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Ethnography of Communication and History: A Case Study of Diplomatic Intertextuality and Ideology[1]

This article shows that an ethnography of communication approach is not only relevant to an understanding of how ways of speaking and language codes define the social-group boundaries of specific speech communities, but (1) that it can be equally pertinent to the analysis of the ideologies and language use of certain communities of practice, and (2) that it can be used to trace historical developments in such communities of practice intertextually. The "community of practice" on which I concentrate is the evolving segment of the world of international diplomacy that was preoccupied with the formulation of legal frameworks regulating warfare from 1856 to 1939. The source materials consist of a compilation of treaty texts, and the focus of the analysis is (a) on basic communicative terminology surrounding concepts such as arbitration, armistice, declarations of war and of neutrality, mediation, ultimatum, and the like, and (b) on regulatory discourse surrounding means of communication, from "bearers of flags of truce" to cables, postal correspondence, telegraph ships, and wireless telegraphy. Ingredients of context-specific and historically situated ideology of communication are brought to the foreground. [ethnography of communication, history, intertextuality, ideology, diplomacy, pragmatics, community of practice]

Introduction

In many ways, the ethnography of communication is a thoroughly "historical" field of inquiry. Not only does it have a 50-year history itself;[2] its ambition to document and explain how ways of speaking and language codes, as sources and products of situated practices, define the social-group boundaries of specific speech communities implies a clear focus on dynamics, variability, and change. Though such a dynamic dimension is present in most good examples of the ethnography of communication, there have been few attempts, as far as I know, to apply the approach systematically to historical data or to emphasize a diachronic perspective explicitly. Somehow, Yakov Malkiel's (1964) "Some Diachronic Implications of Fluid Speech Communities" and William Labov's (1972) "On the Mechanism of Linguistic Change" do not count as exceptions, though they appeared in the pioneering volumes of Gumperz and Hymes (1964, 1972). Malkiel's emphasis on the fluidity of speech communities, both synchronically and diachronically, both internally and at the fringes, is most useful for an ethnography of communication, but he is less interested in the communicative processes that shape these communities than in the structural sediments of those processes in the form of dialectal variability. Labov is

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obviously interested in social mechanisms, but the 1972 article concentrates completely on sound changes, and society comes in as a correlational object, even if there is a heavy emphasis on changes in progress within identifiable communities, thus requiring a seriously ethnographic approach. Thus both seem to be slightly off center for analysis of situated and metapragmatically framed forms of verbal interaction in speech communities that posits the *speech event*—or *communicative practice*—as its basic unit of analysis (Gumperz 1972:16).[3] Clearly, there have been some truly historical instances of research under the flag of the ethnography of speaking. A prominent example is Bauman's (1974) examination of the ambivalent role of the minister's speech in a 17th-century community of Quakers, later expanded to his (1983) general account of the symbolic functioning of speaking versus silence in Quaker society in the same period.

Against that background, the main purpose of this article is to provide an additional illustration showing that the conceptual apparatus developed in the ethnography of communication, including the speech event or activity type (labeled "communicative practice" in what follows), speech community, and linguistic repertoires (as developed in the classic contributions to Gumperz and Hymes 1964 and 1972, Bauman and Sherzer 1974, and in Hymes 1974, Gumperz 1982, Saville-Troike 1982), is entirely relevant for an understanding of the historical development of non-local discourses that reflect a cohesive body of interaction by being explicitly linked intertextually and by being based on a unifying, underlying set of ideological assumptions. Specifically, the intertextual and ideological dimensions at which I am aiming link this paper to John Gumperz's legacy. The central message of his œuvre, in my interpretation, has always been the fundamental connection between minute details of situated language use and larger formations defined socioculturally, institutionally, and in terms of interactional power. The latter are constituted by the former; the former are not interpretable without the latter.

The materials with which I work are exclusively written documents. Therefore, I leave it up to my readers to judge how ethnographic my investigation really is. In that respect, my limitations are the same as those experienced by Bauman (1974, 1983). Unlike in Bauman's case, however, the written records that I use are also not "located" within a specific community in the traditional sense of that word. Nor am I dealing with what could be conveniently called a social "network." A "speech community" in Gumperz's sense is characterized by a shared world of communicative practices and generally agreed-upon norms of communication. More implicitly, coevalness and co-presence seem to be required. Bauman's 17th-century community of Quakers meets all of these criteria. But what if a community shares practices and norms, but not time and space? In search of an appropriate label for such a case, which is exactly what I shall be dealing with, I feel compelled to interpret the notion of speech community, for the present purposes, in terms of a *community of practice* that is not confined to a specific, locally situated and temporally bounded context of co-participation.[4] To clarify this, I shall first have to say something about my data.

International Diplomacy as Community of Practice

The community of practice on which I shall concentrate—sharing communicative practices and norms while not being co-eval or co-present—is the evolving segment of the world of international diplomacy that was preoccupied with the formulation of legal frameworks regulating warfare from 1856 to 1939. The source materials consist of a compilation of treaty texts, published in Brussels in 1943 by Marcel Deltenre under the title *General Collection of the Laws and Customs of War on Land, on Sea, under Sea and in the Air, According to the Treaties Elaborated by the International Conferences since 1856* (see Figure 1). Since this is a highly cohesive set of similar-status documents with multiple intertextual links, I am not facing the problem of other types of

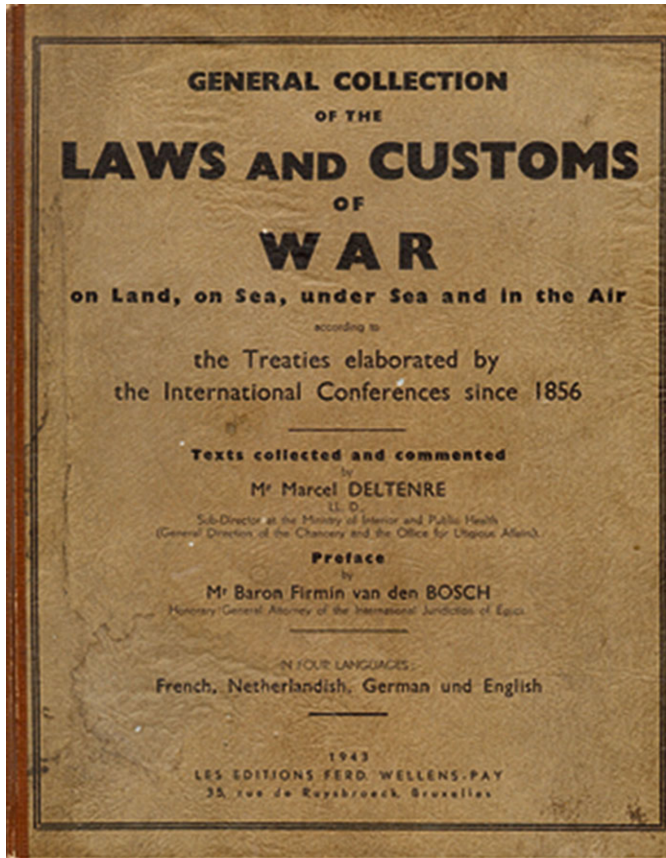

Figure 1
1943 Treaty Texts

historical ethnography, dealing with fragmentary archival sources or a range of different forms of evidence (images and artifacts, in addition to texts).

This book was printed and distributed under the German occupation of Belgium during World War II, in a limited edition of 150 copies reserved for the heads of state of countries involved in the agreements it collected.[5] This LXXVI+885-page volume presents all of the compiled texts in four languages, French, Dutch, German, and English, printed in four columns spread out over two facing pages. At the beginning of every new treaty text, on top of the columns it says explicitly which text is the official one and which are translations. For most of the older texts, the French is the "Texte officiel." At the bottom of the columns, the sources are indicated. Again, for many of the older texts, there is no source for the translations, and the editorial staff of the publishing house is said to be responsible (which then makes the book deviate slightly from its anticipated character as a "collection"). The result, if the original is in French, is usually quite correct Dutch (though with an archaic ring to the present-day ear) and quite idiomatic German, but the English is slightly non-idiomatic here and there and contains more than just accidental spelling errors. Native speakers of English may have been hard to come by in German-occupied Belgium in 1943. In the present context, this is merely a descriptive remark, but it would gain significance in an analysis focusing on the differences in meaning landscapes that may be evoked even by the most careful and accurate translations of the "same" text.

If communities of practice are characterized by the fact that membership fluctuates and does not require co-presence, international diplomacy is a particularly good

example, as participants in the process continuously change. Thus the *Declaration of Paris of 1856, establishing some Rules of Maritime Law in Times of War* (signed in Paris, April 16, 1856) was negotiated by Austria–Hungary, France, Great Britain, Prussia, Russia, Sardinia, and Turkey. Of those, Sardinia would cease to exist as a separate diplomatic agent only five years later, after playing a vital role in the creation of the newly founded Kingdom of Italy in 1861. Prussia was in the middle of a period of upheaval, transforming itself into the German Empire by 1871, only to be radically transformed again as a result of World War I, a war that also meant the end for Austria-Hungary. On the other hand, the declaration was also adhered to by small independent entities soon to be incorporated into the German Empire. Some had been allies of Prussia during the Austro-Prussian war of 1866 (Anhalt, Baden, Hamburg, Lübeck, Mecklenburg, Oldenburg, Sachsen-Altenburg, Sachsen-Coburg-Gotha), while some were Austrian allies to be annexed by Prussia after the war (Hannover, Hesse-Kassel, Hesse-Darmstadt, Nassau, the Kingdom of Sachsen, Württemberg). Other entities adhering to the declaration were the Kingdom of the Two Sicilies, the Roman States, Parma, Modena, and Tuscany (all to become part of a united Italy), and a—by now obscure—entity such as Danubia (to be integrated into a new Kingdom of Romania in 1881).

Despite the disappearance or transformation of specific agents involved, the texts of treaties and declarations from 1856 to 1939 are written in such a way that they build upon each other. Thus, within the community of practice, agreements regulating warfare are treated as preserving their validity across the fluctuations of membership. The dynamics involved are quite similar to the relations between newcomers and old-timers which motivated Lave and Wenger (1991) to introduce the notion "community of practice" in a theory of situated learning: patterns of shared practice are central, but so is the orientation to community over time. The 150 heads of state of countries involved in the agreements, for which the 150 printed copies of the compilation were intended, are considered the heirs—in the world of 1943—to the transmitted texts. The compilers explicitly adopt the position of educators introducing the products of the community's earlier practices as input for a new generation of practitioners.[6]

Intertextual Cohesion

The treaty texts and declarations collected by Deltenre (1943) form a cohesive body of international interaction. They are linked intertextually, sometimes explicitly, sometimes implicitly, using change-of-state verbs and comparatives, or both, as in the following example:

(1)

> Thinking it important [. . .] to revise the general laws and customs of war, either with a view to defining them with greater precision or to confining them within such limits as would mitigate their severity as far as possible;
>
> Have deemed it necessary to complete and explain in certain particulars the work of the First Peace Conference, which, following on the Brussels Conference of 1874, and inspired by the ideas dictated by a wise and generous forethought, adopted provisions intended to define and govern the usages of war on land.
>
> (Deltenre 1943: p. 251; from the *Second International Peace Conference, The Hague, 1907*, section IV "Convention concerning the Laws and Customs of War on Land"; acts signed at The Hague, October 18, 1907)

The second paragraph refers explicitly to (the texts resulting from) two earlier meetings, representing work to be "completed" and "explained." More implicitly, "revising" laws presupposes earlier formulations, and "greater precision" suggests a clear point of comparison.

This intertextuality is seriously complicated, though, by a complex temporal dimension. As Table 1 shows, not all members of the diplomatic community of

Table 1
Dates of declared adherence to a selection of declarations and conventions by a selection of states

	Declaration of Paris of 1856	Convention of Geneva of 1864	Declaration of St. Petersburg of 1868	Brussels Conference of 1874	First International Peace Conference, The Hague, 1899	Second International Peace Conference, The Hague, 1907
Argentina	1856	**1879**			**1907**	
Austria(-Hungary)	1856	**1866**	1869	1874	1900	1909
Belgium	1856	1864	1869	1874	1900	**1910**
Bolivia		**1879**			**1907**	1909
Brazil	**1858**	***1906***			**1907**	**1914**
Bulgaria		1864			1900	
Chile	1856	**1879**			**1907**	
China		***1904***			**1904**	**1917**
Colombia		***1906***			**1907**	
Congo		**1888**				
Cuba		***1907***			**1907**	**1912**
Denmark	1856	1864	1869	1874	1900	1909
Dominican Republic		***1907***			**1907**	
Ecuador	1856	***1907***			**1907**	
Ethiopia						**1935**
Finland						**1922**
France	1856	1864	1869	1874	1900	**1910**
Germany		***1906***		1874	1900	1909
Great Britain	1856	**1865**	1869	1874	1900	1909
Greece	1856	**1865**	1869	1874	**1901**	
Guatemala	1856	***1903***			**1907**	**1911**
Haiti	1856	***1907***			**1907**	**1910**
Honduras		**1898**				
Italy		1864	1869	1874	1900	
Japan	**1887**	**1886**			1900	**1911**
Korea		***1903***				
Liberia						**1914**
Luxembourg		**1888**			**1901**	**1912**
Mexico	***1909***	***1905***			**1901**	1909
Montenegro		**1875**			1900	
Netherlands	1856	1864	1869	1874	1900	1909
Nicaragua		**1898**			**1907**	1909
Norway						**1910**
Panama		***1907***			**1907**	**1911**
Paraguay		***1907***			**1907**	
Persia		**1874**	1869		1900	
Peru	**1857**	**1880**			**1907**	
Poland						**1925**
Portugal	1856	1864	1869	1874	1900	**1911**
Prussia	1856	1864	1869			
Romania		**1874**			1900	**1912**
Russia	1856	**1867**	1869	1874	1900	1909
Salvador	**1858**	**1874**			**1907**	1909
Serbia		**1876**			1900	
Siam		**1895**			1900	**1910**
South Africa		**1896**				
Spain	***1908***	1864		1874	1900	
Sweden						1909
Sweden and Norway	1856	1864	1869	1874	1900	
Switzerland	1856	1864	1869	1874	1900	**1910**
Turkey	1856	1865	1869	1874	1900	
United States of America		**1882**			1900	1909
Uruguay	1856	***1900***			**1907**	
Venezuela		**1894**			**1907**	

practice show commitment to specific agreements at the same time. Of the examples given here, for instance, the Declaration of St. Petersburg of 1868 seems not to have been presented for approval to any government not involved in the meetings during which it was drafted. The same holds for the Brussels Conference of 1874, which, moreover, was never fully ratified even by the negotiating powers. In other cases, dates between the meeting and a state's approval of the conclusions may be half a century apart. See, for instance, the Declaration of Paris of 1856, which was not agreed to by a number of states until the early 20th century. Yet, this unequal rate of acceptance or approval did not prevent the continuous buildup of a diplomatic corpus in which texts at a given moment explicitly or implicitly presupposed earlier ones. The intertextuality of the texts creates an institutional reality of its own.

Three other features provide still more complications. First of all, the presuppositional relationships are selective and rarely complete. Mexico, for instance, reverses the temporal order by first approving the texts of the First International Peace Conference of The Hague 1899 (in 1901), then the Convention of Geneva 1864 (in 1905), and then the Declaration of Paris of 1856 (in 1909, the same year in which it declares adherence to the Second International Peace Conference of The Hague 1907). This can only be explained if earlier texts can be assumed to cover principles that are neither repeated nor self-evidently presupposed by later ones. If that is the case, the intertextual growth of the corpus is less organic than cumulative. What effect this has is a wide-open question beyond the scope of this article.

Second, not only do entities that qualify as members come into being or cease to exist in the course of the intertextual process (as already explained), but such entities seem to be free to join in or opt out of the process as they please. Why, for instance, does Korea decide in 1903 to support the Convention of Geneva of 1864, but not the First International Peace Conference of The Hague 1899? Why do quite a number of countries seem to disengage from the Second International Peace Conference of The Hague 1907, after having supported the first one? Little does this seem to matter to the assumed validity of the overall process itself, though, again, the possible effects deserve further exploration. The participation framework is an important point of attention, and the least one can say is that participants are assumed to be legitimate representatives of legitimate political entities, such that they have the authority to enter into contracts.

Third, little does it seem to matter, also, that the individual texts are linked to different levels or degrees of commitment for the different participants involved. Close attention must also be paid here to the precise nature of the participation framework. In a recent study of a 16th-century Spanish text that Conquistadores were obliged to read before they could legitimately launch an attack on people to be subjected to colonial rule, Faudree (2013) emphasizes the indeterminacy of the text's participant structure: Who should read it, precisely, and to whom? Did the target audience have to hear, let alone understand? In other words, the weak constraints on contexts of use did not affect the performative force and validity of the acts of uttering. In sharp contrast to Faudree's case, the relation between participants and the texts produced, though highly variable, is strictly defined. Thus treaty texts can be

(2)
—Signed
—Signed with reservations
—Signed and ratified
—Signed and ratified with reservations
—Adhered to
—Adhered to with reservations

Some participants in a conference may also be said to have "Participated in the conference without signing." The "reservations" referred to are usually specified, but not always easy to interpret. Two examples:

(3)
Reservations made on signing this document:
For the United States: Under reservation of the declaration made in the plenary session of the Conference held on October 16, 1907.

Extract of the procès-verbal:

"Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign State; nor shall anything contained in the said Convention be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions."

The act of ratification contains the following reservation:

"That the United States approves this Convention with the understanding that recourse to the Permanent Court for the settlement of differences can be had only by agreement thereto through general or special treaties of arbitration heretofore or hereafter concluded between the parties in dispute; and the United States now exercises the option contained in Article 53 of said Convention, to exclude the formulation of the compromis by the Permanent Court, and thereby excludes from the competence of the Permanent Court the power to frame the compromis required by general or special treaties of arbitration concluded or hereafter to be concluded by the United States, and further expressly declares that the compromis required by any treaty of arbitration to which the United States may be a party shall be settled only by agreement between the contracting parties, unless such treaty shall expressly provide otherwise."

(Deltenre 1943: p. 225; *Second International Peace Conference, The Hague 1907*)

(4)
For Greece: With the reservation of paragraph 2 of Article 53.

(Deltenre 1943: p. 227; *Second International Peace Conference, The Hague 1907*)

Both reservations pertain to the first section of the text adopted by the Second International Peace Conference of The Hague 1907 (by far the longest text in the book, from p. 186 to p. 441), namely the Convention for the Pacific Settlement of International Disputes and, in particular, the subsection on a Permanent Court of Arbitration. Both bear, more specifically, on Article 53, which reflects a somewhat contorted attempt to reassure the negotiating parties that the Court of Arbitration cannot omnipotently impose the terms of a "compromis" (see below) in an international dispute. While (3) embodies an attempt on the part of the United States to explicitly emphasize the autonomy that Article 53 already allows, the Greek reservation in (4) expresses a rejection of at least some of the freedom that is left to individual states in the case of recourse to arbitration. Thus (3) and (4) represent opposite tendencies.

Summing up, there are variable types of commitment, explicit instances of partial non-commitment, and remaining disagreements about aspects of the adopted texts themselves. Still, the construction of what looks like a common frame of reference for war and peace simply continues, as anaphoric references to earlier texts rarely manage to do justice to reservations expressed by individual signatories.

Civilized Belligerence

Intertextual continuity and cohesion masks numerous underlying fault lines of the types just described. Though the smoothness of outward cohesion is clearly ruffled by such disturbances as discontinuities in participation and variable commitment, there is a strong form of fundamental and deeper coherence as well. We only have to ask the question of why responsibility taken by one member of the diplomatic community of practice is, as it were, "inherited" by another member that takes the place of the first one, partially or entirely, in the course of a history of changing state structures (as briefly pointed out above). Inherited responsibility is based on the assumed universality of the wishes, desires, and moral preoccupations that give rise to declarations and conventions concerning warfare. In other words, there is a unifying underlying set of ideological assumptions[7] that can be summarized as a belief

in the possibility of *civilized belligerence*: warfare is seen as inherently deplorable, but also as inevitable under certain circumstances; whenever war is waged, therefore, this should be done in an honorable, civilized manner, with respect for human decency. Consider the following extract from one of the earlier texts in Deltenre's compilation:

(5)
His Majesty the King of the Belgians, [. . .], His Majesty the King of Wurtemberg;

Being equally animated with the desire to soften, as much as depends on them, the evils of warfare, to suppress its useless hardships and improve the fate of wounded soldiers on the fields of battle, have resolved to conclude a convention to that effect, and have named for their plenipotentiaries, [. . .].

(Deltenre 1943: p. 31; from the *Convention of Geneva of 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field*, signed at Geneva, August 22, 1864)

Note that "the evils of warfare" are simply presupposed, as are the "hardships" that they involve; but it is also assumed that these evils can be "softened" by "suppressing" (not eliminating) the hardships that are "useless"—a characterization that implies that not all hardships fall into that category. The contradictory requirements that this involves are voiced in a matter-of-fact manner and very explicitly in (6):

(6)
On the proposition of the Imperial Cabinet of Russia, an International Military Commission having assembled at St. Petersburg in order to examine the expediency of forbidding the use of certain projectiles in time of war between civilized nations, and that Commission having by common agreement fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity, the Undersigned are authorized by the orders of their Governments to declare as follows:

Considering:

That the progress of civilization should have the effect of alleviating as much as possible the calamities of war;

That the only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the enemy;

That for this purpose it is sufficient to disable the greatest possible number of men;

That the object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;

That the employment of such arms would, therefore, be contrary to the laws of humanity;

[. . .]

(Deltenre 1943: p. 49; from the *Declaration of St. Petersburg of 1868, to the Effect of Prohibiting the Use of certain Projectiles in Wartime*, signed at St. Petersburg, November 29–December 11, 1868)

Thus "war between civilized nations" is a real possibility. In other words, there is no contradiction between war on the one hand and being civilized on the other. The only problem is to reconcile "the necessities of war" with "the requirements of humanity," and, to the extent that "the calamities of war" can be "alleviated," this demonstrates "the progress of civilization." This perspective—leaving open the question as to whether the same rules hold when waging war against nations that are not regarded as civilized—is repeated over and again, well into the 20th century:

(7)
Seeing that, while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary to bear in mind the case where the appeal to arms has been brought about by events which their care was unable to avert;

Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever progressive needs of civilization;

[. . .]

(Deltenre 1943: p. 251; from the *Second International Peace Conference, The Hague, 1907*, section IV "Convention concerning the Laws and Customs of War on Land"; acts signed at The Hague, October 18, 1907)

This frame of interpretation also underlies the reasons that Mr. Baron Firmin van den Bosch[8] and Marcel Deltenre adduce in their preface and foreword, respectively, for their endeavor to compile their *General Collection of the Laws and Customs of War* at a time when Europe, and much of the rest of the world, was in the grip of war. In their words, however, there is a palpable ideological tension or ambivalence. Their argumentation contains at least the following ingredients:

(8)
- It is a simple fact that wars have always been fought
- War has a tendency to escape legal regulation
- Yet efforts have to be made "*to limit the struggle, to humanize it or to fix its consequences*" (p. LIX)
- So, what is needed for that is regulation anyway
- And for those who want to continue that kind of regulatory work after the war is over (when "*la civilisation est appelée à se retrouver,*" p. LX, or "*civilization will be called upon to find itself back* [sic]," p. LXI), this complete collection of what is already available in that domain will be a very useful starting point

The fact of war is accepted, but only grudgingly. In contrast to what we have seen from the treaty texts themselves, neither van den Bosch nor Deltenre would go as far as to say that war itself can be a civilized activity. For them, civilization really does not return until after the war. Yet, when civilization has returned, further work must be done to get the necessary regulations in place in order to make sure that the inhuman nature of future armed conflict (the eventuality of which is assumed) will be limited. For them, the collection of treaty texts reflects the work that has already been done in this direction, as "*texts by means of which the States have tried to unite their efforts with a view to the humanization of the rules of warfare*" (p. LXV). "Humanization" implies a nonhuman starting point.

There is evidence that, well into the 20th century, there were fewer hesitations about unrestricted warfare in the case of an enemy perceived as uncivilized.[9] This is clearly related to the growing self-image in the Western world—requiring a distinguishable Other—that is documented as "the invention of modern man" or "the civilization of customs" by historians such as Elias (1974) and Muchembled (1988, 2008). The process called "civilization" is conceived less in terms of developments in the arts and sciences than in terms of social, political, and cultural constraints on "primitive" behavior, with instinctive recourse to violence as a prime example. While this view of civilization flatly condemns individual acts of violence (and glorifies its decline over the past seven centuries), it is under pressure to cast collective violence—the complete evitability of which is doubted—in a civilizational mold. Not doing so would destroy the carefully cultivated self-image, while radical pacifism would seem to undermine the rationality of accepting observable facts. This predicament defines the task before the diplomatic community of practice under investigation. But how does it go about carrying out that task?

In order to shed light on this question, in what follows, I shall focus on two aspects that would necessarily have to be dealt with in a Gumperz-inspired ethnography of communication as applied to non-interactional historical data. I first review some of the basic communicative terminology that is used to frame efforts at maintaining peace and regulating warfare. Then I briefly touch upon the regulatory discourse surrounding material resources for communication.

Communicatively Framing War and Peace

As suggested previously, the texts under investigation reflect various types of agreement, the binding nature of which is neither universal nor definable in terms of a level of commitment that would be uniformly shared by all of the parties involved. Yet they adopt the discursive style of legal documents. And ***law*** is a basic term throughout.

Not only does it appear in the title of the collection, alongside "customs," but it is also used to distinguish texts that have acquired the force of law from non-ratified international declarations, and many of the texts themselves explicitly deal with "laws of war." But the notion is also problematized from the start, as appears from (9).

(9)
Considering:

That maritime law in time of war has long been the subject of deplorable disputes;

That the uncertainty of the law and of the duties in such a matter, gives rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts;

That it is consequently advantageous to establish a uniform doctrine on so important a point;

That the Plenipotentiaries assembled in congress at Paris cannot better respond to the intentions by which their Governments are animated than by seeking to introduce into international relations fixed principles in this respect;

[. . .]

(Deltenre 1943: p. 25; from the *Declaration of Paris of 1856 establishing some Rules of Maritime Law in Times of War*, signed in Paris, April 6, 1856)

Thus "maritime law," which is treated here as presupposed or already "given," is not something everyone agrees upon; it involves "uncertainty," gives rise to "differences of opinion," "difficulties," and even "conflicts." The uncertainty referred to was a consequence of the fact that the available body of maritime or admiralty law—legal formalization of which had started more than a millennium earlier—pertained first and foremost to seaborne trade and was unclear about its application under conditions of war. Hence the expressed need for "fixed principles" about which it is then said that the negotiating powers have reached "an agreement" allowing them to put forward a "solemn Declaration."

What follows is a meager set of four principles (i) asserting the continued prohibition of piracy, (ii) stating that a neutral flag protects an enemy's merchandise with the exception of contraband of war,[10] (iii) stating that neutral merchandise, except for contraband of war, cannot be seized even when transported under an enemy flag, and (iv) stipulating that blockades are only obligatory if they are effective, i.e., if they are "maintained by a force sufficient to really prevent access to the coast of the enemy."

Most striking is the fact that the problematization of presupposed existing law is counterbalanced by a firm belief in the power of words. There is a language-ideological current underlying the exercise of trying to regulate warfare, namely that better guarantees can be created by ever more precise formulations.

It is not surprising, therefore, that the *genre* of the legal text is adduced—in those same texts—as the basis for the *communicative practice* of ***arbitration***. Arbitration is presented as a last resort if diplomacy fails—which may happen, again, because of the uncertainty of the law:

(10)

Art. 15. International arbitration has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law.

Art. 16. In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognised by the Signatory Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

(Deltenre 1943: p. 73; from the *First International Peace Conference, The Hague, 1899*; Acts signed at The Hague, July 29, 1899)

To manage this type of conflict resolution, the First International Peace Conference of The Hague 1899 creates a legal *institution*, the ***Permanent Court of Arbitration***. The process of arbitration and the functioning of the Permanent Court is much further

developed during the Second International Peace Conference of The Hague 1907. The first article of the relevant section of the convention text repeats Art. 15 (see (10) above), and adds:

(11)
Recourse to arbitration implies an engagement to submit in good faith to the award.
(Deltenre 1943: p. 201; from the *Second International Peace Conference, The Hague, 1907*; Acts signed at The Hague, October 18, 1907)

It is no doubt this kind of implication that led to "reservations" such as those voiced by the United States (see extract (3) above—a foreboding of lasting hesitations about the role of the International Court in The Hague until today), in spite of the open-endedness of formulations intended to maximize commitment to the arbitration process:

(12)
Art. 40. Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the contracting Powers, the said Powers reserve to themselves the right of concluding new agreements, general or particular, with a view to extending compulsory arbitration to all cases which they may consider it possible to submit it to.
(Deltenre 1943: p. 201; from the *Second International Peace Conference, The Hague, 1907*; Acts signed at The Hague, October 18, 1907)

The communicative *repertoire* of the process of arbitration contains well-defined *opening* and *closing* events. The opening of the procedure is a ***compromis***, a French term that remains untranslated in the English version of the relevant texts.

(13)
Art. 52. The powers which have recourse to arbitration sign a "Compromis," in which the subject of the dispute is clearly defined, the time allowed for appointing arbitrators, the form, order, and time in which the communication referred to in Article 63 must be made, and the amount of the sum which each Party must deposit in advance to defray the expenses.
The "Compromis" likewise defines, if there is occasion, the manner of appointing arbitrators, any special powers which may eventually belong to the tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.
(Deltenre 1943: p. 209; from the *Second International Peace Conference, The Hague, 1907*; Acts signed at The Hague, October 18, 1907)

This means, in fact, that an agreement is needed before arbitration can start.
The closing act, the result of arbitration, is an ***award*** or decision, defined or specified as follows:

(14)
Art. 79. The award must give the reasons on which it is based. It contains the name of the arbitrators; it is signed by the President and Registrar or by the Secretary acting as Registrar.
Art. 80. The award is read out in public sitting, the agents and counsel of the Parties being present or duly summoned to attend.
Art. 81. The award, duly pronounced and notified to the agents of the Parties, settles the dispute definitively and without appeal.
Art. 82. Any dispute arising between the Parties as to the interpretation and execution of the award shall, in the absence of an agreement to the contrary, be submitted to the Tribunal which pronounced it.
Art. 83. The Parties can reserve in the "Compromis" the right to demand the revision of the award.
(Deltenre 1943: p. 217; from the *Second International Peace Conference, The Hague, 1907*; Acts signed at The Hague, October 18, 1907)

Note that, just like the compromis, the award is a performative event or act subject to a series of highly specific felicity conditions. For the award, they include:

- Context:
  - A public sitting
  - Parties present/represented (or at least invited)
- Manner of communication
  - Read out
- Format
  - Including names of arbitrators
  - Signed by President and Registrar/Secretary
- Propositional content
  - The decision
  - Reasons for the decision
- Consequence
  - Settles the dispute without appeal

Recasting this in Searlean speech-act terminology, conditions pertaining to context and manner of communication may be seen as "preparatory conditions," format could be included into the "propositional content conditions," and the specified consequence would be the "essential condition." Missing, as would be predictable for an act belonging to the category of declarations, is only a "sincerity condition." In Gumperz's terms, we are dealing with a speech event or activity type defined in terms of culturally established contextual norms and patterns of expectation.

Most remarkable is the apparent need for Art. 82 and 83 after Art. 81 has declared that a felicitously delivered award "settles the dispute definitively and without appeal." Art. 82 only suggests that a new dispute may arise, in particular about the interpretation of the decision and its practical implementation. But Art. 83 clearly implies that, in spite of Art. 81, an appeal is possible, on condition that the possibility of a demand for revision be agreed upon in advance and laid down in the compromis. The text then goes on to explain the restrictions on the agreed-upon possibility of a demand for revision: (i) there must be a new fact, unknown to the tribunal and the demanding party at the time of the decision, and (ii) the compromis must fix the period during which a demand for revision can be made.

In addition to the highly formalized procedure of arbitration, another communicative practice is foreseen to prevent or to help cease hostilities, namely ***mediation***:

(15)

Art. 2. In cases of serious disagreement or conflict, before an appeal to arms, the Signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

Art. 3. [. . .] Powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by one or the other of the parties in conflict as an unfriendly act.

Art. 4. The art of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

[. . .] [p. 69]

Art. 6. Good offices and mediation, either at the request of the parties at variance, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice, and never have binding force.

(Deltenre 1943: p. 69 and 71; from the *First International Peace Conference, The Hague, 1899*; Acts signed at The Hague, July 29, 1899)

In contrast to arbitration, with its dedicated institution, its formal requirements, and its binding nature, mediation is just presented as a good idea. It does not require any strict regulation, which is why the text on "good offices and mediation" from the First International Peace Conference can be adopted verbatim in the Second. But the fact that its repetition is deemed necessary, even if nothing new is to be added, and even though the Second conference is already supposed to build on the First, means that mediation is considered an important practice. Note also that it implies, with the

distinct roles of "powers," "parties in conflict," and "mediator," a rather well-defined participation framework within the communicative activities that form the topic of the texts (as distinct from the participant roles that we touched upon earlier in relation to the production of the texts themselves).

Arbitration and mediation are expected to fail sometimes, which is why there is further regulation in a "Convention relative to the Opening of Hostilities," in which the issuing of an ***ultimatum*** or a ***declaration of war*** is defined:

(16)

Considering that it is important, in order to ensure the maintenance of pacific relations, that hostilities should not commence without previous warning;

That it is equally important that the existence of a state of war should be notified without delay to neutral Powers;

[. . .] have agreed upon the following provisions:

Art. 1. The contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a declaration of war giving the reasons on which it is based or of an ultimatum with conditional declaration of war.

Art. 2. The existence of a state of war must be notified to the neutral Powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph. Neutral Powers, nevertheless, cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war.

(Deltenre 1943: p. 243; from the *Second International Peace Conference, The Hague, 1907*; Acts signed at The Hague, October 18, 1907)

In addition to declarations of war, there can be ***declarations of neutrality***. Examples are a number of elaborate texts put forward in 1938 by the Nordic countries (Denmark, Finland, Iceland, Norway, and Sweden, collectively), Belgium, Switzerland, and the Netherlands, specifying in great detail what their neutrality implies with respect to the movement of war ships and armies, care for deserters, escaped prisoners of war, etc.

Finally, since armed conflicts must also find an end, there are clauses defining ***capitulations*** and ***armistices***:

(17)

Art. 35. Capitulations agreed on between the Contracting Parties must be in accordance with the rules of military honor.

When once settled, they must be scrupulously observed by both the parties.

(Deltenre 1943: p. 113; from the *First International Peace Conference, The Hague, 1899*; Acts signed at The Hague, July 29, 1899)

(18)

Art. 36. An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not fixed, the belligerent armies can resume operations at any time, provided always the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

(Deltenre 1943: p. 113; from the *First International Peace Conference, The Hague, 1899*; Acts signed at The Hague, July 29, 1899)

The above gives just a cursory glimpse at some of the communicative practices, and the associated repertoire of genres and speech activities, involved in diplomatic efforts at maintaining peace or controlling warfare as they evolved over a time span of nearly a century. The efforts themselves are entirely communicative, and their sediment is a body of texts with agreed-upon rules aimed primarily at keeping lines of communication open as long as possible and secondarily at regulating violence in case communication fails. In this context, it is not surprising that the material resources for communication also receive a lot of attention, as shown (even more fleetingly) in the following section.

Channels of Communication

A significant amount of attention is paid to regulations surrounding the means for keeping open or reopening lines of communication. Some of those means are categories of people (again reminding us of the well-defined participation framework, involved in the conduct of war and peace, on which the texts rely), such as ***bearers of flags of truce***:

(19)

Art. 32. An individual is considered as bearing a flag of truce who is authorized by one of the belligerents to enter into communication with the other, [111] and who carries a white flag. He has a right to inviolability, as well as the trumpeter, bugler, or drummer, the flag-bearer, and the interpreter who may accompany him.

(Deltenre 1943: p. 111 and 113; from the *First International Peace Conference, The Hague, 1899*; Acts signed at The Hague, July 29, 1899)

The text adds that this privileged status should not be abused for treachery or espionage. Since the concept involved does not really rely on complicated technicalities, as was the case with mediation, this text from the First International Peace Conference is adopted verbatim in the Second Conference, while it had already been adopted by the Brussels Conference of 1874 (though at that time the term *parlementaire* was used to refer to the bearer of a flag of truce).

Other agreements pertain to truly material resources for communication, reflecting technical developments, and including tools such as ***submarine cables***:

(20)

Desiring to secure the maintenance of telegraphic communication by means of submarine cables [. . .] [53] have agreed upon the following articles:

Art. 1. [. . .]

Art. 2. The breaking or injury of a submarine cable, done willfully or through culpable negligence, and resulting in the total or partial interruption or embarrassment of telegraphic communication, shall be a punishable offense, but the punishment inflicted shall be no bar to a civil action for damages.

(Deltenre 1943: p. 53 and 55; from the *Convention of Paris of 1884 concerning the Protection of Submarine Telegraph Cables*, signed in Paris, on March 14, 1884.)

To this it is added that telegraph ships (involved in laying or repairing submarine cables) should be left in peace and that a distance should be kept in order not to hinder their operation, but that "[t]he operations of telegraph ships shall be finished as speedily as possible" (p. 57). Moreover,

(21)

Art. 54. Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.

(Deltenre 1943: p. 277; from the *Second International Peace Conference, The Hague, 1907*; Acts signed at The Hague, October 18, 1907)

(22)

Art. 54.—C. Submarine cables.—In the conditions stated below, belligerent States are authorized to destroy or to seize only the submarine cables connecting their territories or two points in these territories, and the cables connecting the territory of one of the nations engaged in the war with a neutral territory. [691]

[. . .]

Submarine cables connecting belligerent territory with neutral territory, which have been seized or destroyed, shall be restored and compensation fixed whe peace is made.

(Deltenre 1943: p. 691 and 693; from the text of the *Oxford Session of 1913, The Laws of Naval War governing the Relations between Belligerents (manual adopted by the Institute of International Law).*)

Among the material resources for communication we also find services such as ***postal correspondence*** (23) and ***wireless telegraphy*** (24):

(23)

Art. 53.—Postal correspondence.—Postal correspondence, whatever its official or private character may be, found on the high seas on board an enemy ship, is inviolable, unless it is destined for or proceeding from a blockaded port.

The inviolability of postal correspondence does not exempt mail-boats from the laws and customs of maritime war as to ships in general. The ship, however, may not be searched except when absolutely necessary, and then only with as much consideration and expedition as possible.

If the ship on which the mail is sent be seized, the correspondence is forwarded by the captor with the least possible delay.

(Deltenre 1943: p. 691; from the text of the *Oxford Session of 1913, The Laws of Naval War governing the Relations between Belligerents (manual adopted by the Institute of International Law).*)

(24)

Art. 1. In time of war, the operation of wireless stations continues to be organized, so far as possible, in such manner as not to interfere with the service of other wireless stations. This rule does not apply to the wireless stations of the enemy.

[. . .]

Art. 4. [. . .]

Any restriction or prohibition enacted by a neutral Power shall apply to the belligerents uniformly.

Art. 5. Belligerent mobile wireless stations, when they are within a neutral jurisdiction, must abstain from any use of their wireless apparatus.

The neutral governments are bound to employ the means at their disposal in order to prevent such use.

(Deltenre 1943: p. 819; from *Rules concerning the Control of Wireless Telegraphy in Time of War and Air Warfare,* fixed by the Commission of Jurists entrusted with Studying and Reporting on this Revision of the Laws of war, assembled at The Hague on December 11, 1922.)

Also in this area there is a lot of intertextual repetition—the 1913 text in (23), for instance, being a literal copy from the 1907 text of the Second International Peace Conference—showing both a sense of importance and the absence of a need for refinement.

Concluding Remarks

Much is necessarily left untouched in a brief article. In order to really do justice to John Gumperz's legacy, the performative character of the investigated texts, for instance, would demand much more attention to language-ideological underpinnings and explicit metapragmatic terminology. What does it mean precisely, in the context of these treaty texts, to "agree" on something, to "conclude," "resolve," "appoint," "renounce," etc.?[11] The meaning and pragmatic force of the texts literally hinges on such key communicative notions. Their further ethnographic exploration requires several further lines of investigation. I mention just a few that immediately come to mind when trying to imagine the questions that Gumperz might ask:

- How do the texts relate to relevant surrounding discourses, such as parliamentary debates leading to the (absence of) ratification by individual states?
- Since ratification does not automatically follow from participation in the negotiation processes, what is the precise role of the individual negotiators vis-à-vis the international practice of negotiation, on the one hand, and with respect to their ability to influence local decision-making at home, on the other? A great amount of variability may be assumed in this respect, but patterns may also emerge.

- What obligatory, formal, routine features determine the structure and design of the texts? How does this relate to the genre of the legal text in other domains?
- How do the texts relate to the actual practices that they are supposed to regulate, for instance, in the case of arbitration?
- How does the multilingual nature of the diplomatic community of practice influence or shape the practices themselves? What changes do we find in the multilingualism itself over time, and what are their effects?
- The types of diplomatic practices leading to the texts in Deltenre (1943) have expanded drastically since World War II. Thus there has been an explosion of the intertextual buildup of regulatory discourse, and many new notions have emerged (e.g., "responsibility to protect"). What continuity can be observed, and what has changed?

All of these questions offer clear sites for a truly historical ethnography of communication.

Anticipating further necessary research, there are already a few preliminary conclusions that can be drawn regarding some of the ingredients of context-specific and historically situated ideologies of communication characterizing the diplomatic community of practice involved in negotiating rules for war and peace.

A first ingredient is the following. There seems to be a tension between, on the one hand, complete trust in the binding nature of legal texts (with a construction of accountability by means of a wide range of metapragmatic formulae) and, on the other hand, an awareness of the virtual impossibility of true regulation (appearing from the frequent vagueness or open-endedness of formulations).

Second, in spite of that tension, there is still a strong trust in the power of words to create better guarantees by means of ever more precise formulations. This is why the corpus forms an expanding concatenation of texts that continuously elaborates additional points and perspectives.

Third, while the intertextual buildup is a clear feature of the discourse, the corpus as a whole is constructed as a self-contained reality. Thus, no one can be held accountable for something that is not regulated by the texts. Here we hit the perverse effect of legalization: though the agreed-upon rules are formulated to safeguard the more general and intuitive norms of "humanity," such norms no longer play the most prominent role in their general and intuitive form as soon as the formalized formulation of agreed-upon rules has started.

Notes

1. Research for this paper has been supported by the University of Antwerp TOP-BOF grant for project 2205, *Intertextuality and flows of information*. The paper was first presented at the 2012 AAA Annual Meeting, November 14–18, 2012, San Francisco, and once again at an IPrA Forum in Antwerp on March 29, 2013. Especially comments by Richard Bauman, Frank Brisard, Maarten Franck, Alexandra Jaffe, and two anonymous *JLA* reviewers have left visible traces.

2. Here I am counting from the publication of Hymes (1962) and the time of a formative meeting that the preface to Gumperz and Hymes (1964) reports as having been held in that same year with John Gumperz, Dell Hymes, Nancy Tanner, Susan Ervin-Tripp, Charles Frake, Mary Haas, and Erving Goffman as participants.

3. Gumperz's *speech event* is conceived as a unit that establishes a relationship between certain types of content and certain types of verbal routines. Often a language will have a specific label for the event type, so that interlocutors are quickly inclined to interpret and normatively evaluate the activity in which they are engaged in terms of the type of event for which the label stands. Clearly, metapragmatic awareness is involved, and the phenomena in question cannot be understood without reference to the reflexivity of the human mind, as manifested in language use. The notion is comparable to Levinson's "activity type" (Levinson 1992). In order to avoid the rather agentless "event" as well as the strongly intention-oriented

"activity," I prefer the term *speech practice*. And in order to avoid the strong association with spoken language, I tend to replace *speech practice* with the more general *communicative practice*—which seems to fit well with the "ethnography of communication."

4. The concept *community of practice* is appropriate for talking about much that has been discussed under the label of "speech community" in the ethnography of speaking. But it was not available until it was launched by Lave and Wenger (1991) in the context of describing the situated learning leading to membership in a community characterized by specific types of knowledge and skills and performing specific social functions (e.g., midwives or professional physicists). Since such communities require neither co-presence nor well-defined groups with socially visible boundaries, the notion is particularly appropriate in a historical context, in which members of the community may not even be contemporaneous.

5. For an earlier analysis of some aspects of this collection, focusing specifically on metapragmatic terminology, see Verschueren (2012b).

6. Even Lave and Wenger's (1991) notion of "legitimate peripheral participation," as applied to learners, is ultimately relevant in this context. We cannot make use of it in the study of treaty texts as products of a community of diplomats. Obviously, all of those whose names are mentioned as participants in negotiations have already achieved the level of experience required in order to function in that way. In other words, they are no longer peripheral; they take center stage. If we were to undertake an ethnographic study of the negotiation processes themselves and of the preparatory steps, however, we would no doubt be able to observe the legitimate involvement of people who are new—and hence still more peripheral—to the process.

7. The term "ideology" is used here in the sense of "any basic pattern of meaning or frame of interpretation bearing on or involved in (an) aspect(s) of social 'reality' (in particular in the realm of social relations in the public sphere), felt to be commonsensical, and often functioning in a normative way" (Verschueren 2012a:10).

8. Mr. Baron Firmin van den Bosch (1864–1949) is identified on the cover and title page as Honorary General Attorney of the International Jurisdiction of Egypt. He studied law, was active in the literary and art scene (elected as a member of the Académie royale de langue et de littérature françaises de Belgique), and pursued a career as a magistrate and diplomat. He was a driving force behind a new Egyptian constitution (on the model of the Belgian constitution), served in Greece during World War I, and returned to Egypt afterward. At the time of World War II, he was retired, living in Brussels.

9. See Verschueren (2012b:115–116).

10. Contraband of war = goods shipped by a belligerent to another belligerent under the cover of a neutral flag.

11. For a few remarks on this, see Verschueren (2012b).

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