon. However, Vermeer's assumption that the text is an *offer of information* (Informationsangebot), "from which the receiver accepts what they want or need" (Nord 2006, 132) potentially leads to the conclusion that the ambiguity embedded – to varying degrees – in both the Polish and the Lithuanian language version of the treaty is precisely the embodiment of this postulate; in fact, it is *the outcome of the translation process desired for a target purpose by the target addressees in target circumstances*.

Within the framework of the functionalist approach it is also possible to treat the mistranslation in question as an example of what Nord (2005, 81) terms *instrumental translation*[22], "intended to fulfil its communicative purpose without the recipient being conscious of reading or hearing a text which, in a different form, was used before in a different communicative situation." As Nord (ibid.) emphasises, "an instrumental translation is legitimate only if the intention of the sender or author is not directed exclusively at an SC [source culture] audience but can also be transferred to TC [target culture] receivers, so that the information offer of the TT [target text] is included in the information offer of the ST [source text]". Strictly speaking, this is the case: the TT meaning under consideration here is one of the two possible meanings that the corresponding expression in ST may assume.

[20] After all, "we should feel free to move between the paradigms, selecting the ideas that can help us solve problems" (Pym 2010, 165).

[21] Cf. Pym's question: "What happened to the equivalence?" (2010, 64-65).

[22] As opposed to documentary translation.

Many volumes have been devoted to the constatation that cultural differences between source culture and target culture (e.g. different types of institutions, such as – in legal translation – courts) render translation difficult. Nevertheless, the present article focuses not on profound cultural differences, but on simpler (and more trivial) language differences. Cao (2007, 34) refers in that context to the "often invisible crossover in translation" and points out that "[w]ords may be written and read in the same language but people's interpretations in the SL and TL differ due to the differences in language use," which – if one disregards for a moment the potential intentionality of the mistranslation – is exactly what happened in 1994.

Yet another proposal for interpreting (and possibly preventing) the mistake under consideration comes from scholars who accentuate the notion of *uncertainty*. One can never be certain about the intention of a text, and this uncertainty might even extend to communication in general. These theories are quite prescriptivist in the solutions they offer to deal with this problem. If one can not rely on the meaning of the ST, what is one to do? Certainly theories of consensus (cf. Pym 2010, 102-103) can help: the ST meaning needs to be established by discussion before a translation is made – the move obviously neglected in the translating of the 1994 treaty.

Concluding Remarks

In terms of the language, evidently the two different readings of the controversial passage in the 1994 treaty belong to two different realms: to the realm of the language of the law ('wording, content') and to the realm of general language ('sound'). In fact, the former is included in the latter, in line with the opinion expressed by Pieńkos that "the language of the law of normative acts, the legal language, the legal jargon[23], in order to express what it is to express refers not only to specific legal lexis and to certain characteristic peculiarities of inflection, but also to all of the national language" (1993, 302). In such cases translators must be aware of their responsibility – but also of the limitations of their job. Referring to the distinction between *understanding* (i.e. automatic cognition without consciously reflecting on the meaning) and *interpretation* (where due to some ambiguity or other unclarity the receiver is forced to reflect on the meaning), Šarčević notes in the context of international treaties:

> it is generally agreed that the translator has no authority to resolve an ambiguity in the source text as this would be an act of interpretation. This is especially true in the case of treaties which are often the product of political compromises where clarity must be sacrificed for the sake of obtaining consensus, thus resulting in ambiguous or vague formulations […] [O]ne of the biggest fears of treatymakers is that translators will clarify an intentional ambiguity or unclarity, thus upsetting the delicately achieved balance and inviting adverse interpretations (1997, 92).

Similar advice is given to legal translators by Cao who stresses that

[23] The distinction between the language of the law [język prawny] and the legal language [język prawniczy], introduced in the 1940s into Polish by Bronisław Wróblewski, is not necessarily paralleled in the systems of other European states, cf. e.g. http://transliteria.blogspot.com/2012/05/judicial-decisions-in-polish-and.html, accessed Sept. 4, 2013.

> important advice to translators of international instruments is that translators should avoid attempts to clarify vague points, obscurities and ambiguities, and as pointed out, those who do run the risk of upsetting the delicately achieved balance and misrepresenting the intent of the parties […] However, there is also the difficult question of how the translator distinguishes the deliberate obscurity […] from inadvertent obscurity (2007, 153).

The question remains open then how much responsibility for the situation described above rests with the translator(s) and how much – with the politicians. This issue is closely related to the following question: "to what extent can one disregard the literal meaning of the original texts[24] (even when there is no discrepancy between them) if it appears that the literal meaning does not reflect what the drafters intended to say, or the way in which a provision is applied in practice?" (Akehurst 1972: 25). It appears that in the case under consideration, the inclusion of a third language in the text of the treaty might have reduced the ambiguity. It is also possible, however, that the double-entendre on the part of the negotiators may have been intentional, since in this way the public opinion in each state has been left free to choose the meaning it wants.

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[24] Of parallel language versions of an international treaty.

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