

Definitions for Harmonising Legal Terminology

Examples from the Protocol on the Conservation of Nature and the Countryside

Céline Randier

In this contribution we will examine some challenges posed by the harmonisation of the terms contained in the Protocol on the Conservation of Nature and the Countryside. All Implementation Protocols of the Alpine Convention were written in an Alpine language, namely in the languages chosen by the different Working Groups charged with drafting each Protocol, and was then translated in the three other official languages of the Convention. Due to this fact, some terms were inappropriately translated and need to be defined in order to be understood in the same way by all the Contracting Parties. We will examine this challenge with reference to the Protocol on the Conservation on Nature and the Countryside and give some specific examples.

The objective of the LexALP project is to harmonise the terminology of the Alpine Convention's four languages (French, German, Italian and Slovene), so that the Parties to the Convention are able to cooperate effectively, surpassing the obstacles posed by the differences in their respective legal systems and the disputes over the conception and execution of common policies in the fields of spatial planning, sustainable development and environmental issues in general. In order to reach an equal understanding of the concepts used within the Alpine Convention and its Implementation Protocols (in the following referred to as the Alpine Convention system), harmonisation is based on a common definition for all the concepts of the Alpine Convention system, translated in the four languages. The aim is not to create a complete legal dictionary, but to overcome the obstacles represented by the differences between the legal systems and by the linguistic barriers. The definitions represent the meaning of the terms, even though they are not a part of the Alpine Convention system and are not legally binding.

1. On the importance of definitions in different legal systems

When elaborating definitions for the concepts of the Alpine Convention system we, the lawyers and terminologists in the LexALP project, often used definitions that could be found in the other legal systems (International, European and national legal systems) as a starting point. Most definitions adopted by the Harmonising Group were based on European and on International Law. Indeed, European and International legal texts often contain definitions of the terms used in order to ensure their common understanding by all the Member States or Contracting Parties. The definitions harmonised during the LexALP project are often wide and general in order to allow the members of the Harmonising Group to reach a consensus and to overcome the specificities of all Alpine legislations. European definitions may obviously be fully acceptable for all the States, with the only exception of Switzerland, which is not part of the EU, notwithstanding the various bilateral agreements between the EU and Switzerland (one such agreement deals specifically with the membership of Switzerland to the European Environmental Agency). Nevertheless, the Swiss representative within the Harmonising Group accepted most definitions based on the European texts. In fact, the definitions accepted by the Harmonising Group never explicitly refer to specific European provisions, because the main purpose is obviously to establish acceptable definitions for the Alpine Convention system (still, the original text is quoted in the source field).

Hence, the definitions coming from EU sources have often been adapted accordingly. For instance, when defining the term ‘environmental damage’ (*Umweltschaden/ dommage environnemental/ danno ambientale/ okoljska škoda*) a European definition from directive 2004/35/EC¹ was taken as a starting point, but the reference to other European legal texts had to be deleted to make it useful also for the Alpine Convention system. More specifically, the references to the other European directives 92/43/EEC, 79/409/EEC and 2000/60/EC were deleted. The resulting amended definition is not referred to the list of protected habitats and species of the European law but to the species and natural habitats which are protected by the Alpine regulations and reads like “damage to protected species and natural habitats, to water or to the land”.

While looking for definitions in the various national legal systems it became soon clear that there are relatively few definitions in the French legal system as opposed to other national legal systems, for example the Slovene one. Contrary to the French usage, also the European legislation often contains definitions. This is a modern ‘technocratic’ way of drafting legal texts and is the reason why the Slovene legal texts, which had to be quickly

1 Directive 2004/35/EC of the European Parliament and of the Council of 21st April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.04.2004, p. 56-75).

adapted to the *acquis communautaire*, often contain definitions coming from European legal texts. To some extent the use of definitions in the European legal texts has been influencing the French legal system in recent years. Today, the French legislator tends to adopt definitions taken from European legislation. This is particularly obvious in environmental law, because nearly 80% of the French environmental law comes from the European law. We must underline ‘to some extent’, because the legislator does not always take *all* the definitions provided by the European legal texts. This point can be illustrated on the basis of the transposition of the Fauna-Flora-Habitats Directive² into the French legal system. Even though the directive provides a certain number of definitions (see art. 1), the French legislator did not insert all of them in the legal dispositions on Natura 2000³. Unlike France, the Italian government has copied all the definitions provided by the European directive in the decree transposing the Fauna-Flora-Habitats Directive⁴.

In the French legal tradition however, the legislator rarely defines the terms used. Definitions (if there are any) can be found in the preparatory works to the laws or in *circulaires administratives* (administrative circulars), which explain and interpret the legal texts for a better implementation by the administration⁵ (see Makowiak 2003:10). These texts are very important for the French administration (cf. Lefevre 2006:177-179), but the role of the administrative judge is even more important for the interpretation of the rules. In application of the Rule of Law the judge is bound only by the legislator; administrative courts may therefore discard definitions adopted by the administration and rely on an own, new definition (Chevallier in Lefevre 2006:251). As judges have to interpret the norms, they often explicit the meaning of the terms in question, so interpretations of legal terms can often be found in French case law. An example is the *Loi Montagne* (Mountain Law). Some important terms, like for instance ‘*hameau*’ (hamlet) are not defined in the law, but have been interpreted many times. In this way the administrative courts defined the term hamlet step by step (Lamy et al. 2006:43). Knowing the content of this term is very important, because it conditions one of the principles of this law, the so called *principe de l’urbanisation en continuité*, which appears in article L. 145-3-III of the *Code de l’urbanisme*⁶. According to this principle, urbanisation has to be in continuity with the

2 Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.07.1992, p. 7–50.

3 See L. 414-1 ff. of the *Code de l’Environnement*.

4 See article 2 of the *Decreto del Presidente della Repubblica dell’8 settembre 1997, n. 357* (G.U. n. 248 del 23 ottobre 1997).

5 See for example the *circulaire d’application MATE/DNP/MAP/DERF/DEPSE N°162 du 3 MAI 2002 relative à la gestion contractuelle des sites NATURA 2000*.

6 Article L. 145-III-3 of the *Code de l’urbanisme*: “*Sous réserve de l’adaptation, du changement de destination, de la réfection ou de l’extension limitée des constructions existantes et de la réalisation d’installations ou d’équipements publics incompatibles avec le voisinage des zones habitées, l’urbanisation doit se réaliser en continuité avec les bourgs, villages, hameaux, groupes de constructions traditionnelles ou d’habitations existants*”.

existing villages, towns and hamlets. Hamlets can thus become nuclei of agglomerations and the more hamlets are recognised, the stronger the urban sprawl.

2. Protected Areas in the Alps – The different categorisations

2.1. Different legal systems – different protected areas

In the Alpine space there are various legal systems with diverging legal traditions. Many differences between the systems had to be faced when harmonising the terms of the Protocol on the Conservation of Nature and the Countryside. During this working step we had to propose definitions for the categories of protected areas. Creating such definitions is not an easy task, because some categories of protected areas might have seemingly equivalent designations, like *Nationalpark*, *parc national*, *parco nazionale* and *narodni park*, for instance, but they do not fully share the same meaning in the sense that they do not respond to the same regulations. In fact, the classification of protected areas is made on the basis of different criteria in the Alpine States; it is ruled by each legal system and does not come from a classification elaborated at the international or European level. That is why in an Austrian national park and in a French national park the rules could be different. In the French national parks the projects have to be made in accordance with art. L. 122-1 of the *Code de l'environnement*. And it is a federal law which rules this point in the Austrian national parks⁷.

In this case the Harmonising Group was confronted with a worldwide problem. In order to solve the difficulties in classifying the protected areas, in 1994 the World Conservation Union (IUCN) and the World Conservation Monitoring Centre (WCMC) (cf. Olivier 2005:153) proposed *Guidelines for Protected Area Management Categories*. These guidelines are the only widely recognised international categorisation of the different types of protected areas. In the Alpine space only Slovenia refers directly to the IUCN classification in her national legislation on nature protection (Bishop et al. 2004:76-77). A few years ago a study of the *Alpine Network of Protected Areas* showed the differences in the categorisation of protected areas across the Alpine space (Réseau alpin des Espaces Protégés: 2002). Some of these will be illustrated in the following sections.

⁷ Bundesgesetz über die Prüfung der Umweltverträglichkeit (Umweltverträglichkeitsprüfungsgesetz 2000 – UVP-G 2000) BGBl. I Nr. 149/2006.

2. 2. The ‘national park’ in different legal systems

We will explain the problem focussing on the concept of ‘national park’. It has linguistic equivalents in all Alpine languages, but the terms do not have the same legal meaning in all the Alpine States. This entails that the legal statute of this type of protected area is different from State to State. Therefore, the question arises of how this term can be defined. Can we define it with a reference to the main objectives pursued with the creation of the protected area or with a reference to the regulations associated to it? Choosing the first option is problematic, because the main objectives are not always the same and some important objectives could easily be overlooked. Concerning the regulations, they also differ from one State to another.

The LexALP Harmonising Group considered adopting the IUCN’s definition: According to the IUCN guidelines, a national park is a “natural area of land and/or sea, designated to protect the ecological integrity of one or more ecosystems for present and future generations, exclude exploitation or occupation inimical to the purposes of designation of the area and provide a foundation for spiritual, scientific, educational, recreational and visitor opportunities, of all of which must be environmentally and culturally compatible” (IUCN 1994). However, not all the national parks in the Alps do correspond to this definition (Veyret 2002:120). Indeed, some of these Alpine areas better correspond to category I of the IUCN’s classification, namely ‘Strict Nature Reserve’. That is why the Harmonising Group decided to adopt and elaborate the definition proposed by the Alpine Network of Protected Areas on their website⁸, where national parks are defined as “[l]arge natural areas or areas that have been changed very little by man [and] generally have a high level of protection. However, certain traditional activities may be permitted”.

Contrary to the above example, for the concept of ‘protected area’ we adopted the definition coming from the IUCN guidelines. The following quite wide definition corresponds to the reality of all Alpine legal systems and could be accepted by all the members of the Harmonising Group: “Area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means”.

A further challenge is represented by the fact that some categories of protected areas mentioned in the Protocol on the Conservation of Nature and the Countryside do not exist in all Alpine legal systems. Each Protocol of the Alpine Convention was elaborated by a Working Group, under the guidance of one Alpine State. The Protocol we are dealing with was elaborated by a Working Group under the direction of Germany. That is why some concepts come from the German legislation and do not always appear in the other legal

⁸ See http://www.alparc.org/ep_alpins.php?INIT_RUBRIQUE=2 (date of consultation 15.12.2007).

systems. Hence, it can be problematic to apply the translated German definition to all the other Alpine States. Indeed, the concept of *Landschaftsschutzgebiet*, which is translated in French as *zone de protection du paysage* can be easily defined starting from German law. It appears in paragraph 26 of the Federal Law on nature protection⁹. This protected area has a specific legal meaning in Germany. But this concept is not a category of protected areas in the French legal system¹⁰; it does not mean anything concrete for a French person, be he or she lawyer or linguist. Another example is *Naturschutzakademie*, which was translated with *centre de recherche et formation en matière de la protection de la nature*. It does not exist as such in the other legal systems, but maybe here form will follow function.

Perceiving terms through their political etymology reveals the original differences between the legal traditions on nature protection in the Alpine space. In Germany, like in the German-speaking States in general, the protection of landscape is more developed than in the Southern Alpine States (cf. also Piore 2007:1141-1164). Indeed, the importance accorded to the landscape is something ‘new’ in the French legal system. That is why Kiss (2007:79-88) could write that the dispositions on landscape of this Protocol are its most important aspect, seeing that it is not as ‘revolutionary’ as the other Protocols. Landscape protection was also a new preoccupation in international law. In fact, the Alpine Convention Protocol was adopted before the European Convention on Landscape by the Council of Europe¹¹.

In the French legal system the importance accorded to the landscape appeared in 1906 with the *Loi sur la protection des sites et des monuments naturels*, but it did not find any real application (Romi 2007:609 ff.). And if the necessity to protect the landscape gradually appears in legislation, the principles remain very vague until the *Loi sur la protection et la mise en valeur des paysages*¹² (1993). With this law it seems that a new form of landscape management appears in France, conceived after the principles of the protection of landscapes (Romi 2007:609 ff.). In spatial planning the local communities have to take into account norms about the landscape and also adopt a landscape policy (*directive de protection et de mise en valeur des paysages*). But for the time being, there is no legal definition of ‘landscape’ in the French legal system, although it is part of the “*patrimoine commun de la nation*”¹³. Contrary to France, there is a definition in the Italian legal system. The

9 *Gesetz über Naturschutz und Landschaftspflege vom 25. März 2002, BGBl I 2002, 1193, zuletzt geändert durch Artikel 3 des Gesetzes vom 10. Mai 2007 (BGBl. I S. 666).*

10 There is no such protected area, but the *directive de protection et de mise en valeur des paysages* should be mentioned here.

11 European Landscape Convention, Florence, 20.10.2000.

12 *Loi n°93-24 du 8 janvier 1993 sur la protection et la mise en valeur des paysages et modifiant certaines dispositions législatives en matière d'enquêtes publiques, JORF du 9 janvier 1993.*

13 Art. L. 110-1 of the *Code de l'environnement*.

landscape consists of “[P]arti di territorio i cui caratteri distintivi derivano dalla natura, dalla storia umana o dalle reciproche interrelazioni”¹⁴. Nevertheless, even though the French doctrine still doubts about the ‘juridical’ character of the landscape (Romi 2007:609 ff.), because of its subjective character, France ratified the Landscape Convention¹⁵ in 2005. Hence, this Convention is now hierarchically higher than the French laws, according to article 55 of the French Constitution¹⁶.

The same problem appears with the concept *Ruhezone*, which comes from the Austrian legal system and does not appear in the other legal systems. This category of protected areas does not even appear in all the laws on nature protection of the Austrian *Länder*. It is a specificity of Tyrol¹⁷ (*Ruhegebiet*) (Réseau alpin des Espaces Protégés 2002:9). The classification of the protected areas is different between the Austrian *Länder* because there is no common framework law on the subject. Still, the term *Ruhezone* is quite important, because according to article 11, 3 of the Protocol on Conservation on Nature and the Countryside, the Contracting Parties have to encourage the creation of such areas¹⁸. Still, for the time being, the Harmonising Group has not yet managed to define this concept in a satisfactory way.

3. The different ways to define a concept

3.1. The concept of ‘species’

When elaborating definitions we often realised that some concepts could be defined differently from a scientific point of view or from a legal point of view. For instance, the concept of ‘species’ is often defined differently (Kamto 2007:867-879, De Sadeleer & Born 2004:54) and very broadly in legal texts, without consideration for the scientific definition. According to article 1(a) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) ‘species’ means “any species, subspecies, or geographically separate population thereof”. This definition includes the populations of species and the subspecies and even defines the term ‘species’ by the term itself. Such definitions are considered tautological by linguists. In order to really understand what ‘species’ means in

14 D.Lgs. 22.01.2004, n. 42 T.C., art. 131, co. 1.

15 *Loi n° 2005-1272 du 13 octobre 2005 autorisant l’approbation de la convention européenne du paysage (JORF n° 240 du 14 octobre 2005 page 16297)*. The Harmonising Group adopted the definition provided by article 1 of the Landscape Convention.

16 Article 55 of the French Constitution: “*Les traités ou accords régulièrement ratifiés ou approuvés ont, dès leur publication, une autorité supérieure à celle des lois, sous réserve, pour chaque accord ou traité, de son application par l’autre partie.*”

17 See paragraph 11 of the *Kundmachung der Landesregierung vom 12. April 2005 über die Wiederverlautbarung des Tiroler Naturschutzgesetzes 1997* (LGBl. Nr. 26/2005).

18 Article 11,3: “[*Les Parties contractantes*] encouragent la création d’autres zones protégées et de zones de tranquillité, garantissant la priorité aux espèces animales et végétales sauvages.”

general, it is better to refer to a scientific or general definition. According to the Oxford Dictionary species is: “A group of animals or plants which are similar and can be bred together to produce young animals or plants of the same kind of them”.

The difference between these two kinds of definitions lies in the general purpose of international agreements: they intend to offer the broadest possible protection of species¹⁹. This is also the objective of article 1 of the Protocol on the Conservation of Nature and the Countryside: “*L'objectif du présent protocole est [...] de convenir de règles internationales en vue d'assurer [...] la conservation des [...] espèces animales et végétales sauvages [...]*”. The Harmonising Group decided to adopt the scientific definition because of the tautological character of the CITES definition. Nevertheless, it was not adopted without discussion. For the reason explained above, the legal experts favoured the adoption of a broader definition. Yet the opinion of the linguists was that a tautological and terminologically incorrect definition leaves the term undefined. The problem was solved by keeping the scientific definition as main definition and referring to the CITES definition in a note to the term.

3. 2. The concept of ‘mountain area’

Elaborating a definition for the term ‘mountain area’ was also problematic, even though it is a central term for the Alpine Convention system. In the different Alpine States a precise definition of ‘mountain area’ is necessary in order to specify the territorial scope of application of the statutory provisions concerning mountains. For instance, the farmers in mountain areas may be supported by compensatory allowances to ensure continued and sustainable agricultural land use, preservation of the countryside and the fulfilment of environmental requirements. Mountain areas are a kind of less-favoured area, which are areas affected by specific handicaps²⁰. The criteria used in the different Alpine States to define these areas are principally based on altitude and on some additional criteria that may differ from State to State. For instance, according to the Italian legislation a mountain area is a “[Z]ona geografica caratterizzata dalla presenza di notevoli masse rilevate aventi altitudini, di norma, non inferiori a 600 metri nell'Italia settentrionale e 700 metri nell'Italia centro-meridionale e insulare”²¹. However, the definition of the Alpine Convention level cannot be based on the criterion of altitude, because the table below shows clearly that the

19 The species are usually listed in the annexes to the international agreements.

20 See Council Regulation (EC) No 1257/1999 of 17th May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations. Since 2007 new regulations exist, but the dispositions of this Council Regulation N°1257/1999 concerning the less-favoured areas are still valid until 2010.

21 Law no. 142, 8th June 1990, on the autonomous local authorities, amended by Act no. 265 of 3rd August 1999. These criteria were written in the law until 1990, but they can still be considered valid, because new criteria were not adopted and the mountain communities remain the same (Villeneuve et al. 2006:82).

limits are set in a variety of forms in the Alpine countries. One recent study of the General Direction of the European Commission showed the following differences:

Table 1: Delimitation of mountain areas in the Alpine Member States (Schuler et al. 2004:150)

Alpine Member State	Minimum elevation	Other criteria
Austria	700 m	also above 500 m if slope > 20%
Italy	600 m	altitudinal difference > 600 m
France	700 m (generally) 600 m (Vosges) 800 m (Mediterranean)	slope > 20% over > 80% of area
Germany	700 m	climatic difficulties
Slovenia	700 m	also above 500 m if more than half the farmland is on slopes of > 15%; or slope > 20%

That is the reason why the Harmonising Group decided to adopt a compromise definition derived from Council Regulation (EC) 1257/1999²², which is not based on altitudinal criteria at all. Such a definition leaves it to the States to decide whether they want to include or exclude certain areas. A mountain area is an area “characterised by a considerable limitation of the possibilities for using the land and an appreciable increase in the cost of working it due either to the existence, because of altitude, of very difficult climatic conditions, the effect of which is substantially to shorten the growing season, or at a lower altitude, to the presence over the greater part of the area in question of slopes too steep for the use of machinery or requiring the use of very expensive special equipment, or to a combination of these two factors, where the handicap resulting from each taken separately is less acute but the combination of the two gives rise to an equivalent handicap”. A note specifies that the delimitation of mountain areas is a competence of the Alpine States/ regions. The limits of the content of the national definitions are clear, so are those of a more general definition, which cannot delimit the mountain areas precisely. However, the Alpine region “had been already defined by the Contracting Parties during the drafting of the Convention and the administrative units that are included in the geographical scope of application are listed in the Annex to the Convention” (Regional Environmental Center for Central and Eastern Europe 2007:25). The definition of the geographical scope of the Alpine region is based on the delimitation of the mountain areas of each Member State (Galle 2002:30).

22 Council Regulation (EC) 1257/1999 of 17th May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ L 160, 26.06.1999, p. 80-102).

4. The meaning of 'transborder': traditional strict or innovative wide interpretation?

The definition of the term 'transborder protected area' (*Gebiet grenzüberschreitenden Schutzes*²³/ *espace protégé transfrontalier*/ *area protetta transfrontaliera*/ *čezmejno zavarovano območje*) also posed some difficulties, because of the adjective 'transborder'. Does it refer to State borders or also to administrative borders like the regional borders? We initially proposed a definition which referred to administrative borders and was rather broad, since this seemed to be closer to the aim of the Alpine Convention and especially to that of article 12 of the Protocol on the Conservation of Nature and the Countryside. As a consequence, this proposal was also in accordance with the definition given by the Alpine Network of Protected Areas, which is now a structure of the Alpine Convention. In fact, this organisation made an important study on this topic and defined how this term should be understood for the implementation of the Alpine Convention. For the Alpine Network of Protected Areas 'transborder' means not only on both sides of the national borders but also on both sides of the administrative borders of a protected area located in one State (Signaux Alps 2003:30). However, this definition did not meet the requirements of the representatives of the *Délégation Générale à la langue française et aux langues de France*, who wanted to adopt the 'classic' and restrictive definition focused on the national borders²⁴.

Eventually the Harmonising Group adopted the restrictive definition: "*Espace protégé partagé par des pays voisins, permettant un continuum écologique et servant de couloir pour de nombreuses espèces migrant à travers les frontières*". It is to be regretted that this definition is not in accordance with the study of the Alpine Network of Protected Areas, because the regional borders within a protected area could be a real obstacle to cooperation (in Federal States, but also in the other countries). For example, the *Parco Nazionale dello Stelvio*/ *Nationalpark Stilfserjoch* is divided into tree parts, has tree different management authorities and can be concerned by the above-mentioned article 12. Nevertheless, it can be considered a viable solution, which avoided an interpretation of the text of the Protocol that might have gone too far. On this issue, it would be very interesting to have a look at the preparatory works for the Protocol on the Conservation of Nature and the Countryside. The problem was solved by adding a comment to the term, which explains the position of the Alpine Network of Protected Areas.

23 Term proposed by the Harmonising Group instead of *grenzüberschreitendes Gebiet* to underline the transborder character of the desired protection.

24 According to a French general dictionary *frontière* (border) means "*limite qui sépare deux Etats*" (Le Petit Larousse Illustré 2007, 2006:487). Also according to the *Vocabulaire juridique* of G. Cornu it means "*ligne séparant le territoire de deux Etats*".

5. New concepts and new terms

5.1. The concept of 'ecological network' in the Alpine legal systems

Another 'modern' disposition of the Protocol on the Conservation of Nature and the Countryside is the concept of 'ecological network' developed in article 12. This concept is relatively new and is currently gaining more and more importance in the national legal systems, even though it is still taken into consideration at different degrees by the Alpine States. It is present in the German national law since 2002 (cf. Krüsemann 2006:546-554, Krüsemann 2005). The German experts also played an important part in the interpretation of this concept by the European authorities and especially the European Commission (cf. Ssymank et al. 2006:45-49). Furthermore, as explained previously, the Protocol on the Conservation of Nature and the Countryside was written by a Working Group under the direction of Germany. For the time being, this concept is still not so *clearly* present in other national legal systems²⁵ and we could not compare the definitions elaborated at the national levels. In the Alpine States only the German legislator expressed this concept of connectivity between the biotopes in the law. In the other States this necessity appears in different environmental programmes. For instance, the creation of an ecological network is one point of the *Conception Paysage Suisse* adopted by Switzerland in 1997 and one objective of the French National Biodiversity Strategy adopted in 2004. The different approach to this concept in the various national legal systems can illustrate the different understanding of this concept by the national authorities. The diverging approaches emerged very clearly within the Harmonising Group, which is composed of people from all Alpine States. Nevertheless, the legal consideration of this concept is changing very fast: The European Commission recently published a study on the ecological coherence of the Natura 2000 network (Kettunen et al. 2007) in order to facilitate a common understanding of this concept between the Member States²⁶. For the Alpine Convention term 'ecological network' the Harmonising Group adopted a definition coming indirectly from article 12 of the Protocol on the Conservation of Nature and the Countryside ("*[R]éseau national et transfrontalier d'éléments protégés, de biotopes et d'autres éléments dignes de protection dont le caractère est reconnu*"). It is true though that this definition leaves some elements unexplained, which could be defined further (e.g. *éléments dignes de protection*). The Harmonising Group decided to adopt this definition in order to use material of the Alpine Convention system. Yet there might have been a more complete definition, adopted by

25 For instance, the concept 'ecological network' means the Natura 2000 sites as a whole (see art. L. 414-1-V of the *Code de l'Environnement*). But if the *Code de l'Environnement* (art. L. 414-4-III) does refer to the ecological coherence of the Natura 2000 network, there is no explanation about what this actually means.

26 It must be noticed here that the necessity of the creation of a European working group on this topic was not expressed by all the Member States.

the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) of the Convention on Biological Diversity in 2003²⁷: “An ecological network can be described as [...] [a] network comprising an ecologically representative and coherent mix of land and/or sea areas that may include protected areas, corridors and buffer zones, and is characterized by interconnectivity with the landscape and existing socio-economic structures and institutions”.

5.2. The proposal of new terms

During harmonisation work, some new terms had to be proposed, because some terms present in the Framework Convention and the Protocols had not been adequately translated. This does not mean that the text of these international treaties was being re-written. It is legally impossible to ‘rewrite’ an international treaty (cf. Dupuy 2006:275) and even minor corrections are usually avoided. Besides, even though it is clear that the terms are not harmonised across the four language versions, the texts are considered as harmonised as a whole²⁸. These newly proposed terms are considered as ‘better translations’ and will be used by the translators or other actors working in transborder relations for future text production.

One very interesting case was the search for an equivalent for the terms *Kulturlandschaft/ paesaggio culturale/ kulturna krajina* in the French language. The French equivalent used in the Alpine Convention is *paysage culturel*, but this term does not correspond to the meaning developed by this international treaty. The contexts we could find in French for this term were always linked to the culture in the sense of the customs, beliefs, etc. of a particular society/country, the literature, music, etc. (cf. Oxford Dictionary, 2004:165). This does not correspond to the definition of the term *Kulturlandschaft* that can be extracted from the *Working Programme 2005-2010* of the Alpine Convention. In this programme the *Kulturlandschaft* is described as a landscape, which is strongly influenced by human activities²⁹. That is why the Harmonising Group proposed to create a new term in order to express the concept of cultural landscape, namely *paysage cultural*³⁰.

27 Doc UNEP/CBD/SBSTTA/9/6/Add.1, 6th September 2003, point 2.6.

28 See point 5.5 of the Minutes of the VI Alpine Conference (30-31 October 2000, Lucerne): “*La Conférence alpine prend acte du rapport final sur l’harmonisation linguistique de tous les protocoles d’application convenus à ce jour et l’approuve. Elle constate que les protocoles Aménagement du territoire et développement durable, Agriculture de montagne, Protection de la nature et entretien des paysages, Forêts de montagne, Tourisme, Protection des sols et Energie ont été entièrement harmonisés sur les plans linguistique et stylistique, et ce sans qu’aucune modification de fond n’ait été apportée*”.

29 *Programme pluriannuel de travail de la Convention alpine 2005-2010*, point 1.1 and point 2.4.

30 An official opinion of the *Délégation Générale à la Langue Française et aux Langues de France* is still being prepared.

6. Conclusion

The harmonised definitions are often wide, because they have to be accepted by all the members of the Harmonising Group. Legal definitions require mediation in order to be accepted by all the Parties. The examples show that harmonising the terms of the Protocol on the Conservation of Nature and the Countryside was a particularly difficult task, because some terms have different contents and some linguistic labels have no content at all in some countries. Defining the object of protection means to tell the Member States exactly what and how to protect and in some cases our decisions will surely lead to discussions.

To conclude the discussion it must be noticed that the term ‘environment’, which we did not treat in our work has also been defined very broadly. The frontiers of this concept are always changing and cannot ‘happily’ be restricted by the law (Amirante 2007:6). That is why the definitions given by the International or European legal texts are quite general. Thus article 3 of the directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment gives a broad definition of ‘environment’ by identifying the scope of the impact assessment: “The environmental impact assessment will identify, describe and assess in an appropriate manner, [...] the direct and indirect effects of a project on the following factors: human beings, fauna and flora, soil, water, air, climate and the landscape, the interaction between the factors mentioned in the first and second indents, material assets and the cultural heritage”. For some terms, this might be the only viable solution.

Bibliography

- Amirante, Domenico (2007): L'autonomie scientifique du droit de l'environnement, Réflexions de droit comparé. In Prieur, Michel (ed.): *Pour un droit commun de l'environnement*. Paris: Dalloz, 3-19.
- Cornu, Gérard (2007): *Vocabulaire juridique*, 8th ed. Paris: PUF.
- De Sadeleer, Nicolas & Born, Charles-Hubert (2004): *Droit international et communautaire de la biodiversité*. Paris: Dalloz.
- Dictionnaire général, *Le Petit Larousse Illustré 2007* (2006). Paris: Larousse.
- Dupuy, Pierre-Marie (2006): *Droit international public*, 8th ed. Paris: Dalloz.
- Galle, Ewald (2002): *Das Übereinkommen zum Schutz der Alpen (Alpenkonvention) und seine Protokolle, Beitrag zur Umweltgestaltung A 148*. Berlin, Schmidt Erich Verlag.
- IUCN (1994): *Guidelines for Protected Areas Management Categories*. Cambridge/ Gland: IUCN.
- IUCN (2004): *Speaking a common Language, Uses and performance of the IUCN System of Management Categories for Protected Areas*. Cardiff University/ IUCN/ UNEP.
- Kamto, Maurice (2007): L'espèce protégée en droit international de l'environnement. In Prieur, Michel (ed.): *Pour un droit commun de l'environnement*. Paris: Dalloz, 867-879.
- Kettunen, Marianne/ Terry, Andrew/ Tucker, Graham/ Jones, Andrew (2007): *Guidance on the maintenance of landscape connectivity features of major importance for wild flora and fauna, Guidance on the implementation of Article 3 of the Birds Directive (79/409/EEC) and Article 10 of the Habitats directive (92/43/CEE)*. Institute for European Environmental Policy.
- Kiss, Alexandre (2004): Place et rôle du système conventionnel alpin dans le développement du droit international de l'environnement. In Treves, Tullio/ Pineschi, Laura/ Fodella, Alessandro (eds.): *Sustainable development of Mountain Areas, Legal perspectives beyond Rio and Johannesburg*. Milano: Giuffrè, 79-88.
- Krüsemann, Ellen (2005): *Biotopverbund im Naturschutzrecht, Umweltrecht und Umweltpolitik*, vol. 15. Berlin: Wissenschafts-Verlag.
- Krüsemann, Ellen (2006): Der Biotopverbund nach §3 BNatSchG. In *Natur und Recht*, vol. 9, 546-554.
- Lamy, Eric/ Lefort, Jérôme/ Zago, Alexandre (2006): *La Loi Montagne éclairée par sa jurisprudence*. Voiron: Territorial Editions.
- Lefevre, Silvère (2006): *Les actes communautaires atypiques*. Collection Les Travaux du CERIC. Bruxelles: Bruylant.
- Makowiak, Jessica (2003): *Rapport national relatif à la transposition des dispositions relatives au réseau Natura 2000 en droit français*, Séminaire de Caserta/ Pedimonte Matese, 30th-31st May.
- Ministère de l'Ecologie et du Développement Durable (2004): *Stratégie nationale pour la biodiversité : enjeux, finalités, orientations élaborée par le Ministère de l'Ecologie et du Développement Durable, Première Partie*. Paris: MEDD.
- Olivier, Juliette (2005): *L'Union mondiale pour la nature (UICN), Une organisation singulière au service de l'environnement*, Collection Les Travaux du CERIC. Bruxelles: Bruylant.
- Oxford Wordpower. Dictionary for Learners of English* (2004). Oxford/ New York. Oxford University Press.

- Piore, Riccardo (2007): Verso l'applicazione della Convenzione Europea del paesaggio in Italia. In Prieur, Michel (ed.): *Pour un droit commun de l'environnement*. Paris: Dalloz.
- Réseau alpin des Espaces Protégés (2002): *Typologie des espaces protégés alpins – Cadre juridique et statuts de protection*, Collection Les dossiers du Réseau alpin, n° 8. Gap. Secretariat Permanent de la Convention Alpine et Réseau Alpin des Espaces Protégés.
- Romi, Raphael (2007): *Droit et administration de l'environnement*, Domat Droit Public, 6th ed. Paris: Montchrétien.
- Schuler, Martin/ Stucki, Erwin W./ Roque, Oliver/ Perlik, Manfred (2004): *Mountain Areas in Europe: Analysis of mountain areas in EU members states, acceding and other European countries*. Final Report. European Commission Contract No 2002.CE.16.0.AT.136. NORDREGIO – Nordic Centre for Spatial Development.
http://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/montagne/mount9.pdf
(date of consultation 12.12.2007)
- Secrétariat permanent de la Convention alpine et Réseau Alpin des Espaces Protégés (2004): Réseau écologique transfrontalier, Etude sur mandat de la Convention Alpine. In *Collection Signaux Alpins* n°3. Innsbruck: Secrétariat permanent de la Convention alpine.
- Ssymanck, Axel/ Balzer, Sandra/ Ulrich, Karin (2006): Biotopverbund und Kohärenz nach Artikel 10 der Fauna-Flora-Habitat-Richtlinie. In *Naturschutz und Landschaftsplanung* 38, 2/ 2006, 45-49.
- The Regional Environmental Center for Central and Eastern Europe (2007): *Handbook on the Carpathian Convention*. Szentendre.
- Veyret, Yvette (ed.): *Les montagnes, Discours et enjeux géographiques*, Collection Dossiers des Images Economiques du Monde. Paris: SEDES.
- Villeneuve, Annie/ Castelein, Astrid/ Mekouar, Mohamed A. (2002): *Mountain and the law: emerging trends*, Legislative Study 75. Roma: FAO.