

Opinion

LEGAL CULTURE AND LANGUAGE AS RISK FACTORS IN INTERNATIONAL ARBITRATION.

As cross-border contracts and treaties multiply, international dispute resolution faces a critical but often overlooked risk: linguistic ambiguity and conceptual misalignment. International disputes typically involve parties, counsel, and adjudicators from diverse linguistic and legal backgrounds, making language itself a source of misunderstanding. Similarly, 'legal culture' further shapes how participants behave, perceive, and understand the contracts, treaties, and proceedings. Misunderstandings of translated legal terms during negotiation and drafting pose systemic risks to fairness, enforceability, and, in some cases, parties' access to justice. Even when parties share the same language, underlying legal-cultural and language differences can lead to divergent interpretations of key terms.

Several practical measures can mitigate these risks:

- **Draft clearly and define key terms.** Vagueness is the enemy of effective translation. Use definitions and explanatory clauses to specify what terms mean. Where a text is drafted with built-in ambiguities in one language, such ambiguity is necessarily reflected in any subsequent translation and can lead to jurisdictional disputes and inconsistent rulings.
- **Designate a controlling language.** For multilingual agreements, include a clause specifying which language version prevails in the event of a discrepancy. Supremacy clauses provide clear starting points for interpretation and prevent disputes over which language version should control. When no such clause exists, parties necessarily hand the task to the tribunal to reconcile texts using contract and treaty interpretation guidelines to varying results.
- **Engage bilingual and comparative lawyers early.** Involve lawyers fluent in the relevant languages and familiar with the relevant legal systems. Cross-cultural collaboration is crucial. Involving such practitioners from the counterparty's jurisdiction can surface potential pitfalls.
- **Avoid "the trap of hidden meaning" and test translations.** During drafting, test translations with practitioners from the target jurisdiction to ensure that the language conveys the intended meaning.
- **Provide explanatory annexes when needed.** For complex terms or provisions, include interpretive annexes that explain how particular terms should be understood.

In the absence of the precautions outlined above, tribunals face the complex task of determining which version of an agreement or related document should prevail. The following considerations may guide arbitrators in addressing these linguistic challenges:

- **Determine the authenticity of all versions** when no supremacy clause exists. Even though many parties now include such clauses, tribunals must assess whether each version of an agreement or related document was intended to be equally authentic.
- **Refer to Articles 31–33 of the Vienna Convention** when applicable, as they provide interpretive principles useful for multilingual treaty interpretation.
- **Seek to reconcile authentic texts** where possible, considering whether diverging interpretations can be harmonized to produce a consistent meaning rather than conflicting outcomes.