

Lost in translation

Varying German-language versions of international treaties and documents

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“Of course, international law is the same everywhere, so it's not a problem, right?” is the response I often get when talking about my transition into German academia. Anthea Roberts [prominently made the case](#) that this is not necessarily true. Surprisingly, I discovered that some of it differs even between Austria and Germany.

Teaching international law courses at a German University, I expected to simply draw from my previous years of experience without much additional preparation. I walked into my first international law class, the characteristically [yellow “Kodex” materials collection](#) in use across Austrian law schools in hand. Reading out the [Satzung der Vereinten Nationen](#) (for this is what the UN Charter is called in Austria, as opposed to the German [“Charta der Vereinten Nationen”](#)), a couple of students following the text in their voluminous loose-leaf [“Sartorius”](#) looked bewildered: “Sorry, this is not what it says here.”

Non-German-speakers will quickly stumble over the word jumble from one text to another. German-speakers marvelled at the almost opposite choice of grammar. Both are the “official” translations produced within the respective legislatures or ministries, reproduced in the law gazettes of each state. The fact that two neighbouring countries sharing the same language would not pool their resources to create a common translation might seem peculiar. But is it relevant? After all, most often texts will not be authentic.

I will argue three specific reasons why my observation is worth sharing: (1.) it adds a viewpoint to the emerging field of [comparative international law](#); (2.) it sheds light on the still underexplored role of translation in the relationship between law and language, emphasising the limited functionality of authentic language interpretation; and (3.) it contributes to an understanding of legal and administrative cultures.

(1.) Part of understanding international law is identifying the domestic templates applied to its legal concepts. A recent discussion among colleagues regarding the [Articles on State Responsibility](#) illustrates this. While any lawyer would take recourse to the authentic text, German-language treatises usually follow the vocabulary used in unauthentic translations. The [German version of the Articles](#) exclusively relies on the phrase “Umstände, welche die Rechtswidrigkeit ausschließen” (“circumstances precluding wrongfulness”). I have spent numerous conversations discussing with colleagues what this “preclusion” implies for the original obligation, based on the discussion [in Austrian doctrine](#). A quick look into the English text and the [ILC’s commentaries](#) shows not much distinction between “preclusion”, “justification”, “excuse”, or the use of these circumstances as a “shield”.

What does this prove? Doctrine picks up unauthentic language versions and understands them through domestic conceptualisations. This produces unique approaches to legal thought distinct from the original idea. It influences the understanding of norms when reintroduced to the international level, as through the German commentary tradition picking up the [UN Charter](#) and the [Statute of the ICJ](#).

(2.) At last year's ESIL Conference in Manchester, I had the pleasure of sharing the [panel "Universality and the Working Languages of International Law"](#) with Peter Tzeng who boasts the rare trait of speaking [all official languages of the United Nations](#). Using provisions from the UN Charter and [UNCLOS](#), he demonstrated the limits of authentic language interpretation, focusing on such banal obstacles as conjunctions and the grammatical value of punctuation.

The ECJ reveals the original language of each case, allowing a closer look at the actual reasoning in its purest form, while all versions remain authentic. Even so, with English firmly in place as the dominant working language of international law, it is striking to read that Achmea provides ["private sickness insurance services"](#) (as opposed to the correct translation of an ["Anbieter privater Krankenversicherungen"](#) as providing "private health insurance services").

As to the discrepancies between the Austrian and German text versions, the apocryphal story goes that the traditionally Francophile Austrian diplomatic service tended to choose the French original as a basis for its translations, whereas in Anglophile post-WWII Western Germany, English prevailed. In Switzerland, authentic French texts are already available in one of the [official languages](#).

Between the Austrian "Satzung" and the German "Charta", this seems to be true. I have it from a reliable source – former Austrian ILC Member Gerhard Hafner – that Stephan Verosta, then head of the Office of the Legal Adviser and later also ILC Member, chose the French version of the UN Charter as a basis for the "Austrian translation" (the only German translation available until 1973 according to [Verdross](#)). Germany, on the other hand, went on to use the English version as a basis for its own translation (the same might have happened in the case of the 1949 Geneva Conventions). The discrepancy has practical consequences with Germany first joining the European Economic Community, making its translation the point of reference for German language documents in the EU up until today.

However, it appears that efforts were made to achieve harmonisation early on in the form of translation conferences – or nowadays email exchanges – between Austria, Germany (in the past both Federal and Democratic), and Switzerland – with Germany usually presenting an initial draft based on a working translation of the responsible ministry. The English language version is usually the point of reference (available French versions are mostly used to resolve unclarity, also owing to its official language status in Switzerland). Such conferences were successful in the case of the Vienna Convention on the Law of Treaties and the UN Convention on the Law of the Sea. Still, minor differences, such as three variations for the term "depository" ("Verwahrer", "Depositär", or "Depositär"), persist. In the case of the International Criminal Court, the Rome Statute is either the "Römisches Statut" (Germany) or the "Römer Statut" (Austria, at least domestically). Sometimes

varying German-language versions are simply owed to timing or miscommunications without much further thought.

Divergencies within one and the same language across two or three states confirm what Peter Tzeng demonstrated across the official languages of the UN: authentic language interpretation might be a myth. Unless parties pour their will into words, translation services will anticipate the process of interpretation – a semantic pick and choose in any future application.

(3.) While it is the norm nowadays to rely on the English – not French – original text both in academia and in practice, it is not absolutely unheard of that civil servants and lawyers are still more comfortable in their mother tongue. When we put together the [materials collection mentioned](#) above, we had Austrian law students in mind preparing for their exams. The overall tenor resonating in class is still the wish to have translations readily available. We chose the – albeit unauthentic – German versions where available.

Equally, the [“Deutscher Übersetzungsdienst der Vereinten Nationen”](#) (“German Translation Service of the United Nations”) was created, not only to ensure uniform translations of the most important UN documents for the German-speaking member states, but to make the documents more accessible to both domestic political, administrative, and academic actors as well as to the public. The Service cooperates with domestic points of contact that may both request translations and contribute substantially to the process.

The Service itself was created in 1974 – a year following the acceptance of both “Germanies” as members of the United Nations – at the initiative of the two German states plus Austria through [General Assembly Resolution 3355 \(XXIX\)](#). It was agreed that these three should bear the costs and a joint fund was established for the purpose. While the German Democratic Republic withdrew its cooperation in 1982, Switzerland joined in 1992 where the three states (and, supposedly, [Liechtenstein](#)) split the financial burden relatively to their share in the UN budget. While there is no geographic key for allocation among the German-speaking member states, an effort is made to achieve a balance between nationalities (currently five Germans, four Austrians, and one Swiss) and gender (currently seven female, three male).

The Service is both the smallest and the only one representing a non-official language within the UN. Still, it is one of the most active in promoting its work, feeding terminology into the DETERM database that forms part of the [UNTERM database](#) in coordination with domestic language services and the EU as well as publishing the translated documents in both the [UN Official Document System \(ODS\)](#) and on its [website](#).

It is interesting to note that German did not start out as a “typically unauthentic” language. Until Germany withdrew from the International Labour Organisation in 1933, German counted among the official languages of the organisation. Upon Germany’s re-entry in 1951, efforts were made for its reintroduction with translations concerted in coordination meetings that revolve between Berlin, Bern, and Vienna.

German also still plays a role, in particular as a working language in the [OSCE](#) and as a regional language [in various UN bodies](#).

Apart from UN documents, translation of treaties still rests with the Foreign Office in the case of Germany that coordinates with the respective counterparts in Austria and Switzerland. Parliamentary clarifications, however, and other domestic interpretations are for the majority in German and only accessible in the form of translated digests [published in national law journals](#). The German translations play a direct role in national legislative processes and an indirect role through their effect on doctrine and domestic application.

Going forward, it might be interesting to further explore (1.) whether similar phenomena appear in other contexts, between Spain and other Spanish-speaking countries, for example, (2.) how the current traditional view regarding authentic language interpretation is in any way still tenable, and (3.) whether uniform consolidated translations provide an added value beyond the efficiency of avoiding additional workload (since language shapes thought, a pluralistic textual landscape might open up fresh perspectives).

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