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Gérard-René de Groot

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Aller au sommaire du numéro

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The point of view of a comparative lawyer

G.-R. de GROOT *

Introduction

Because of both increasing international traffic of persons and goods as well as the growing importance of international governmental and non-governmental institutions, the demand for translated legal texts is continually growing.

Lawyers often require a "literal" translation of legal documents, but even more often they are confronted with foreign legal literature, which does not need to be translated but which does need to be comprehended adequately for a report in another language to be written. Besides, lawyers regularly must

* Associate Professor, University of Limburg, Maastricht.

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explain in foreign languages the content of the law in their own country. Then too, the core of their work is "translating" [1]. In legal translations, one must have a good knowledge of the legal terminology of hte language in which the information was originally given and of the language into which the information must be rendered. Therefore, it is astonishing to find that legal literature and law schools are devoting little attention to the problems of legal translation. This applies to the situation prevailing in the Netherlands [2] and in most other countries [3].

1. Thus, where in this text the word "translate" is used, this must be understood in a very broad sense.
2. In the Netherlands, respectively by dutch authors, there have been relatively few publications on the issue of legal translations. The following essays are brought to your notice.
   T.M.C. ASSER, *Problemen bij het vertalen van juridische teksten*, van taal tot taai, 1968, 37-44; also printed in: *Vertalen vertolkt, verhalen over vertalen*, Nederlands Genootschap van Vertalers, Amsterdam, 1976, 144-162.
   A. FRID, "De Tolk in strafzaken: een goed verstaander...?", in *Vertalen vertolkt, verhalen over vertalen*, Nederlands Genootschap van Vertalers, Amsterdam, 1976, 144-162.
   T. GASE, "Gerechtstolken", in *Vertalers in zicht, gids bij de tentoonstelling ter gelegenheid van het 25-jarig bestaan van het Nederlands Genootschap van Vertalers in het Rijksmuseum Meermanno-Westrenianum/Museum van het boek*, Haarlem, 1981, 96-103.
   G. van GINSBERGEN, *Qualifikationsproblem, Rechtsvergleichung und mehrsprachige Staatsverträge*, Zeitschrift für Rechtsvergleichung 1970, 1-15.
   G.R. de GROOT/M. TRAGTER-SCHUBERT, Bookreview of: Hans Langendorf, *Juridisch Woordenboek, Wörterbuch der deutschen und niederländischen Rechts-sprache, Lexikon für Justiz*, Verwaltung, Wirtschaft und Handel, Teil I, Niederländisch-Deutsch (München 1976), RM Themis, 1979, 479-484.
   G.R. de GROOT, "Belgisch-Nederlands Taalunieverdrag," Een "*verborgen*" *opdracht tot rechtsvergelijking en rechtsunificatie?* NJB, 1983, 374-378 (as well as a reaction to this by Mrs. E. Kalshoven-van Tijen with a commentary by G.R. de Groot in NJB 1983, 962-964).
   G. HESSELING, "Een juridisch woordenboek: geen alledaags projekt," in: *Tien jaren T.M.C., Asser instituut 1965-1975*, 's-Gravenhage 1975, 141-148.
   Th.M. de JONGH, "Jurist en talenkennis", in: *Notariële opstellen, Serie Ars Notariatus XXVIII*, Kluwer, Deventer, 1982, 155-159.
   I. KISCH, "Droit comparé et terminologie juridique", in: M. ROTONDI, *Inchieste di diritto comparato*, Padova New York, 1973, 407-423, also printed in: Vertalen vertolkt, Verhalen over vertalen, Nederlands Genootschap van Vertalers, Amsterdam, 1976, 124-139.
   A.V.M. STRUYCKEN, Pinyin, Over de vertaling van juridische benamingen, NJB 1979, 786-787.
   H. DUINTJER TEBBENS, Le "dictionnaire juridique néerlandais: un exercice de droit comparé", in: *Langage du droit et traduction*, Montréal, Conseil de la langue française, 1982, 173-185.
   L.C. WALLER, "Enige vertaalproblemen en hun oplossing door internationale samenwerking", in: *Tien jaren T.M.C.* Asser Instituut 1965-1975, 's-Gravenhage 1975, 137-140.
   At the moment a book of essays "Recht en vertalen" is being composed, edited by J.P. Balkema en G.R. de Groot; this book will be published in 1986 by Kluwer, Deventer.
3. An exception must be made for Canada, where in Montreal intensive research is done in the field of "jurilinguisitcs". Compare J.C. GEMAR (editor), *Langage du droit et traduction* (*The language of the law and translation*), *Essais de jurilinguistique* (*Essays on jurilinguistics*), Montréal Linguatech, Conseil de la langue française, 1982.

1. The difficulties of translation

In fact as the famous Spanish philosopher José Ortega y Gasset wrote [4], translating is a utopia. Translating is essentially impossible because languages are entirely embedded in their own social-cultural-political context. Each language refers to the customs and history of those who use it as their native language [5]. Ortega y Gasset wonders for instance, whether the Spanish word *bosque* is a good translation of the German word *Wald*; this suggestion of a German translation for "bosque" can be found in any Spanish-German dictionary [6]. When a German thinks of the word *Wald*, he pictures several hectares of trees which are standing closely together, while a Spaniard pictures several trees which stand in an otherwise bare environment as being a *bosque*. Is it therefore justified to give one word as a translation of the other? That is an open question!

It is already apparent from the simple example of Ortega y Gasset, that a word must be comprehended in terms of its linguistic and social-economic contexts. In fact, when translating, the entire context has to be translated too. This translation of the whole linguistic social-cultural-economic context can hardly be realized in practice [7].

Much has been written on the difficulties of translating, in particular on the pitfalls and traps on the path of the literary translator. It does not make much sense to go further into the subject here. The reader is referred to the litterature relating to this matter [8].

It is often noted that scientific texts are easier to translate than literary texts [9]. This thesis is generally wrong, in my opinion. Translating scientific texts is somewhat easier than translating other texts, if the science to which a text is refering possesses an international terminology [10]. In principle, such an international terminology can only develop, if a science in various countries

4. *Miseria y Esplendor de la Traducción*. Published in a bilingual edition (*Elend und Glanz der Uebersetzung*) in the series DTV-zweisprachig, 1976. Also printed in german translation in the book *Das Problem des Uebersetzens* edited by H.J. STÖRIG, Darmstadt, 1973, 296–321.
5. H.U. Jessurun d'Oliveira, Merlijn 1963, 19.
6. *Miseria y Esplendor de la Traducción*, DTV-edition, 16–19.
7. Cf. M. SPARER, "Pour une dimension culturelle de la traduction juridique", *Meta* 1979, 68–94.
8. Again the book *Das Problem des Uebersetzens supra* note 4, is brought to your attention. See further W. WILSS (ed.), *Uebersetzungswissenschaft*, Darmstadt, 1981 and R. van den BROECK and A. LEFEVERE, *Uitnodiging tot de vertaalwetenschap*, 2nd ed., Muiderberg, 1983.
9. For example, A. RIBBINK, "Kraaltjes rijgen", in: *Vertalers in zicht*, Haarlem, 1981, 56.
10. Van den BROECK and LEFEVERE, *supra*, note 8, 169.

always has similar systems and models to describe and work out its subject matter.

There is, for the most part, no international jargon in jurisprudence. Legal terms are strictly bound to a legal system and because legal systems differ from state to state, legal terminology also differs from country to country. Because legal terminology is bound to a legal system, translating legal texts is more difficult than translating texts which refer to other specializations [11].

2. Translating legal texts

When translating legal texts, one must take into account the fact that the terminology used deviates from the normal colloquial speech [12]. The manner in which a concept functions within a legal system often causes it to obtain a meaning which deviates from or is more differentiated than colloquial language and which must be expressed when translating. An extra difficulty is that legal documents are often characterized by a usage form which has already become obsolescent in colloquial language [13].

The closeness of the relationship between legal usage and a legal system can be illustrated by the terminology difference between the law of property in the Dutch Civil Code (*Burgerlijk Wetboek*) 1838 and the law of property in the new Dutch Civil Code (*Nieuw Burgerlijk Wetboek*) [14]. The terminology modifications which will appear with the introduction of the New Civil Code will, because of the change occurring in the legal system, involve the adaptation of translated foreign legal texts into Dutch. Dutch-foreign language legal dictionaries need to be revised in several respects.

An additional complication appears when one language is used in various legal systems. The legal language in the Netherlands and in Belgium, for instance, is the same Dutch (in Belgium, French is another legal language). Nevertheless, the legal language in Belgium and in the Netherlands possesses dissimilar legal content. Thus, often different legal terms are used in Belgium and the Netherlands : in Belgium, for instance the public prosecutor is called

11. H. SCHWARZ, *Babel*, 1978, 150.
12. Cf. A. LANE, *Babel*, 1970, 32; L. LAUZIÈRE, "Le sens ordinaire des termes de droit", in: *Langage du droit et traduction*, Montréal, Conseil de la langue française, 1982, 39-47.
13. Cf. M.R. REINSMA, NJB 1976, 857-872.
14. For terminological differences between the old and the new Civil code, see E.H. HONDIUS a.o., *Het Nieuw BW in 400 trefwoorden*, Deventer Kluwer, 1983 and A.S. HARTKAMP, *Compendium van het nieuwe vermogensrecht*, 2nd ed., Kluwer, Deventer, 1984, 12 ff. as well as A.S. HARTKAMP, *Aard en opzet van het nieuwe vermogensrecht*, Kluwer, Deventer, 1982, 27-29.

the *Procureur des Konings* and in the Netherlands *Officier van Justitie*. The fact that identical terms sometimes have a different meaning makes it even more difficult. In Belgium as well as in the Netherlands there is an *arrondissementsrechtbank*. The court that is called *arrondissementsrechtbank* in the Netherlands is called *rechtbank van eerste aanleg* (court of first instance; *tribunal de première instance*; Article 76, 568 and following *Gerechtelijk Wetboek*) in Belgium. In Belgium the *arrondissementsrechtbank* is a court, which consists of the presidents of the *rechtbank van eerste aanleg*, de *rechtbank van koophandel (tribunal de commerce*, Article 73, 573 and following *Gerechtelijk Wetboek*) and the *arbeidsrechtbank* (*tribunal de travail*; Article 73, 578 and following *Gerechtelijk Wetboek*) and its task is to settle matters of competence between the courts in question, if in a concrete case it is not clear before which of the three courts a certain case must be brought. It is because of these differences that an "intralinguistic translation" [15] is frequently necessary in order to make Belgian legal texts understandable to Dutch lawyers and vice versa. The legal content of a certain term in the Belgian legal language must be examined such that a term in the Dutch language with almost the same legal content can be found.

Of course, this remark on the method of Belgian-Dutch intralinguistic translations of legal texts also applies to legal translation in general. In this connection, it is of great importance to bear in mind that translations from one legal language into another legal language must be made. In principle, one may not translate into the normal colloquial language of the target language [16].

When translating legal texts, more than just linguistic skills are important [17]. The translator must possess the skill to compare the legal content of terms in one language (one legal system) with the legal content of terms in another legal language (the other legal system). We can formulate this thesis differently; comparative law forms the basis for translating legal texts [18].

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15. G.E. BUZELLI, "General problems in scientific and technical translation", *Babel*, 1970, 141.
16. S.A. ADELO, "Legal translators and translations", in: *Case and Comment*, 70 no. 6, The Lawyers Coop. Publ. Co., Rochester, N.Y., 1965; cf. further J. KERBY, "La traduction juridique, un cas d'espèce", in: *Langage du droit et traduction*, Montréal, Conseil de la langue française, 1982, 5: "La traduction [juridique] comporte non seulement le passage d'une langue à une autre, mais encore la transportation (...) d'un système de droit à un autre".
17. Although the necessary linguistic skills must not be underestimated; cf. Van den BROECK and LEFEVERE, *supra*, note 8, 175.
18. H.C. GUTTERIDGE, *Comparative law*, 2nd ed., Cambridge, 1949, chap. IX.

3. Legal translations and the difference in structure between legal systems

3.1. Different degrees of difficulty of legal translating

Now that we have seen that comparative law is the basis of translating legal texts we have every reason to offer some remarks on translating legal texts from the perspective of comparative law. Comparative law points out to us, among other things, the differences in structure between legal systems. Comparative law particularly teaches us that the structural differences of some legal systems are smaller than those of other legal systems. In this context, legal families are often mentioned — that is, groups of legal systems which have much in common regarding structure and social-political-historical background. With this in mind, a few thesis can be advanced.

The fact that comparative law is the basis of translating legal texts, justifies the supposition that the degree of difficulty is not primarily determined by linguistic differences, but by the extent of affinity of the legal system in question. The extent of affinity of the languages in question is a secondary factor which influences the degree of difficulty of the translation.

In light of these facts, we can say that legal translations will be (relatively) easiest, if both legal systems which the translations are concerned with are closely related and the languages in question are also closely related [19]. In terms of civil law texts, this implies that legal translations in the relation Denmark - Norway [20] or Spain - France [21] will be relatively easy. Of course, such translations also raise problems. This has already been mentioned in regard to the fact that it is sometimes necessary to make intralinguistic translations in, for instance, the relation Belgium - the Netherlands. But nevertheless, one may hope that under the conditions described (both languages and legal systems are relatively closely related), there is a reasonable chance that terms with a comparable legal content can be found in both legal languages, so that an acceptable translation can be presented.

Translating legal texts of one country into the language of another country which has a closely related legal system, even though the languages of the respective countries have few similarities, will not raise extreme difficulties.

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19. H.C. GUTTERIDGE, *supra*, note 18, 122.
20. On the affinity of the legal systems of Denmark and Norway, see J.G. SAUVEPLANNE, *Rechtsstelsels in vogelvlucht, 2de druk*, Kluwer, Deventer, 1982, 127 ff.; K. ZWEIGER/H. KÖTZ, *Einführung in die Rechtsvergleichung*, 2nd edition, Tübingen, 124, 125.
21. The Spanish legal system is generally regarded as a "daughter" of the french one; J.G. SAUVEPLANNE, *supra*, note 20, 98 ff.; K. ZWEIGER/H. KÖTZ, *supra*, note 20, 124, 125.

Translations concerning civil law made from French into Dutch can illustrate this. The legal systems of France and the Netherlands are closely related although they have been diverging somewhat from one another in the course of the last 150 years [22]. Another example are the translations from German into Japanese. The large number of Japanese translations of German publications concerning civil law justifies the supposition that such translations do not pose insurmountable problems. The fact that Japan has taken over a great deal of German civil law must be the reasons for this.

The thesis defended above also casts an interesting light on translation made within a uniform legal system. This particularly occurs in countries with a polyglot legislation (like Belgium, Canada, Finland, Switzerland). Such translations may be expected to be relatively easy, because the legal connotations of terms run parallel. In principle, there are no problems concerning comparative law [23] ; the main problem lies in imparting to the words of both languages the same social-economic background. However problems can arise. The words of the languages involved in the translation are gauged as legal terms by one and the same legal system ; that is why the legal contexts of the terms used are normally completely identical. Usually the languages in question are also used as legal languages in other (different) legal systems. As soon as one tries, when translating, to chose terms in such a way that they correspond as much as possible with the terms from the other legal system, translation problems arise because of the different prevailing legal connotation of the terms of the latter legal languages.

Translating legal texts from one legal system into the language of a very different legal system is more difficult that the above-mentioned translation categories, even if the legal languages used are closely related. In translating legal texts from Anglo-American countries into Dutch and vice versa, systematic differences between common law and civil law regularly raise very big problems. It is self-evident that problems will grow even bigger when translations must be made from very different legal systems which use languages that are not or are hardly related. Examples are translations of some legal texts from the Soviet Union or the People's Republic of China.

22. Gradually the Netherlands follow more and more the german example ; cf. J.G. SAUVEPLANNE, *supra*, note 20, 55 ff. ; K. ZWEIGER/H. KÖTZ, *supra*, note 20, 119.

23. This thesis only partly fits the case of Canada, for Quebec has its own legal system that is based on the tradition of civil law, which makes it very different from the common law that is valid in the rest of Canada. However, the thesis that has been advanced here, could perhaps be defended in respect of the federal laws. See on the passing of the federal laws : A. COVACS, "La réalisation de la version française des lois fédérales du Canada", in : *Langage du droit et traduction*, Montréal, Conseil de la langue française, 1982, 83-100.

A final category must be added to the above-mentioned categories: translations of legal texts from two legal systems which differ from each other on several points with regard to system and content, while the legal languages used are linguistically closely related. Translating German legal texts into Dutch is an example of this. Because of the linguistic affinity of German and Dutch, it is sometime believed that legal texts are extremely easy to translate. But often the differences in system and detail between German and Dutch law are not being taken into consideration. Dangerous (misleading) translation errors can be the result [24]. This kind of translation proves to be very difficult, because the chance of making legal *faux amis* [25] is considerable.

When, in the above-mentioned situations, the degree of difficulty of legal translations is related to the degree of affinity of the legal systems in question, one has to bear in mind that all countries in the world at least inform themselves in one way or another about the legislation in some other countries when framing laws. That is why one can always come across legal constructions which are more or less familiar. That does not alter the fact that there can be profound differences. Besides, when talking about the affinity of legal systems, there is a *materiebezogene Relativität* [26]. In regard to some legal subject matter legal systems can be closely related; but in regard to other subject matter affinity can be lacking completely.

3.2. Similarities with some general problems of private international law

As already stated the basis of translating legal texts is comparative law. In view of this thesis, we can conclude that legal translation difficulties arise when incongruities between legal systems are found while comparing these legal systems. Translators of legal texts are not the only ones who confront difficulties raised by the structural differences of legal systems, specialists of private international law encounter such difficulties even more frequently. Perhaps one of the clearest forms of parallelism between the work of a

24. See on this point G.R. de GROOT and M. TRAGTER-SCHUBERT in their bookreview of H. LANGENDORF, *Jurisdisch woordenboek ; Wörterbuch der deutschen und niederländischen Rechtssprache, Lexikon für Justiz*, Verwaltung, Wirtschaft und Handel, Teil I. Niederländisch-Deutsch, München 1976, in: R.M. Themis 1978, 479-484.

25. With regard to "*faux amis*" in general, see H. KREM, *Falsi amici e amici da evitare*, Idioma, 1967, 176-180. Compare also the examples of legal "*faux amis*" in the relation France-England by I. KISCH in his essay "Droit comparé et terminologie juridique" in M. ROTONDI, *Inchieste di diritto comparato*, Padova, New York, 1973, 407-423, also in: G. FRITSCHY (editor), *Vertalen vertolkt*, Amsterdam, 1976, 124-139.

26. K. ZWEIGERT/H. KÖTZ, *supra*, note 20, 76.

translator of legal texts and the work of a private international law specialist can be found in the problem of classification in private international law [27].

In private international law difficulties of classification arise when unfamiliar foreign legal institutes or laws have to be qualified for applying the national rules of private international law. In this context Ernst Rabel advanced the thesis that, when qualifying, the legal systems must be compared [28]. The foreign legal institute or rule must be compared with legal institutes or rules which exist in one's own country in order to be able to determine under which rule of private international law, which is formulated in the perspective of one's own country, the foreign legal institute or rule in question must be classified. One should "disengage" the foreign legal institutes or rules from the foreign legal system and compare it with legal institutes or rules from one's own legal system. Here the function of the legal institute or rule to be classified is an important factor. One should consider the nature of this legal institute or rule as well as the function it performs and then determine by comparing both legal institutes or rules in the two countries, the legal institute or rule in one's own country which performs a similar function. Thereafter, one should be able from the perspective of one's own private international law to qualify and subsume after having interpreted the rule of private international law. When subsuming such a foreign legal institute under a rule of private international law of the own legal system we can see that this rule is interpreted somewhat differently than what might have been expected from the national *Vorverständnis*.

When determining the qualification of foreign legal institutes or laws for applying the private international law of one's own country, we can see similarities to the problems of translating legal texts. As a rule, the national rules of private international law are formulated in the light of legal structures in one's own country. Questions with regard to qualification arise when various countries interpret situations differently from a legal point of view or when a certain foreign legal institute is unknown as such in one's own country. In that case qualification is more difficult. It is only after some comparison that one can determine which rule of private international law must be applied. When translating legal concepts, the problems are running parallel; if it is not clear beforehand that concepts correspond with each other from a legal point of view, comparisons must be made before the conclusion

27. This parallel has already been pointed out by G. van GINSBERGEN, *Qualifikationsproblem, Rechtsvergleichung und mehrsprachige Staatsverträge*, Zeitschrift für Rechtsvergleichung, 1970, 1–15, see also the same author in NJB 1968, 353–359.

28. Rabels Z. 1931, 267; on the theory of Rabel a.o. G. KEGEL, *Internationales Privatrecht*, 3rd edition, München, 1971, 118–120.

can be drawn that a concept in one language may be used as a translation of a concept in another language. Sometimes the concept used in the translation will contain shades of meaning unlike those underlying the same concept when used in an authentic national context. Then the crucial question is whether one term may still be used as a translation of the other.

Another similarity between the general problems of private international law and the problem of a legal translator can be found in the form of the public order (*ordre public*). Sometimes the rules from a foreign legal system are such that, although in principle that legal system should be applied according our national rules of private international law, our own legal system would, in the opinion of the judge, be incompatible with the application of that legal system. In such cases application of foreign law is prevented by appealing to the public order (*ordre public*) of private international law. A similar situation can also be found in legal translations ; sometimes one comes across terms which cannot be translated because of extreme differences in the structure of the legal systems in question. A terminological parallel in the legal systems cannot be found. With regard to private international law, it is often pointed out that one should not appeal too quickly to the public order (*ordre public*) [29]. This would often be hypocritical and, in addition, does not agree with the aim of private international law : the application of foreign law within a certain legal system by virtue of the rules of reference given by that system. A similar situation presents itself in translation work ; one should not conclude too quickly that a certain term cannot be translated. Such a conclusion does not agree with the aim one has set for oneself — that is rendering the content of a legal document in a language other than the language in which the document was written originally. However, one may not conclude from the above discussion that everything always must be translated. Sometimes a concept has such a uniquely appropriate meaning that the best solution is not to translate it, such as to maximize its unusual character. A good example may be found in the notion of "trust" in Anglo-American law.

3.3. Similarities with problems of legal documentalists

An important task of legal libraries is to order books and other publications on law in a clearly structured way. This ensures that users of the library can find without excessive difficulty publications relevant to their work. They are ordered by classification schemes, which order various

29. H.U. JESSURUN d'OLIVEIRA, "Openbare orde en rechtsvergelijking", in : *t Exempel dwinght* (Kisch-bundel), Zwolle, 1975, 239-262; G.R. de GROOT, WPNR (1979), 5482, 343.

publications in a way that facilitates their retrieval. The classification of legal books is hampered by structural differences in various legal systems as well as by subsequentt differences in the usual subdivisions of legal field in various countries. It is self-evident that a classification scheme for lawbooks focuses on the structure of the law, but this implies — if we do not take international law into consideration just now — that it also focuses on the structure of a national legal system. This implies that for every country (or even better for every legal system) a separate classification scheme would have to be drawn up. Another problem is that for collections with many books on foreign and comparative law other classification schemes would have to be used for each legal system, namely the classification schemes which are developed for that particular country. This is an extremely complicated task for those charged with encoding publications for a library; for this reason, the chance of errors increases considerably when encoding. Moreover such a complicated classification scheme is very troublesome for users.

The clarity and consequently the accessibility of a collection increase by using, in addition, a classification scheme which has been developed within the national law (in one's own country) for classifying books about foreign legal systems. However, in this case the person in charge of encoding for a legal library is confronted, when classifying books from legal systems with structures, different than that of his own legal system, with the same (abovementioned) problems which confront the specialist of private international law, namely he runs up against qualification problems and must adapt. But the difference is that he may not eliminate from his scheme by appealing to the public order those books or publications which offer qualification problems.

Classification problems also arise when classifying information which has been stored in computers. Storing legal information in computers not only facilitates the consultation of national documents, but, in principle, also simplifies considerably the accessibility of foreign documents. When sitting before a terminal in Maastricht, one has access to, for instance, legal documents which have been stored in computers in Rome or Washington. This sounds very attractive and simple, but in practice there still appear to be gigantic barriers. Let us set aside for now the fact that the sorts of legal information which have been stored in computers in various countries are very different. The main problem is that even though the documentation is similar, it is still not easy to get access to the legal information of different countries. Practically all automized information systems use another query-language (i.e., the language which is used in a computer to get access to information), which the user must first learn before he can ask his question. But when he has learned these query-languages, he is then confronted with the fact that he can only find the information he is looking for if he has

command of the legal language that is used in the country in question. Dutch legal categories and concepts will have to be translated into another legal language before the user can ask his question. So here too we are confronted with (translation) problems concerning the different structures of legal systems. For the time being we can only contemplate the quick computer access to foreign legal documents.

In order to obtain such access, it would be necessary to unify the query-languages [30] and either to store documents according to a classification system which has been developed for the purpose of comparing legal system or at least according to numerical entries which refer to legal categories abstracted from national legal systems, in other words, a legal "metalanguage".

3.4. Towards a supranational legal vocabulary

We have just referred to legal categories abstracted from national legal systems. It ought to be clear that the existence of such a detailed legal language would not only aid in international access to legal documents stored in computers, it would also provide the basis for a classification scheme used by legal libraries. Furthermore it would be valuable to specialists of private international law. Last but not least, it would be useful in the preparation of legal translation.

At first sight, the propagation of a legal metalanguage appears to be somewhat unrealistic. It could not easily be created and refinements would require the efforts of several generations of comparative lawyers. However, it appears to me that such an effort would be worthwile in view of the above-mentioned problems.

I must point out that the idea of developing a legal metalanguage is not new. In his monumental work *Rechtsvergleichung* the great Romanian comparative lawyer, Léontin-Jean Constantinesco spends a whole paragraph to "*Die Rechtsvergleichung als instrument zur Schaffung einer übernationalen Systematik, einer universalen Rechtsterminologie und zur Erarbeitung von Idealtypen*" [31]. He says with regard to the development of supranational systematics as well as to the development of a supranational legal terminology, that progress of the development of such metacategories can best be expected "*wenn man bei der Vereinheitlichungsbemühungen auf eine geographische*

30. The Council of Europe is trying to do something in this field. See, for example, W.R. SVOBODA, *Study on common standards for query languages in computerized legal retrieval systems, Strasbourg*, Council of Europe, 1981.

31. L.-J. CONSTANTINESCO, *Rechtsvergleichung*, Band II, *Die rechtsvergleichende Methode*, Köln etc. 1972, 357-367.

Universalität des Vokabulars verzichtet und in einem bescheideneren und praktikabeleren Rahmen beginnt. Im Rahmen eines jeden Rechtskreises lässt sich die Vereinheitlichung nicht nur hinsichtlich der determinierenden Elementen, sondern auch hinsichtlich zahlreicher Rechtsbegriffe und Begriffsgegenstände am ehesten verwirklichen"[32].

Conclusion

— Making legal translations

Rather abstract theoretical observations have been made up to now. I would now like to try, while considering the foregoing discussion, to draw more practical conclusions and to offer some suggestions.

First of all I must caution legal translators about using normal bilingual dictionaries. The legal dimensions of words are usually neglected by such dictionaries because the authors are not lawyers. At best, such dictionaries can be used as an *aide-mémoire* but never as a motive for certain translations.

Great caution should also be exercised when using bilingual legal dictionaries. Of course, in these dictionaries much more attention is paid to the legal dimensions of concepts than in "normal" dictionaries, but they still appear to contain many inaccuracies. In addition, they often fail to give the context of the entries and the context of the translations suggested.

When translating legal texts, unilingual legal dictionaries, which give an explanation of the terms that have been translated, are often very useful. Often translations can be found — by comparing the legal systems — with the help of corresponding lexica in the other language in question. But one must remain cautious; the concise definitions of concepts in such lexica are not always that reliable.

However, the best method is to look up in foreign text-books, commentaries and statutes (with the help of indexes) the meaning of the word that has to be translated[33]. Thereafter, when some insights have been achieved one can consider possibilities for translating a certain term.

The above-mentioned suggestions do not make translating legal documents a simple matter. When translating such documents one will constantly be aware of the fact that legal concepts from various legal systems hardly ever

32. Cf. also the essay of H.C. GUTTERIDGE, *Comparative law*, 2nd ed., Cambridge, 1949, 124–126 on "An international juridical dictionary". For that matter, Gutteridge points out a proposal for an international legal lexicon. This proposal was made by prof. ALTAMIRA (*Acta Academiae Universalis Jurisprudentiae Comparativae*, vol. II (I, 237).

33. J. KERBY, *supra*, note 16, 10.

mean exactly the same thing. In this context Kisch wondered whether making legal translations is possible at all. He points out that a word for which no equivalent can be found will have to be described. But in his opinion one may not draw too quickly the conclusion that there is no relevant equivalence. He points out that, for instance, the french word *mariage* and the German concept of *Ehe* differ, among other things, such that the grounds for divorce are different. Can "*mariage*", therefore, not be translated into *Ehe*? According to Kisch [34], that would be a conclusion which is drawn too quickly: "*Ce serait tomber dans le péché du perfectionnisme*": "*D'abord la vie est trop brève, et les demandes du commerce social sont trop urgentes*". If "*quant à la substance*" there is identity, one may translate according to Kisch. If this is not the case, the word will have to be described in the translation. And finally he emphasizes: "*Bref, la question de l'équivalence est une question d'ordre pragmatique*". It is true, on the one hand, that one must not take too quickly the identity of certain concepts for granted, but on the other hand, one must also not hesitate too long. One has to be practical, or to state in other words, as Kegel did in another context: "*Man muss den Mut zum Irrtum haben*" (One must dare to take the wrong decision) [35].

— Legal dictionaries

It is of utmost importance that good legal dictionaries are compiled. Ideally such dictionaries should also give the context of the concepts that have to be translated as well as the context of the suggestions for translation. Only a few dictionaries make an attempt to do this; most dictionaries give some suggestions for translating a concept and usually only one of these suggestions is correct, depending on the context. And then the user still has to find and analyse the contextual material himself. A favorable exception is the legal dictionary Dutch-French published by the T.M.C. Asser Institute [36]. Here I want to plead for the publication of more legal dictionaries of this type.

34. *Supra*, note 25, 411, 412. Cf. also the essay of J. KERBY, *supra*, note 16, 9, 10 and the article of M. BASTARACHE and D.G. REED, "La nécessité d'un vocabulaire français pour la common law", in: *Langage du droit et traduction*, Montréal, Conseil de la langue française, 1982, 207-216.

35. G. KEGEL, in: Festschrift Nipperdey, 457: "Allerdings sind Entschlusskraft und, was dasselbe ist, Mut zum [rrtum hier mehr gefordert als bei der Anwendung inländischen Privatrechts".

36. Ed. G. HESSELING, Amsterdam, Antwerpen 1978. On this dictionary: G. HESSELILNG "Een juridisch woordenboek: geen alledaags projekt", in: *Tien jaren TMC Asser Instituut 1965-1975*, 's-Gravenhage 1975, 141-148; H. DUINTJER TEBBENS, "Le dictionnaire juridique néerlandais: un exercice de droit comparé", in: *Langage du droit et traduction*, Montréal, Conseil de la langue française, 1982, 173-185. See also the dictionaries described by A. LANE, "Legal and administrative terminology and translation problems", in: *Langage du droit et traduction*, Montréal, Conseil de la langue française, 1982, 219-231.

From the foregoing findings, namely that a legal translation involves translating from one legal language into another by comparing legal systems, the conclusion must be drawn, in my opinion, that legal dictionaries should restrict themselves to giving suggestions for a translation from only one legal system into only one other legal system. If not, the structure of the dictionary becomes slightly unclear and precludes easy and reliable consultation. However, not many dictionaries put this kind of wise self-restriction into practice.

This thesis can be illustrated by an example : the *Juridisch Woordenboek Nederlands-Duits* (legal dictionary Dutch-German) by Hans Langendorf [37], differentiates insufficiently between the Dutch and Belgian terminology, on the one hand, and between the West German, East German, Swiss and Austrian terminology on the other.

For example, in this dictionary there are several typically Belgian terms (e.g. *procureur des Konings, hof van assisen*). But it is not clear which standards are used for including the Belgian legal terms. This dictionary fails, for instance, to give different translations of the term *arrondissements-rechtbank*, depending on whether the Dutch or Belgian term is meant. Moreover, this dictionary does not always give the West German terminology for Dutch terms. Sometimes suggestions for a translation which only apply to Switzerland are given without this being explicitly mentioned [38]. Of course, it is praiseworthy to strive to include Belgian terminology in addition to Dutch terminology. But, in my opinion, it is better to orientate a dictionary less broadly and to confine oneself to giving suggestions for translating from one legal system into another.

— Standardised translations of legal terms

Because translating legal terms is so difficult, it is not surprising that certain terms in one legal language are translated differently into another legal language by various translators. A.V.M. Struycken has called attention to this in an article in the *Nederlandse Juristenblad* [39]. He points out, for instance, that in English publications on Dutch law certain terms are translated

37. München, 1976, see above : note 24.
38. Thus, the words "*recht van opstal*" are translated into "*Baurecht*", among other things, which is only a correct translation in Switzerland.
39. "Pinyin" (over de *vertaling van juridische benamingen*), NJB 1979, 786-787 ; P. NEWMARK makes a similar remark as Struycken in, "The translation of authoritative statements : a discussion, in : *Langage du droit et traduction*, Montréal, Conseil de la langue française, 1982, 283-299.

differently every time. He pleads that a sort of "pinyin" has to be created ; one standardized translation of principal Dutch legal concepts in the chief modern languages. The suggestion of Struycken has been accepted by the *Netherlands Comparative Law Association*, which has formed a "Pinyin-committed" to deal with the standardisation of translations of legal concepts. The committee consists of comparative lawyers from various Dutch universities, the *Nederlands Genootschap voor Vertalers* (Dutch Association for Translators) and representatives of the translation service of the Ministry of Foreign Affairs.

"Pinyin" is a Dutch initiative. It is unknown to me whether similar initiatives have also been taken in other countries, But as far as this is not the case, I hope that other countries will also take the initiative to develop a legal "pinyin". Perhaps creating such standardised translations will also be a step towards the creation of supranational concepts.

— Inventory of legal translations

When preparing legal translations it is extremely useful to consult previous translations. It is also wise to take note of any translations into other cognate languages of the text that is to be translated, or of translations of comparable texts from the source language into the target language.

Also, translations of comparable texts of a cognate legal system that are translated into the same target language can often be inspiring. However, it is rather problematic to locate all these translations ; and after one has found out about their existence, it is difficult to obtain them. Therefore, if some person(s) undertook to make at least an inventory of the existing translations of statutes, his action would be welcomed. If such an inventory was published and if the signalized translations were centrally stored in a documentation office, the work of legal translators and international lawyers would become somewhat easier. Some translations will immediately become superfluous or at least simpler. In that case it is naturally required that such a documentation office is prepared to send copies of the translations on inquiry, or to make the relevant documentation available by way of databanks.

This kind of inventory and documentation could primarily be taken up on a national level. Nevertheless, it would be desirable that all countries keep a similar documentation. The next step would be the international coordination of the inventories and particularly of the publications of those lists.

Here it must be noted that, in the early seventies, the Council of Europe has made an inventory of translations of statutes in the field of civil law and has published these inventories in a book called : *Bibliography of translations*

of codes and other laws of private law[40]. This book is a good basis for a more comprehensive inventory such as the one that has been proposed above.

It is not only useful to collect translations of statutes, surveys made of "translations" of other information about a legal system would also be very welcome. Compare the use of publications like Scandinavian legal bibliography (publications on the law of Scandinavian countries in English[41], Basis Literature on law: Federal Republic of Germany[42] or the bibliography of books and articles on Japanese administration of justice and civil procedure in western languages[43]. At the moment the Limburg State University is considering setting up a documentation file "Dutch law in foreign languages" (possibly in cooperation with the Dutch State School of Translation).

This kind of documentation file does not yet exist in the Netherlands.

— Education of legal translators

The translation of legal documents is actually comparative law, as we have already seen. Is it therefore necessary that legal translators be lawyers? In my opinion this is not necessary, but legal translators do need to have insight into the structure of the legal systems their translations are concerned with as well as a good feeling for the problems of comparative law that can arise. It is of the utmost importance that this is taken into account in the training of legal translators. We want to examine how far this is actually done at the schools and universities Dutch people usually go to before they establish themselves as translators.

Many Dutch translators have been graduated at a faculty of arts. During their studies they have been able to qualify themselves in the field of linguistics. However, as a rule, they have not or have hardly come into contact with legal texts during their training, and they have therefore not been confronted at all with the specific problems of translating legal texts. They have not occupied themselves fully enough with comparative law.

It is true that it is possible within the scheme of some final examinations, to take "law" as an "elective" subject; but in those cases jurisprudence is studied as a subject outside one's own faculty, namely at the faculty of law.

40. Strasbourg, 1975. See also J. HARTMAN, *Bibliographie der Uebersetzungen von Gesetzestexten, Deutsch-Französisch-Englisch, Arbeitsgemeinschaft der Parlements – und Behördenbibliotheken*, Arbeitsheft 24, Karlsruhe 1971.
41. Stockholm, 1961.
42. R. LANSKY, *Grundliteratur Recht; Bundesrepublik Deutschland/Basic Literature on Law*, Federal Republic of Germany, Hamburg, 1984.
43. Compiled by Y. Taniguchi, Kyoto, 1971.

The syllabus of such an "elective" subject usually offers the subject of "Introduction to the (Encyclopaedia of the) Jurisprudence", which is specially designed for first-year law students, and sometimes also another introductory subject like, for instance, "Introduction to Private Law". Indeed, the persons in question do get an impression of the structure of a legal system, but, in view of the character and the intention of such course, the subjects that are especially important for translators (comparative law, comparative legal terminology) are not treated at all.

Recently some faculties of arts have made changes in their program which make it possible for students to concentrate more fundamentally on the problems of legal translations during their study. Thus, the Faculty of Arts of the State University of Groningen has included a variant for translators within the field of study, "General Literature", which enables students to choose law as a specialization.

This implies for example, that students who study French as their first language follow some normal courses at the Faculty of Law but that they also have to follow a course of lectures on "*Introduction au droit français*". After that, they get translation assignments in the domain of law. They also have to undertake an internship at the legal translation departments or institutions of businesses.

The Faculty of Arts of the State University of Leiden is also developing programs which offer students the opportunity to focus specially on legal terminology (the so-called LSP-courses, — Language for Specific Purposes). However, these programs will for the greater part not start before the autumn of 1986, so that information on the exact content and method cannot yet be given.

A field of study, "Translation Science", has been set up at the University of Amsterdam. This science, in which one can also graduate, is a "post-propaedeutic" study. One can be admitted to this course after having passed the so-called propaedeutic examination (after one year of study) of either the English, the French or the German department. In this study the student chooses one foreign language as his main subject and a second one as an optional subject. Besides that, course contains a so-called "free subject" which offers the student the possibility to "gather information on the field in which he later possibly wants to work as a translator". One of the fields which this free subject allows students to concentrate on is law. However, if a student decides to do so, he is again dependent on a member of the law faculty for lectures (and an examination). And then, again, these students choose the introductory subject of jurisprudence, so that there is only a brief introduction to the field of law. Obviously, they do not get around to studying comparative law, which must be done to achieve an understanding of legal terminology.

On the other hand, it must be noted that the Department of Translation Science is occupied with legal translation problems in the field of European Community law.

Since 1981 there is a state school for higher vocational education of translators in Maastricht. The translators that have followed this course have a different background. During their study they have been familiarized with their areas of interest through a training system that is based on problem-solving. Those who graduate as translators, with law as their special subject, have been confronted with legal, administrative and political texts for about 2.5 years. In this way they have continuously come across the problems that occur when translating legal information among other things, and they have been able to develop a certain skill in that field. However, during their training they have generally had to concentrate especially on the linguistic aspects of their activities, i.e. to train themselves further in the passive and active command of their mother tongue and two foreign languages. Though problems of legal nature have regularly arisen, it is nevertheless found that, in general, they have not been able to spend much time on the principles of law and comparative law which lie at the root of the problems they came across. Moreover, they lack the regular and systematic supervision of qualified comparative lawyers.

If one surveys the programs of study at the faculties of arts and the Dutch State School of Translation, one can conclude that some training institutes realize that familiarity with the law is of major importance as a preparation for legal translation work. However, these institutes are not unanimous as to how and how much persons, who want to specialize in legal translations, have to occupy themselves with law. Neither do they explicitly make room for instruction in comparative law or comparative legal terminology under the responsibility of a qualified comparative lawyer. But, nevertheless it is a hopeful start.

— The training of lawyers with insight into translation

Many lawyers still think that someone who is fluent in a foreign language (or has at least very good command of it), will also be able to translate legal documents. It is very important that attention is paid to this misunderstanding during the legal education. A good training in comparative law and, particularly, in comparative legal terminology, is essential for that purpose. On behalf of (future) lawyers with an interest in foreign languages and legal systems in other countries, various dutch law faculties give courses on foreign legal languages which can help the participants in augmenting their ability to take note of international developments in the field of law (e.g. "Legal German" at

the State University of Groningen ; *Introduction au droit français* at the Free University of Amsterdam as well as at the State University of Groningen, etc.). The Tilburg faculty of Law even offers a specialized course in comparative legal terminology, while in Leiden, in 1985, an experimental course on English, French and German legal terminology has started as a *caput selectum*. These are positive developments which will, also in the future, give these lawyers a good preparation for possible activities on a international level.

Nevertheless, these subjects are only optional, so that law students who choose them can only concentrate upon the above observed problems during a relatively short time. The same goes for the PAO-courses (*Post-Academisch Onderwijs* ; post-graduate-courses) that are based on these elective subjects (in Groningen and Rotterdam there were post-graduate-courses on the german legal terminology). Even if these courses (as was the case in Rotterdam and Groningen) are set up very broadly, they do remain in their first stage. Moreover, because of the sometimes defective linguistic skills of the participants, it appears that it is necessary to devote more time than is desirable to purely linguistic problems, such that little time is available for the comparative treatment of legal terminology.

There is not yet a systematic training of jurilinguists in the Netherlands. Yet, we must make mention of a plan that has been proposed in 1985 to the Minister of education by the Limburg State University to set up a post-graduate course on "Law and Linguistics"[44] under the joint responsibility of this University's faculty of law and the Dutch State School of Translation (Maastricht). During this training, which is open to graduate lawyers as well as to linguists, the participants are trained in making legal translations. The foci of this course are comparative law and particularly comparative legal terminology. The teachers who will be responsible for this training will both be teachers of the Faculty of Law who are qualified in comparative law as well as teachers with a linguistic education of the State School of Translation[45]. At this time the Dutch Department of Education has offered financial reasons for not giving permission to start this course.

44. Report "Recht en linguistiek, voorstel van een beroepsopleiding ex artikel 32 lid 3 WWO", Maastricht, 1983.

45. The creation of the course in question could also offer teachers the possibility to do more fundamental research in the field that J.-C. GEMAR, *supra*, note 3, 21-137 calls "The new discipline of Jurilinguistics" (cf. particularly 135, 136).